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

Appeal No.	**:**	**14/2022**
Registered on	**:**	**22.06.2022**
Date of order	**:**	**14.10.2022**

In the matter of: -

Appeal against the order dated 29.11.2021 passed by CGRF, DHBVN, Gurugram in case No. DH/CGRF-3244/2020.

M/s. Country Wide Promoters & M/s. BPTP Ltd., OT-14, 3rd Floor, Next Door, Parklands, Sector 76, Faridabad,121004.

Appellants

Versus

1. Sh. R.P.Uniyal & other, R/o Park Floor -2,Flat no. T-13/G004, Sector-76, Faridabad.
2. CGRF, DHBVN, Gurugram
3. XEN (Op) Division, DHBVN, Greater Faridabad.
4. SDO (Op) S/Division, DHBVN, Badrola.

Respondents

Before:
Sh. Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:
Sh. Hemant Saini, Advocate for appellants.

Present on behalf of Respondents:
1. Adv. Gaurav Gupta, on behalf of R-1
2. Adv. Sahil Sood, Advocate for Respondent 3 & 4.
3. Sh. Ranjan Rao, XEN/OP, Greater Faridabad
4. Sh. Sandeep Kaushik, SDO (Op) S/Division, DHBVN, Badrola

ORDER

A. M/s. Country Wide Promoters & M/s. BPTP Ltd., OT-14 ,3rd Floor, Next Door, Parklands, Sector 76, Faridabad,121004 has filed an Appeal against the order dated 29.11.2021 passed by CGRF, DHBVN, Gurugram in case No. DH/CGRF-3244/2020 along with application for condonation of delay and submitted as under: -

Condonation of delay: - The appellant in condonation of delay application submitted as under:

1. *That the Applicants-Appellants are filing an Appeal, feeling aggrieved from the Judgment dated 28.11.2021 passed by the Hon'ble Forum for Redressal of Consumer Grievances, DHBVNL, Gurugram (CGRF), in the case titled "R.P.Uniyal and Others Vs.* XEN(OP) Division, DHBVN and Others".
2. *That the Hon'ble Supreme Court vide its Order dated 27.04.2021 further extended the period of limitation from 14.03.2021 till further orders, due to COVID-19 Pandemic. Further, the Hon'ble Supreme Court while disposing of the M.A. No.665 of 2021 vide its order dated 23.09.2021, inter alia, directed as under: -*

   "In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021".
3. *That the Hon'ble Supreme Court vide its Order dated 10.01.2022 has further extended the period of limitation till 29.02.2022 while disposing the M.A. No.21 of 2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020 due to Covid-19 Pandemic and impact of the surge of virus on public health and adversity faced by the litigants.*
4. *That the Hon'ble Supreme Court, in its number of pronouncements has time and again said that the Court should be liberal in condoning the delay in filing as well as re-filing, as the procedure is the handmaid of justice and the same should act as a lubricant towards the dispensation of justice and not as an obstruction or irritant. In the present case, the delay in filing the Appeal is absolutely bonafide, on account of various reasons enumerated in the preceding paragraphs and the same may kindly be condoned, in the interest of justice, as there was sufficient bonafide reasons which resulted into the aforesaid delay, as held by Hon'ble Supreme Court in various pronouncements, enumerated as follows; -*

   (a) The Hon'ble Supreme Court vide judgment dated 19.02.1987 in the case titled "Collector, Land Acquisition, Aantnag and Another Vs. Mst. Katiji and Others", 1987 AIR SC 1353, has observed as under: -

"3. The legislature has conferred the power to condone delay by enacting Section 5 "Any appeal or any application, other than an application under any of the provisions of 0. XXI of the Civil Procedure Code, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period." of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that: -

- *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay every second's delay? The doctrine must be applied in a rational common-sense pragmatic manner.*
- *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- *It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

  Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal.

(b) *The Hon'ble Supreme Court vide judgment dated 03.09.1998 in the case titled "N.Balakrishan Vs. M.Krishnamurthy", 1998 AIR SC 3222, has observed as under:-*

10. *The reason for such different stance is thus:*

"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a good accuse would transform into a bad cause".

13. *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant, the Court shall compensate the opposite party for his loss".*

(c) *The Hon'ble Supreme Court vide judgment dated 28.08.1984 in the case titled "Sital Prasad Saxena (Dead) by L.Rs. Vs. Union of India and Others", 1985 AIR (SC) 1, has observed as under: -*

6. *…… Let it be recalled what has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.*

8. *Having heard learned counsel on either side we are satisfied that both the trial court as well as the High Court were in error in not condoning the delay in seeking substitution of heirs and legal representatives of the deceased/appellant in time. Cause for delay as urged 663 appears to us to be sufficient which prevented them from moving the petition for substitution. We are satisfied that sufficient cause was made for condoning the delay. Accordingly…*

(d) *The Hon'ble Supreme Court vide judgment dated 22.03.2021 in the case titled "Sesh Nath Singh and Another Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Another", has observed as under: -*

63. *Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application.*

64. *A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would 26 have expressly provided so. Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.*

102. *In any case, Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing 'sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition, it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay".*

(e) *The Hon'ble Supreme Court vide judgment dated 03.08.1977 in the case titled "Bikram Dass Vs. Financial Commissioner and Others", 1977 AIR (SC) 2221, has observed as under: -*

7. *"Out of the seven questions referred to the Full Bench, we are concerned, principally, with question No. 7 only which is as follows:*

"Can an appeal under Clause 10 of the Letters Patent be held to be incomplete or "no appeal in the eye of law" merely because it is not accompanied by the requisite three spare copies of the paper-book?"

This question was answered by the Full Bench thus:

"The above discussion leads to the conclusion that if an appeal under Clause 10 of the Letters Patent does not comply with the mandatory provisions of Rule 3 of Chapter 2-C of the Rules by not filing three sets of typed copies of the documents, it has to be regarded as no appeal in the eye of law and shall not be deemed to have been filed on that day. It shall be deemed to have been filed only on the day when it is complete in all respects, as required by the Rules and is accepted for registration by the Registry."

22. *"We hold accordingly that the High Court is wrong in its view that the appeal was barred by time. The memorandum was presented within the prescribed period of limitation of 30 days and there is no reason why, the irregularity committed in not filing three sets of documents along with the memorandum should not be excused when one complete set was filed with the memorandum and the remaining two sets were filed within a reasonable time thereafter".*

(f) *The Hon'ble Supreme Court vide judgment dated 12.08.2008 in the case titled "State (NCT of Delhi) Vs. Ahmed Jaan", 2008 (4) RCR (Criminal) 119, has observed as under: -*

"7. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be considered in using the discretion. In N. Balakrishnan v. M. Krishnamurthy, 1999(2) RCR(Civil) 578: (AIR 1998 SC 3222) it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of

the Government without being unduly indulgent to the slow motion of its wheels".

"8. What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd. v. Shanti Misra, (1975(2) SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari, (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bonafides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned".

"11. In O.P. Kathpalia v. Lakhmir Singh, 1984(2) RCR(Rent) 201: (1984(4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji. (1987(2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which sub-serves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common-sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit

by resorting to delay. In fact, he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned".

(g) The Hon'ble Supreme court vide judgment dated 17.02.2015 in the case titled "State of Tamil Nadu Vs. Anbai Kingston Philips and Others", 2015 (6) RCR (Civil) 323, has observed as under: -

"9. The appeal, as mentioned earlier, was filed within the stipulated period of limitation but could not be re-presented for a long time as the defects were not rectified. The question all the same is whether there was sufficient reason for the delay in doing so. The fact that delay is inordinate stretching over nearly 10 years, cannot be denied. At the same time, it is fairly well-settled that the State functions in an impersonal fashion and that the ordinary standards, applicable to a litigant pursuing his own case, do not at times apply stricto sense to the action or inaction of the State. That apart the enquiry conducted by the Registrar (Vigilance) of the High Court has not in the instant case suggested any collusion at the level of the State Government. What appears to have actually happened is that the appeal papers were presented within the time but repeatedly re-presented without fully removing the defects, in which process there was considerable delay. This was mainly because the officers concerned do not appear to have acted diligently. There is no gainsaying that the two range officers who have been indicted in the enquiry report were themselves under the supervisory control of higher officers who ought to have looked into the matter and ensured that the papers were refiled in time. Suffice it to say, we are in the light of the enquiry report submitted by the Registrar (Vigilance) inclined to condone the delay no matter inordinate in its length. We, however, do so subject to payment of costs of L 50,000/- (Rupees Fifty Thousand) which amount shall

be deposited in the Advocates' Welfare Fund, if there is any, failing which with the High Court Legal Services Committee'.

"10.Having said that, we consider it necessary to take the process of identifying those responsible for the delay to its logical conclusion. The report no doubt confines the charge of dereliction to the two range officers, mentioned earlier. We are of the view that the range officers being themselves under the supervisory control of their higher officers the latter were as much responsible for ensuring that the former perform their duties diligently. The enquiry report has not gone into that aspect. We, therefore, direct the Secretary, Department of Environment and Forest, Government of Tamil Nadu, shall call for an explanation of the officers who were, during the relevant period, supervising the two range officers, mentioned in the report. The officers would be called upon to explain as to why they were unable to take note of the neglect/dereliction of duties by the range officers concerned and explain their failure to do so".

(h) The Hon'ble Supreme Court vide judgment dated 13.12.2018 in the case titled "Dr. Narender Kumar Sharma and Others Vs. Maharana Pratap Educational Centre and Another", has observed as under: -

"8. It is settled legal position that delay in re-filing has to be considered on a different footing. Reference in this context may be had to the judgment of the Division Bench of this court in S.R. Kulkarni vs. Birla VXL Ltd., 1998 (3) RCR (Civil) 436 where the court held as follows: -

"8. Notwithstanding which of the aforesaid Rules are applicable, the question of condensation of delay in re-filing of an application has to be considered from a different angle and viewpoint as compared to consideration of condensation of delay in initial filing. The delay in re-filing is not subject to the rigorous tests which are usually applied in excusing the delay in a petition filed under Section 5 of the Limitation Act (See Indian Statistical Institute Vs. M/s. Associated Builders and others AIR 1978 S C 335. In the present case, the initial delay of 7 days in filing the application for leave to defend stood condoned and that has not been challenged by any of the parties. It is no doubt true that the counsel for the appellant had not been very diligent after filing of application for leave to defend on 19th August, 1995 as counsel did not check whether the application was lying in the Registry with any objection or not. Considering however, the nature of the objections, it was a matter of removal of the objections by the counsel and on

the facts of the present case, it is difficult in this case to attribute any negligence to the party. On the facts of the case, the effect of negligence or 'casual approach', which would be appropriate term to be used here, of the counsel on his client, does not deserve to be so rigorous so as to deny condensation of delay in re-filing the application. The casual approach of the counsel is evident as no timely efforts were made firstly to find out after filing application on 19th August, 1995 as to whether the Registry had raised any objection or not. Secondly, despite order of the Joint Registrar dated 9th January, 1996, the objection was removed only on 4th March, 1996 i.e. after the date which the Joint Registrar had fixed for the application being posted for hearing before the Court. When the application was refiled on 4th March, 1996, one would expect the person filing to be more careful thereby not giving an opportunity to the Registry to raise any other objection. But that was no so. The result was that the second objection was raised which, as noticed above, was removed on 21st March, 1996 but application was refiled only on 27th March, 1996. Apart from this casual approach, we do not find any mala fide intention on the part of the appellant to delay the proceedings. When there is negligence or causal approach in a matter like this in refiling of an application, though the court may not be powerless to reject an application seeking condensation and may decline to condone the delay but at the same time, passing of any other appropriate order including imposition of cost can be considered by the court to compensate the other party from delay which may occur on account of refiling of the application."

"9. Similarly, the Supreme Court in Indian Statistical Institute vs. Associate Builders and Ors., AIR 1978 SC 335 held as follows: -

"10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation. If the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests

which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the High Court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be re-presented."

(i) The Hon'ble Supreme Court vide judgment dated 27.03.2012 in the case titled "S.Ganesharaju (D) L.Rs. and Another Vs. Narasamma (D) through L.Rs. and Others", 2013 (11) SCC 341, has observed as under: -

11. We have also critically gone through the averments of I.A. No. 1 of 2008 to find out ourselves if Appellants have been able to explain delay of 53 days satisfactorily or not and if sufficient cause has been shown by them. After having gone through the same, we are more than satisfied that delay has been explained properly and to our satisfaction. It reflects that sufficient cause was shown and proved before learned Single Judge. It is also to be noted that delay was only for 53 days, which would certainly not fall in the category of exorbitant or inordinate delay. If delay of 53 days is not condoned and the matter is not heard on merits, then it would tantamount to rendering injustice to the Appellants, who were seeking condonation of delay. Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits.

13. Such a practice to be adopted by courts, while deciding Application filed under Section 5 of the Indian Limitation Act, especially while rejecting the same and yet touching the merits of the matter has been deprecated by this Court. [See: 2007 (5) SCALE 30, S.V. Matha Prasad v. Lalchand Meghraj & Ors.]. This Court has given the following direction to be followed, which reads as thus:

"5. .... By the impugned judgment, the Division Bench has not only condoned the delay but taken a decision on merits as well. We are of the opinion that the second exercise was not justified as the only issue before the Division Bench was the question of limitation. We, accordingly, set aside the judgment of the Division Bench to the extent that it goes on to the merits of the controversy but maintain it in so far that it deals with the question of limitation."

14. *After giving our anxious and careful consideration to the whole matter, we are of the considered opinion that impugned order passed by the learned Single Judge cannot be sustained in law.*

15. *The expression "sufficient cause" as appearing in Section 5 of the Indian Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice.*

16. *Unless Respondents are able to show malafide in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.*

17. *Rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.*

18. *We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate.*

19. *In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined, thus, the courts are left to exercise a discretion to conclude whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that Appellants have shown sufficient cause seeking condonation of delay and same has been explained satisfactorily".*

(j) The Hon'ble Supreme Court vide judgment dated 14.12.1971 in the case titled "The State of West Bengal Vs. The Administrator, Howarh Municipality and Others", 1972 AIR SC 749, has observed as under: -

"28. In the case before us, it must be stated in fairness to the learned Solicitor General that he has not contended that the state must be treated differently. On the other hand, his contention is that the reasons given by the appellant, which, according to him will establish "sufficient cause" have not at all been adverted to, much less, considered by the High Court. In our opinion the contention of the learned Solicitor General is perfectly justified in the

circumstances of this case. The High Court, certainly, was not bound to accept readily whatever has been stated on behalf of the State to explain the delay. But, it was the duty of the High Court to have scrutinized the reasons given by the State and considered the same on merits and expressed an opinion, one way or the other. That, unfortunately, is lacking in this case".

"30. From the above observations it is clear that the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party".

(k) The Hon'ble Supreme Court vide judgment dated 12.09.2000 in the case titled "State of M.P. Vs. Pradeep Kumar", 2000 (4) RCR (Civil) 730, has observed as under: -

10. What is the consequence if such an appeal is not accompanied by an application mentioned in sub-rule (1) of Rule 3-A? It just be noticed that the Code indicates in the immediately preceding rule that the consequence of not complying with the requirements in Rule 1 would include rejection of the memorandum of appeal. Even so, another option is given to the court by the said rule and that is to return the memorandum of appeal to the appellant for amending it within a specified time or then and there. It is to be note that there is no such rule prescribing for rejection of memorandum of appeal in a case where the appeal is not accompanied by an application for condoning the delay. If the memorandum of appeal is filed in such appeal without accompanying the application to condone delay the consequence cannot be fatal. The Court can regard in such a case that there was no valid presentation of the appeal. In turn, it means that if the appellant subsequently files an application to condone the delay before the appeal is rejected the same should be taken up along with the already filed memorandum of appeal. Only then the Court can treat the appeal as lawfully presented. There is nothing wrong if the court returns the memorandum of appeal (which was not accompanied by an application explaining the delay) as defective. Such defect can be cured by the party concerned and present the appeal without further delay.

19. The object of enacting Rule 3-A in Order 41 of the Code seems to be two-fold. First is, to inform the appellant himself who filed a time barred appeal that it would not be entertained unless it is accompanied by an application explaining the delay. Second is, to communicate to the respondent a message that it may not be necessary for him to get ready to meet the grounds taken

up in the memorandum of appeal because the court has to deal with application for condonation of delay as a condition precedent. Barring the above objects, we cannot find out from the rule that it is intended to operate as unremediably or irredeemably fatal against the appellant if the memorandum is not accompanied by any such application at the first instance. In our view, the deficiency is a curable defect, and if the required application is filed subsequently the appeal can be treated as presented in accordance with the requirement contained in Rule 3A Order 41 of the Code.

(l) The Hon'ble Supreme Court vide judgment dated 12.11.2010 in the case titled "Indian Oil Corporation Ltd. and Others Vs. Subrata Borah Chowlek, etc", 2010 (14) (SCC) 419 has observed as under: -

9. Similarly, in Ram Nath Sao Alias Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., 2002 (2) R.C.R. (Civil) 337: (2002) 3 SCC 195, this Court observed that:

"But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over- jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

5. That otherwise also, it is a settled law that the procedure is handmaid of justice, which should serve as a lubricant to advance the dispensation of justice on merits and not allowed to act as an irritant in the dispensation of

the justice. In the present case, an Appeal has been preferred against a malafide Complaint filed by R.P. Uniyal, which may kindly be heard on merits, in the interest of justice, after condoning the bonafide delay in filing the present Appeal.

PRAYER: -

In view of the submissions made hereinabove, it is, therefore, most respectfully prayed that the delay of 195 days in filing the present Appeal, may kindly be condoned, and Appeal may kindly be allowed, in the interest of justice.

Appeal: -

The appellant submitted as under:

That the appellant filed the instant Appeal under the Haryana State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2020 for setting aside the Impugned Judgment dated 28.11.2021 passed by the Hon'ble Forum for Redressal of Consumer Grievance Dakshin Haryana Bijli Vitran Nigam, Gurugram, in the interest of justice, vide which the ld. Forum has issued a direction for something, which is not contemplated under the relevant Regulations, Notifications issued from time to time, thus rendering the Impugned judgment illegal, arbitrary, violative of the settled law in "DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others" (2003) 5 SCC 622 and "DLF Universal Ltd. and Another Vs. Director, Town and Country Planning, Haryana and Others", 2011 AIR (SC) 1463.

It is prayed that the operation of the Impugned judgment dated 28.11.2021 may kindly be stayed, during the pendency of the present Appeal before this Hon'ble Commission; especially when the CGRF has travelled beyond jurisdiction.

It is still further prayed that this Hon'ble Commission may kindly pass any other appropriate order or direction, which it may deem fit, to secure the ends of justice, in view of the peculiar facts and circumstances of the present case.

RESPECTFULLY SHOWETH: -

1. *That in "DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others" (2003) 5 SCC 622, the Hon'ble Supreme Court had held as follows: -*

"38. A regulatory Act must be construed having regard to the purpose it seeks to achieve. The State as a statutory authority cannot ask for something which is not contemplated under the Act."

2. *That the grievance of the Appellant Company(s) is that inspite of the fact that although no Regulation or Notification vests the ld. Forum for Redressal of Consumer Grievances, (hereinafter referred to as CGRF), Dakshin Haryana Bijli Vitran Nigam, Gurugram with the jurisdiction and authority to order, an audit into various charges collected by a Developer under the Bilateral Agreement LCIV, yet the ld. CGRF has issued a direction for "a comprehensive audit of the total amounts collected so far from the unit holders for creation of high and low-end electrical infrastructure in addition to the amount collected from the unit holders under the name of EDC, EDC paid to HUDA (now HSVP) specifying two component of electricity, cost of electrical infrastructure erected so far, the charges paid to HVPN/ DHBVN so far including the Bank Guarantees, balance amount lying with them along with all other necessary ingredients of a comprehensive audit and to make the audit report public and to share it with RWA/User's Association and the Licencee DHBVN for scrutiny". Thus the ld. CGRF has exceeded its jurisdiction and passed an order/ judgment dated 28.11.2021, which is without jurisdiction, illegal, arbitrary, unsustainable in the eyes of law and thus liable to be set aside.*
3. *That the present Appeal is being preferred in the capacity of a consumer by the Appellants, who are the Developers, having been granted various licences for setting up Residential Plotted Colonies, Group Housing Colonies and Commercial Colonies in Gurugram and Faridabad by the Government of Haryana. The Appellants are having a Single Point connection in the capacity of Single Point Distribution Licencee, from DHBVN, for providing electricity, in their licenced colonies, mentioned above, for the consumption of the public staying therein.*
4. *That the present Appeal is being filed against an illegal judgment dated 28.11.2021 passed by the Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam, Gurugram (hereinafter referred to as "CGRF"), vide which the Forum has exceeded their jurisdiction by directing a detailed forensic audit of the amounts received from the allottees by the Developers, in terms of the Statutory Bilateral Agreements entered with the Allottees, which direction has resulted into transgression by the ld. CGRF, of*

the Bilateral Agreements, executed by the Developers with the Allottees, rendering the Impugned Order dated 28.11.2021 passed by the ld. CGRF in direct conflict with the judgment of the Hon'ble Supreme Court passed in the case of "DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others" (2003) 5 SCC 622 and "DLF Universal Ltd. and Another Vs. Director, Town and Country Planning, Haryana and Others", 2011 AIR (SC) 1463.

5. *That the Hon'ble Supreme Court in "DLF Qutab Enclave Complex Educational Charitable Trust Vs. State of Haryana and Others" (2003) 5 SCC 622 has held that a statutory Authority cannot ask for something which is not contemplated under the Act. There is no provision for forensic Audit in any of the Regulations or Notifications issued from time to time.*

   Furthermore, the Hon'ble Supreme Court in "DLF Universal Ltd. and Another Vs. Director, Town and Country Planning, Haryana and Others", 2011 AIR (SC) 1463 has held that though the State Authority is entitled to inspect the execution of the lay out and internal and external development works in the colony and to issue appropriate directions in order to ensure strict compliance of their terms and conditions of licences, but is not authorized or empowered to review or evaluate the terms of contract and resolve the disputes, if any, between the Developer and the Purchasers of plots/ flats. The Hon'ble Supreme court had, further, held that no direction can be issued to delete the clause or relevant clauses from the Agreement mutually entered into by and between the parties and that the agreement by and between the Developer and Allottees, agreed terms and conditions and covenant therein are purely under private law domain. The Hon'ble Supreme Court had, further, held that the State cannot interfere with the agreement voluntarily entered into by and between the Developer and Purchaser of the plots/flats and the agreed terms and conditions by and between the parties do not require the approval or ratification and no direction can be issued to amend, modify or alter any of the clauses in the agreement entered into between the parties.

6. *That in the present case, the ld. CGRF has exceeded its jurisdiction to issue a direction to the Developers to get a comprehensive audit completed regarding the amount collected so far from the Unit holders in the name of EDC, EDC paid to HUDA (now HSVP), charges paid to HVPN/DHBVN so far including the bank guarantee, the balance is lying with them etc. alongwith all necessary ingredients of the comprehensive audit and to make the report*

public, which is infringement of the aforesaid judgments of the Hon'ble Supreme Court and violation of the settled law and thus, the Impugned Order dated 28.11.2021 is liable to be set aside being illegal, arbitrary, and thus unsustainable in the eyes of law.

7. *That the Impugned judgment dated 28.11.2021passed by the ld. CGRF is perverse, in so much as it has granted relief to the Complainant which was neither part of the original pleadings nor prayed for by the Complainant in the original complaint. The prayer was added subsequently vide application dated 03.12.2020, asking for a Forensic Audit, which was beyond the purview and jurisdiction of the CGRF, in view of the fact that none of the Regulations/ Notifications vests the Forum with the power to order Forensic Audit, which renders the Impugned judgment totally illegal and unsustainable in the eyes of law, being in direct conflict with the law laid down by the Hon'ble Supreme Court.*
8. *That the ld. CGRF have travelled beyond the pleadings to order a comprehensive audit into the pecuniary obligations between the Developers and the Allottees, arising out of the Bilateral Agreement executed with mutual consent which was purely in the private domain. Further, the Authorities have been forbidden to pass directions and enter private domain by the Hon'ble Supreme Court passed in the case of "DLF Universal Ltd. and Another Vs. Director, Town and Country Planning, Haryana and Others", 2011 AIR (SC) 1463.*
9. *That Respondent-Complainant, R.P.Uniyal, had filed a motivated Complaint No. DH/CGRF/3244/2020 before the Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam, HETRI, Sector 16, IDC Area, Gurugram (email: cgrf@dhbvn.org.in). The said complaint was filed on 19.10.2020 on the following allegations:*
   (1) Not to disconnect electricity supply who have been paying the electricity bills honestly.
   (2) To install a separate Single Point Meter for the society Park Floors-2 and also that the connection should be transferred to the name of Park Floors-2 and till such time it is done so, the sub meter of the main Single Point Meter should be read every month and its reading be taken specifically to arrive at DHBVN units exclusively for Park Floor-2 Society.

(3) *To bill the residents of the society in accordance with the regulation and the tariff order for domestic category and refund all the excess amounts charged so far from May, 2017 onwards.*

(4) *To refund surcharge to the residents which has been levied on account of late payments made to DHBVN despite the fact that residents had paid in time to the maintenance agency of the developer.*

(5) *To pass on the interest they have received on the ACD deposited with DHBVN.*

(6) *To pass on any other such incentive, benefit which might have accrued towards the residents because of certain schemes of DHBVN and the Government.*

(7) *To deliver the bills to the residents every two months instead of monthly bills.*

(8) *To allocate/appropriate/apportion the Common Area Electricity consumption upon the residents in terms of electricity units instead of applying it in terms of sq. feet area of apartments.*

(9) *Not to levy the municipal tax and electricity duty as the Park Floors-2 Society falls outside the municipal limits and to refund such charges levied so far with interest.*

(10) *Not to levy the GST on common area electricity charges because it is against the GST Rules.*

(11) *To conduct regular audit of the bills raised by DHBVN and bills collected from the residents.*

(12) *To get all the installed meters audited/checked for their accuracy.*

(13) *To take/record readings of individual resident every month in presence of the owner of such apartment.*

(14) *To take and record daily readings of the main Single Point meter and the sub meter of the Society in presence of the complainant.*

(15) *To show clearly on the bills the electricity consumption and the rate per unit as applicable.*

(16) *Not to charge any non-electricity maintenance charges through the meter meant for recording electricity consumption.*

(17) *Not to install pre-paid meters for collection of electricity charges from the residents.*

10. *That it is submitted that phasing of the ultimate electrical load of 14.419 MVA has already been approved by the Dakshin Haryana Bijli Vitran Nigam*

Limited (DHBVN). Vide Application dated 07.05.2022, the Appellant- M/s. Countrywide Promoters Pvt. Ltd., had applied to S.E. "Operation" Division, DHBVN, Faridabad for releasing the electrical load in a phased manner, in consonance with the development, which is being carried in stages.

11. *That vide Communication dated 05.05.2022, DHBVN has bifurcated the Bank Guarantees to be furnished in the following manner, totaling Rs.13 Cr.:-*
    - *B.G. forn Rs.1.18 Cr. in lieu of 33 KV line Cost (Proposed from 220 KV S/Stn. Sector 78, having distance) to be deposited in one go.*
    - *B.G. for Rs.6.71 Cr. in lieu of internal infrastructure at 33/11 KV level cost.*
    - *B.G. for Rs.1.84 Cr. in lieu of 33 KV Switching Station in case you will offer the land partial of 500 sq. yards duly earmarked by DTCP as per sale circular No.D-14/2018 the BG to be submitted as below.*
    - *B.G. for Rs.3.27 Cr. in lieu of 33/11 KV Sub Station cost to be deposited in one go.*

      Total BG= 13 Cr.
12. *That DHBVN had approved an Electrical Scheme with ultimate load of 14419 KVA at 33 KV level from 220/33 KV nearby Substation which is in Sector 78, Faridabad.*
13. *That it would be pertinent to mention here that DHBVN has also sanctioned a partial load of 2MVA through 400 KV Substation from Nawada which is 14 KMs away from Park Floor-2. Thus due to the problem of the Right of Way, laying of 33 KV line from Nawada to Park Floor-2 was not feasible and hence, a request dated 07.12.2020 had been submitted to change the feeding source from nearby 66/11 KV Substation. The case is pending approval in the office of CE "Operation", Delhi. After the sanction of the same, the Appellant will erect new Feeder from nearby Substation Sector 3, Faridabad or any other nearby location.*
14. *That the Appellant is also furnishing the Bank Guarantee of External Development Works as mentioned in the Memo issued by DHBVN dated 05.05.2022.*
15. *That the Appellant is ready to create the internal and external infrastructure as per sanction Electrical Plan. The Appellant Company is authorized to develop the internal electrical infrastructure in phases, in consonance with the Regulations of DHBVN. The plan for development of internal infrastructure in phases has already been submitted to the DHBVN and for*

the 1st Phase, the internal electrical infrastructure has duly been created by the Appellant. The Appellant is also furnishing Bank Guarantee for external infrastructure, whereas the DHBVN infrastructure is not even ready at the moment.

16. *That the Appellant has already applied for change of feeding source to release the partial load of 11 KV level from nearby Substation, the ultimate load has been sanctioned at 33 KV level from nearby 220/33 KV Substation, Sector 78, Faridabad.*
17. *That Sub Station is under construction and will take about 6-10 months to complete, while there is an additional burden on the Appellant to construct the 11 KV Feeder from another Substation.*
18. *That the ld. CGRF while exceeding its jurisdiction, passed an Impugned judgment dated 28.11.2021 vide which it ordered a Forensic Audit of the amounts received under various heads of charges by the Developer in consonance with the provisions of the Bilateral Agreement LC-IV.*
19. *That it is settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, which the contract is recorded into writing with a specific goal in mind the joint intent of both the parties. Such a written document enunciates the collective content of both the executing parties. Every contract expresses the autonomy of the contractual parties' will and creates reasonable, legally protected expectations between the parties.*

    Anson's Law of Contract, "a basic principle of the Common Law of Contract is that the parties are free to determine for themselves what primary obligations they will accept….. Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large.
20. *That in a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps and the Judge should interpret the contract accordingly." A party who claims otherwise, violates the principle of good faith. [See Purposive Interpretation in Law by Aharon Barak: 2005 Princeton University Press].*
21. *That the Government Authority is entitled to inspect the execution of the lay out and internal & external development works in the Colony and to issue*

appropriate directions, which he may consider necessary and proper for ensuring due compliance of the execution of the lay out and development works in accordance with the licences granted.

However, the Authority is not authorized to interfere with the Agreement voluntarily entered into by and between the Developer and the Allottees. The agreed terms and conditions by and between the parties neither require the approval/ratification by the Authority nor is the Government Authority authorized to issue any direction to amend, modify or alter any of the Clauses in the Agreement entered into by and between the parties.

22. *That no provision in the Act, Rules and in the Licences empowers the Government Authority to issue the directions to conduct a comprehensive audit of the amounts received as a consequence of execution of Bilateral Agreement between the Developer and the Allottees, which is a private domain and the Government Authority cannot ask for something which is not contemplated under the Act.*
23. *That to fortify the aforesaid submissions, the observation of the Hon'ble Supreme Court in "DLF Qutab Enclave Complex Educational Charitable Trust V. State of Haryana & Others", (2003) 5 SCC 622, is as under: -*

"38. A regulatory Act must be construed having regard to the purpose it seeks to achieve. The State as a statutory authority cannot ask for something which is not contemplated under the Act."

24. *That the Hon'ble Supreme Court in the case "DLF Universal Ltd. and Another Versus Director, Town and Country Planning, Haryana and others" has held as follows: -*

> *"The Director's functions and duties are well structured by the Act and the Rules. There is no provision in the Act or the Rules empowering the Director to sit in judgment on the perceived fairness of any clauses incorporated in the agreement entered by the parties. The terms and conditions in the licence granted by the Director do not prohibit incorporation of such a clause in the agreement to be entered between the owners and the purchasers. Nor there is any clause in the agreement entered by the owner with the Governor through the Director empowering the Director to sit in appeal over the agreement entered by the owners with the purchasers of the plots. There is no explanation forthcoming as to the source of power under which the Director could*

have issued the impugned directions directing the owner to delete such clauses from the agreement entered with the purchasers".

……..

25. *That the Hon'ble Supreme Court in the case "DLF Universal Ltd. and Another Versus Director, Town and Country Planning, Haryana and others" has held as follows: -……..*

"We do not find anything in these provisions empowering the Director to issue the impugned directions prohibiting the owners to collect the extension fee for the delayed construction of buildings by the purchasers of the plots"…….

26. *That the Hon'ble Supreme Court in the case "DLF Universal Ltd. and Another Versus Director, Town and Country Planning, Haryana and others" has held as follows: -……..*

"In any event the Director has no power under the Act or the Rules to issue any such direction altogether prohibiting such nomination of another person thereby substituting the allottee"……..

27. *That the Hon'ble Supreme Court in the case "DLF Universal Ltd. and Another Versus Director, Town and Country Planning, Haryana and others" has held as follows: -*

…….

"The crucial question that arises for our consideration is whether the Director of Country and Town Planning is empowered to issue any directions, directing the appellants to stop charging maintenance fee from the plot/flat holders and also "delete the relevant clauses from the agreement" and refund the amounts so far collected to the Government immediately".

……..

28. *That the Hon'ble Supreme Court in the case "DLF Universal Ltd. and Another Versus Director, Town and Country Planning, Haryana and others" has held as follows: -……..*

"It is, therefore, clear that Director has no authority or power under the Act to issue any directions directing the owners/colonizers to incur maintenance expenses, by deeming the same to be part of the internal development works covered by Section 2 (i). It is needless to reiterate that the maintenance of services specifies in Section 3 (3) (a) (iii) cannot

be considered to be part of the internal development works as defined by Section 2 (i)".

…….

29. *That DHBVN approved the electrification schemes for providing electrical load in phased manner in accordance with development being carried out. The Developers have already earmarked the land for electrical substations, switching stations, transformers and other related electrical equipment for which they have already incurred huge cost. The Developers are ready to hand over the entire infrastructure to the Nigam as and when so directed.*
30. *That EDC amount collected by the HSVP does not include cost of internal electrification works but the cost of 220 KV Sub Station, 33KV/11KV Sub Stations is included in the cost of EDC and therefore have made requests to DHBVN for withdrawing the conditions of construction of 220 KV Sub Station.*
31. *That HSVP vide letter dated 11.01.2019 says that the construction of 220 KV Sub Station and above will be jointly constructed by HUDA and HVPN under 50:50 ratio.*
32. *That under the provisions of HERC Single Point Regulation of April, 2020, the Facility Provider Company is also allowed to take meter reading, bill and collect the dues from individual consumers and there was nothing which the Developers were doing against the law. Also, that by getting the work carried out through the facility provider Company, the Complainant or any other consumer was not incurring any loss.*
33. *That the Appealers/Developers are duty bound to collect the EDC and deposit the same with the Government which they have rightfully done and it is the duty of the State Agencies to undertake development works including electricity supply. Also, that for refund of EDC, the ld. Forum does not have any jurisdiction to adjudicate upon the matter.*
34. *That there is sufficient load to cater to the requirement of occupied units but wherever there is shortage, the same is made up from the DG sets. Regarding obtaining more Nos. of connections, the matter is in progress with DHBVN and HVPN.*
35. *That as per Regulation of 2019, the Forum does not have jurisdiction to hear the complaint and the issues listed therein.*
36. *That prima facie, there is no loss which has occurred to the Complainant and, therefore, the Complaint deserves to be dismissed.*

37. *That the complaint has been filed beyond the limitation period of one year from the cause of action and therefore is liable to be dismissed without any discussion.*
38. *That the Appealers/Developers at the time of sale of plots to the Unit holders have informed the sale consideration as well as other costs involved.*
39. *That the allegation of long power cuts is wrong as the Respondent Developer has sufficient load to cater to the present occupation and also that they have installed dual metering meters and reference meters at all the points for separate recording of units consumed through grid and through DG sets etc.*
40. *That it was obligation of Haryana Urban Development Authority/Directorate of Town and Country Planning, Haryana (HUDA/DTCP) because External Development Charges collected by them, which included the charges against necessary electrical infrastructure including HT Lines from the nearest Sub Station. It was the obligation of the Government Agency to put in place the adequate electrical infrastructure.*
41. *That it is humbly submitted that the Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam, Gurugram (hereinafter referred to as "CGRF") has exceeded its jurisdiction and has directed the audit of the amounts received by a Developer, which is nowhere provided in the Regulations or Notification ever and thus the directions issued by the Forum are illegal as they violate the settled law and such directions for no legal backing. The Authority i.e. CGRF suffers from lack of power as the directions issued by the Authority are beyond the limits provided by the Regulations and Notifications. Thus the Order dated 11.10.2021, which is not within the powers bestowed by Regulations or the Notifications, thus has no legal leg to stand on and is thus nullity, utterly without existence or effect in law and thus liable to be set aside, in the interest of justice.*
42. *That being aggrieved by the Impugned judgment dated 28.11.2021 passed by the Hon'ble Forum for Redressal of Consumer Grievances, Dakshin Haryana Bijli Vitran Nigam, HETRI, Sector 16, IDC Area, Gurugram, the Appealers/Developers are filing the present Appeal.*

PRAYER: -

In view of the submissions made hereinabove, it is, therefore, respectfully prayed that this Hon'ble Commission may be pleased to: -

(i) very kindly set aside the Impugned judgment dated 28.11.2021 passed by the Hon'ble Forum for Redressal of Consumer Grievance Dakshin

Haryana Bijli Vitran Nigam, Gurugram, in the interest of justice, the same being illegal, arbitrary, violative of the settled law in "DLF Universal Ltd. and Another Vs. Director, Town and Country Planning, Haryana and Others", 2011 AIR (SC) 1463.

(ii) It is further prayed that the operation of the Impugned judgment dated 28.11.2021 may kindly be stayed, during the pendency of the present Appeal before this Hon'ble Commission; especially when the CGRF has travelled beyond the pleadings and the prayer clause to give a direction of a comprehensive audit, which had never even been prayed for.

(iii) It is still further prayed that this Hon'ble Commission may kindly pass any other appropriate order or direction, which it may deem fit, to secure the ends of justice, in view of the peculiar facts and circumstances of the present case.

B. Sh. R. P. Uniyal respondent no.1 vide email dated 05.07.2022 has submitted as under: -

i. That the present appeal has been filed by the developer just to delay the proceedings before the Hon'ble Commission in petition No. 11 of 2022 filed by the respondents for compliance of the order dated 28.11.2021 passed by Ld. CGRF.

ii. That in the present appeal, application for condonation of delay of 195 days has been filed but as per the guidelines issued by the Hon'ble Apex Court in SUO MOTU WRIT PETITION (C) No. 3 of 2020 the period from 15.03.2020 to 28.02.2022 shall be excluded for the purpose of limitation but the present appeal has been filed on 30th of May 2022 after passing the order dated 26.05.2022 passed by the Hon'ble Commission in petition No. 11 of 2022.

iii. That the present appeal has been filed after the passing of the order dated 26.05.2022 passed by the Hon'ble Commission in petition No. 11 of 2022 whereby show cause notice under section 142 read with Section 146 of the Electricity Act, 2003 after observing that developer is not doing the compliance of the order passed by CGRF.

1. **POINTWISE REPLY:**

1.) That the Appellant, is a Respondent-Developer and not a Complainant in terms of:

(i) *HERC Regulation No. HERC/42/2019 dated 29th March 2019, called the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2019, and*

(ii) *Regulation No. HERC/48/2020 dated 24th January 2020, called the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020.*

2.) *That in terms of Regulation No. HERC/42/2019 dated 29th March 2019, Complainant" means and includes the following who have a grievance as defined in these Regulations:*

i. *A consumer as defined under Clause (15) of Section 2 of the Act. Provided that a member of the Group Housing Society having ''Single Point Connection' from the licensee" is also a deemed consumer for the purpose of this Regulation.*

ii. *A disconnected Consumer*

iii. *An applicant for a new electricity connection/modification in existing connection.*

iv. *Any registered consumer association having 'Single Point Connection'*

v. *Any unregistered association or group of consumers, where the consumers have common or similar interests; and*

vi. *In the case of the death of a consumer, his legal heir(s), or representative(s).*

3.) *That in terms of Regulation No. HERC/48/2020 dated 24th January 2020, "Complainant" means & includes any of the following who have a grievance as defined in these regulations and makes a complaint*

(i) *a consumer as defined under sub-section 15 of section 2 of the Act;*

(ii) *any consumers association registered under any law for the time being in force;*

(iii) *any un-registered association or group of consumers where the consumers have common or similar interest;*

(iv) *in case of death of a consumer, his legal heirs or authorized representative;*

(v) *any other person claiming through or authorized by or acting as agent for the consumer and affected by the service or business carried out by the distribution licensee;*

(vi) *an applicant for a new electricity connection.*

4.) *That in terms of Regulation 5.3 of the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Residential cum Commercial/ Commercial Complexes of Developers and Industrial Estates/ IT parks/ SEZ) Regulations, 2020, the individual consumers in the GHS/ Employer's Colonies/ Residential cum Commercial/Commercial Complexes/Shopping Malls/Industrial Estates/IT Park where Single Point Supply has been provided, shall be treated at par with the consumers of the distribution licensees and shall have the same rights and obligations as that of other consumers of distribution licensee. These consumers shall also be covered under all other relevant Regulations of the Commission including CGRF and Ombudsman Regulations, and tariff order issued by the Commission.*

5.) *That the Complainant, R P Uniyal & Others had approached CGRF on 19-10-2020 and the Respondent/ Appellant, M/S Countrywide Promoters Pvt. Ltd along with DHBVN, SDO (OP), Badrola and XEN (OP), Greater Faridabad participated actively in the CGRF proceedings.*

6.) *That in the concluding Paras of their Order dated 28-11-2021, Hon'ble CGRF (DHBVN) have given the direction in Case Number- DH/CGRF/3244/2020 filed by Mr. R.P.Uniyal and others, (Complainant / Petitioner- present) Vs. XEN / Operation, DHBVN, Greater Faridabad, SDO/Operation, DHBVN, Badrola, Faridabad, (Respondents- SDO and Counsel of BPTP Present) that the Complainant (i.e. R P Uniyal & Others) are at liberty to file appeal with electricity OMBUDSMAN, HERC, Sector-4, Panchkula, if he is not satisfied with the decision of the CGRF.*

7.) *That Execution Petition bearing No. HERC/11/2022 filed on 25-02-2022 before the Hon'ble HERC by the Complainant, Mr. R P Uniyal & Ors. seeking directions for implementation of the Order dated 28-11-2021 of the Hon'ble CGRF (DHBVN), has been being heard and in the interim Order dated 26-05-2022 passed by the Hon'ble Commission, a*

show because notice has been issued to the Appellant, M/S Countrywide Promoters Pvt. Ltd as quoted below:

"5. The Commission took notice with regard to the inordinate delay caused by the developers on one pretext or the other for compliance of CGRF's order dated 28.11.2021 and observes that none of the directions passed by CGRF has been implemented, which has resulted in unnecessary harassment to the occupants' dwelling units by not providing electricity which is an essential amenity. As requested, the respondent-developers were allowed to submit the order of the Hon'ble Punjab and Haryana High Court, if any, within 2 days. The respondent- developers have submitted their reply but no restraining order of the Hon'ble Punjab and Haryana High Court so far has been placed before the Commission regarding deposition of the bank guarantee by the respondent-developers to the Discom against the inadequacy in infrastructure.

Therefore, the Commission being satisfied that it is a prima facie case of non-compliance of the directions issued by the CGRF in its order dated 28.11.2021 and hence, issues a show cause notice to the respondents/ developers no. 3-5, under Section 142 read with Section 146 of the Electricity Act, 2003.

8.) *That it is further relevant to mention here that on 29.06.2022 the counsel for the developer request for an adjournment before the Hon'ble Commission and request of the counsel was accepted and matter posted for 14.07.2022 with a direction to the MD/DHBVN to personally call a meeting within a week for finalizing the BG (Bank Guarantee) to be submitted by the developer to finalize the amount of BG. Director OP DHBVN to be present in person on the next date of hearing with the correct amount of BG, along with the reasons as to why correct BG amount was not intimated earlier, when the complaint was filed before CGRF on 19.10.2020.*

9.) *That the Respondent-Developer, M/S Countrywide Promoters Pvt Ltd. has been attending the HERC hearings and even have submitted reply to the Show Cause dated 26-05-2022 to Hon'ble HERC on 09-06-2022.*

10.) *That the Respondent-Developer, M/S Countrywide Promoters Pvt. Ltd. are being given the opportunity by the Hon'ble HERC to defend*

themselves. In the process, M/S Countrywide Promoters Pvt Ltd have been issued a show cause on 26-05-2022 by HERC and they have since submitted the reply to the Show Cause on 09-06-2022 to the Hon'ble HERC and the next date for hearing is fixed for 14-07-2022. It is; therefore, wrong, and misleading plea being given in the appeal before the Hon'ble Ombudsman by the Respondent-Developer that they have not been granted any opportunity of being heard either in the proceedings before Hon'ble CGRF or Hon'ble HERC.

11.) *That M/S Countrywide Promoters have filed the appeal on 30-05-2022 before the Hon'ble Ombudsman, which otherwise, is not tenable in term of HERC Regulation No. 42/2019, Section 3.16 (a) to (f) and also beyond the limitation period of 30 d ays, is simply to delay/ hamper the judicial process and to waste the valuable time of the Hon'ble Ombudsman and Hon'ble HERC.*

12.) *That as per Regulation 3.16 of the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2019, following are the Pre-conditions/Limitations that all are to be satisfied by the Complainant while filing an appeal before Hon'ble Ombudsman against CGRF Order. The representation may be entertained by the Ombudsman only if all of the following conditions are satisfied by the Complainant:*

(a) It has been filed by the Complainant being the aggrieved consumer or the association representing the consumers. For avoidance of doubt, a licensee is not allowed to file a representation before the Ombudsman against the order of the Forum.

(b) The Complainant had, before making a representation to the Ombudsman, approached the Forum constituted under Section 42(5) of the Electricity Act, 2003 for redressal of his/ her grievance.

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

(d) The representation is not in respect of the same cause of action which was settled or dealt with on merits by the Ombudsman in

any previous proceedings whether or not received from the same complainant or along with one or more complainants or one or more of the parties concerned with the cause of action.

(e) The Complainant is not satisfied with the redressal of his/ her grievance by the Forum, or the Forum has rejected the grievance or has not passed the order within the time-limit specified.

(f) The Complainant has filed the representation before the Ombudsman within 30 days from the date of receipt of the decision of the Forum or date of expiry of the period within which the Forum was required to take the decision, whichever is earlier.

Provided that the Ombudsman may entertain a representation after the expiry of the said period of thirty days if the Ombudsman is satisfied that there is sufficient cause for not filing it within that period.

(g) The complainant has deposited with the licensee, an amount equal to one third of the amount assessed by the Forum, if any.

13.) That M/S Countrywide Promoters Pvt Ltd., the respondent in the above case have therefore, no jurisdiction to file appeal before the Hon'ble Ombudsman against the Hon'ble CGRF's Order dated 28-11-2021 as they do not satisfy the above pre-conditions/ limitations that are paramount for the Hon'ble Ombudsman for entertaining the representation of M/S Countrywide Promoters Pvt. Ltd.

14.) That the Respondent-Developer, M/S Countrywide Promoters Pvt. Ltd; in his application dated 16-06-2022 to the Hon'ble Ombudsman for listing his appeal dated 30-05-2022 admitted that the Complainant, R P Uniyal has filed Execution Petition No.11 of 2022 in HERC, u/s 142 r/w146 Electricity Act 2003 read with HERC (Forum ad Ombudsman) regulations 2020. In the said application dated 16-06-2022, the Respondent-Developer, M/S Countrywide Promoters Pvt. Ltd; have claimed himself to be a Complainant and have relied upon Regulation 3.18 (iv) & (v) of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 for its maintainability, which is absolutely a misleading statement. The said Regulation 3.18 (iv) & (v) read as under:

"(iv) The representation by the Complainant, in respect of the same grievance, is not pending in any proceedings before any court,

tribunal, or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator, or authority."

"(v) The Ombudsman may reject the representation at any stage if it appears to him that the representation is:

(a) Frivolous, vexatious, malafide.

(b) Without any sufficient cause'

(c) There is no prima facie loss or damage, or inconvenience caused to the Complainant.

Provided that the decision of the Ombudsman in this regard shall be final and binding on the Complainant and the Distribution Licensee.

Provided further that no representation shall be rejected in respect of sub clauses (a), (b) and (c) unless the Complainant has been given an opportunity of being heard."

15.) That it is totally wrong rather misleading to claim:

- *That the Respondent-Developer/ Appellant is a Complainant,*
- *That the execution proceedings for the same grievances are not pending before any court, tribunal knowing well that Hon'ble HERC is already hearing the Petition bearing No.11 of 2022 filed by the Complainant, R P Uniyal on 25-02-2022 for implementation of the Hon'ble CGRF Order dated 28-11-2021.*
- *That the Respondent-Developer/Appellant has not been granted any opportunity of being heard. Whereas the fact is that the Respondent-Developer/Appellant, M/S Countrywide Promoters Pvt. Ltd. have actively participated in the CGRF proceedings and are now attending the HERC hearings / proceedings in progress in respect of the Execution Petition No.11/2022, filed by the Complainant, R P Uniyal before the Hon'ble HERC and are being given opportunity to defend themselves. Even the Respondent-Developer/Appellant have already submitted reply dated 09-06-2022 to the Show Cause issued by the Hon'ble HERC on 26-05-2022.*

16.) That the representation dated 30-05-2022 along with application dated 16-06-2022 for listing the appeal, filed by the Respondent-Developer, M/S Countrywide Promoters Pvt Ltd. is, therefore, frivolous, vexatious

& malafide simply to delay the implementation of the legitimate Order dated 28-11-2021 passed by Hon'ble CGRF (DHBVN) in Case Number- DH / CGRF / 3244 / 2020, R P Uniyal & Ors. Vs. XEN / OPERATION, DHBVN, GREATER FARIDABAD, SDO/OPERATION, DHBVN, BADROLA, FARIDABAD, (Respondents- SDO and Counsel of BPTP Present) and is presently, being heard by the Hon'ble HERC in the Execution Petition bearing Number 11 of 2022 in the presence of the Respondent-Developer/Appellant, M/S Countrywide Promoters Pvt. Ltd. and thus, is not maintainable, liable to be rejected straightway and not to be entertained.

PRAYER: -

In view of the submissions made hereinabove, it is, therefore, respectfully prayed that the Appeal may kindly be not entertained and be rejected straightway on the ground of delay as well as on merits in the interest of justice.

C. The appeal was registered on 22.06.2022 as an appeal No. 14/2022 and accordingly, notice of motion to the Appellant and the Respondents was issued on 24.06.2022 for hearing the matter on 06.07.2022.

D. The hearing was held on 06.07.2022, as scheduled. The counsel for the appellant submitted that the reply of the respondent no.1 was received last night and therefore, it is required a time to respond the same. The counsel for DISCOM has also sought time to furnish reply. Acceding to the request of both the parties, the matter was adjourned for 19.07.2022.

E. The respondent no 3 & 4 vide email dated 18.07.2022 has submitted reply, which is as under: -

The present reply is being filed by Respondent No.2 and 3 and at the outset it is submitted that the present appeal and application for condonation of delay is misconceived and filed without any basis.

Before dealing with preliminary submissions, there are certain facts which are necessary for adjudication of this Appeal.

BRIEF FACTS: -

(a) Ld. CGRF has passed the order dated 28.11.2021 ("Impugned Judgement") based on complaint filed by Respondent No. 1. Vide the Impugned Judgement 28.11.2021, Ld. CGRF has given key findings which are as follows: -

(i) *LD. CGRF observed that regulation 8 of the Single Point Supply to Employers Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers and Industrials Estates/IT Park/SEZ Regulations ("Regulations,2020") is not applicable to those Group Housing Societies where residents apply for independent connections directly from licensee through smart pre-paid meters, which is not the present case. The connections from licensee are a Single Point Connection and individual meters are installed by the RWA/Developer. Therefore, above said regulation is applicable to the Appellant herein.*

(ii) *Clause 6.1(a) of the General Terms and Conditions for Single Point Supply stipulates that once the complete infrastructure gets erected by the developer, the same should be handed over to RWA/Users Association and that the Appellant in no manner would have any involvement in affairs of RWA/Users Association in running and maintaining electrical system.*

(iii) *After almost 8 years of occupation of Park-II floors, an independent electricity connection has not been obtained by the Appellants and only connection obtained is in name of M/s BPTP/Appellant No.2, which amounts to violation of Regulations, 2020 as it is mandated to get the connection transferred in name of RWA after completion of infrastructure.*

(b) *After observing defaults of the Appellant, Ld. CGRF has given directions as follows: -*

(i.) *The Appellants were directed to complete all formalities and requirements of licensee/Answering Respondent/DHBVNL for sanctioning of total load as per approved electrification plan. The said directions are to be complied within 45 days from issue of order dated 28.11.2021*

(ii.) *Within 45 days from issue of order dated 28.11.2021, Appellants were directed to create adequate electrical infrastructure either by themselves or by paying cost to the licensee/DHBVN: for providing an independent single point connection to Park Floor-II.*

(iii.) *The Appellants were directed to obtain and transfer single point connections to RWA/Users Association of Park Floor-II. After such transfers, RWA/Users Associations would be responsible to run*

affairs within and serve individual consumers in terms of Regulations, 2020,

(iv.) Till all above said directions gets complied with, Appellants were directed to maintain electrical system of Park Floor-II.

(v.) The Appellants were directed to get a comprehensive audit for two years within a month from 28.11.2021 relating to electricity accounts that includes bills received from DHBVNL, bills issued to individual residents, common area consumption and DG sets units booked, any interest on ACD received from DHBVNL, any other incentives received, any penalties imposed on account of late payments or for any other reason, the tariff levied to domestic and commercial establishments within Park Floor-II to further make such audit report public to be shared with RWA/Users Association and DHBVNL for scrutiny purposes.

(vi.) The DHBVNL was directed to serve notice to the Appellants for compliance of the order dated 28.11.2021.

(c) Thereafter, in compliance with Impugned Judgement, Answering Respondents raised a demand notice(s) dated 08.12.2021 and 31.12.2021 on the Appellants wherein they were directed to comply with the order dated 28.11.2021 including completion of all requisite formalities and requirements for release of an independent single point connection of adequate load of Park Floor-II within the period as stipulated subject to maximum 45 days. On 31.12.2021, Answering Respondents have again served a reminder notice to Appellants wherein it was also requested to renew bank guarantee which was expired on 20.02.2018, however, said request has not been considered. However, Appellants failed to comply with any of directions mentioned above passed by Ld. CGRF vide order dated 28.11.2021. Copy of the notice(s) dated 08.12.2021 and 31.12.2021 are annexed hereto and marked as Annexure R/1 Colly.

(d) On 03.03.2022, Respondent No.1 herein filed petition no. 11 of 2022 before the Hon'ble Commission seeking issuance of directions under Section 142/146 for non-compliance of the CGRF Order. Thereafter, on 07.04.2022, SE (OP), DHBVNL has sent a letter to CE, DHBVNL for approval of change in feeding source from 400 KVA Substation Nawada to 220 KV Sub Station for release of partial load of 2 MVA for residential

colony of Appellant No. 1. Copy of the letter dated 07.04.2022 are annexed hereto and marked as Annexure R/2 Colly.

(e) On 29.04.2022, Chief Engineer, DHBVNL has sent a letter to SE, OP Circle, DHBVNL stating that the builder has to complete the work of 33 KV switching substation within 3 years, however, work is still pending even after passing of more than 5 years and requested the department to complete case file. Copy of the letter dated 29.04.2022 is annexed hereto and marked as Annexure R/3.

(f) On 05.05.2022, DHBVNL issued demand notice to the Appellants requesting to furnish bank guarantee of total thirteen crores and it was indicated vide said demand letter that said amount is tentative. Copy of the notice dated 05.05.2022 is already annexed as Annexure A-5 of this Appeal. on 07.05.2022, Appellants have applied for phasing in terms of the extant regulations and requested the Answering Respondents for submission of bank guarantee (phase wise). On 13.06.2022, Answering Respondents requested Appellants to review phasing plan submitted by him for Park Floor-2 and requested him to resubmit phasing plan upto 2027 in accordance with the terms and condition stipulated in sale circular D-12/2020. On same day i.e., 13.06.2022, Appellants revised the phasing from 11 years to 10 years. Based on this request of Appellants dated 13.06.2022 for phasing, the Answering Respondents have issued a notice dated 23.06.2022 to Appellants wherein demand of bank guarantee was revised to Rs. 7.22 crores in terms of the extant regulations.

(g) On 26.05.2022, the Hon'ble Commission in Petition No. 11 of 2022 while observing as under issued Show Cause Notice ("SCN") to the Developers under Section 142 read with Section 146 of the Act: -

"5....

Therefore, the Commission being satisfied that it is a prima facie case of noncompliance of the directions issued by CGRF in its order dated 28.11.2021 and hence, issues show cause notice to the respondents/developers no. 3-5, under section 142 read with section 146 of the Electricity Act, 2003."

PRELIMENARY SUBMISSIONS

3. *It is evident from above mentioned facts that the Respondent No. 1 has filed the petition bearing no. PRO 11/2022 before Hon'ble Commission for non-compliance of Appellants under section 142 read with section 146 of the Electricity Act, 2003. The present appeal has been filed to circumscribe proceedings pending before the Hon'ble HERC for non-compliance of order dated 28.11.2021 passed by the Ld. Consumer Grievance Redressal Forum ("CGRF") in case no. DH/CGRF/3244/2020.*

RE: APPEAL IS BARRED BY LIMITATION

4. *It is further submitted that the present appeal is also liable to be dismissed as it is barred by the limitation. The filing period of the appeal commenced from the date of passing of the order i.e., dated 28.11.2021 and it was expired on 13.01.2022. The present appeal has been filed on 02.06.2022.*

5.*The Hon'ble Supreme Court vide order dated 10.01.2022 passed in Suo Moto Writ Petition Civil No. 3 of 2020 held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

6*.Therefore, this appeal has been filed even after 90 days buffer period granted by Hon'ble Supreme Court which is in utter disregard of Regulation 3.18 (ii) of Regulation 2020 read with order dated 10.01.2022 passed by Hon'ble Supreme Court.*

7*. It is submitted that the Appellants have failed to provide any sufficient cause for such delay. It is submitted that there were 6 months' time to file this Appeal after passing of order dated 28.11.2021. It is noteworthy that the Appellants have failed to explain cause of delay. More importantly, the Appellant in the Appeal has neither given any reasons for the said delay nor sought any condonation of delay from this Hon'ble Forum. Merely citing judgements on delay cannot be considered as sufficient cause for condoning delay. It is well settled that party has to show sufficient cause exists for condonation of delay. (Reference: Balwant Singh (Dead) Vs. Jagdish Singh & Ors, Civil Appeal No. 1166 of 2006, State of Haryana Vs. Chandra Mani, (1996) AIR 1623). Therefore, this Appeal ought to be dismissed in Limine for*

being time bared and beyond jurisdiction. Regulation 3.18 (ii) of Regulation 2020 is reproduced hereinunder for ease of reference: -

3.18 No representation to the Ombudsman shall lie unless: -

(ii) The representation is made within one month from the date of receipt of the order of the Forum: Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month.

***8.** It is well settled that appellate authority does not have inherent powers to waive the limitation or preconditions prescribed by the statute for filing an appeal. The above discussed conditions are mandatory and ought not be ignored. Thus, the filing of present appeal is a gross abuse of law.*

RE: NO DIRECTIONS HAVE BEEN PASSED BY LD. CGRF RELATED TO AUDIT OF AMOUNTS COLLECTED TO FROM UNIT HOLDERS IN NATURE OF EDC ETC.

***9.** At the outset, it is submitted that appeal has been filed on surmises conjectures. The Appellant has challenged the Impugned Judgement based on finding that has never been discussed and held by Ld. CGRF. Vide paragraph 6 of the Appeal, it is contended by the Appellant that "Ld. CGRF has exceeded its jurisdiction to issue a direction to the Developers to get a comprehensive audit completed regarding the amount collected so far from Unit Holders in the nature of EDC, EDC paid to HUDA (now HSVP), charges paid to HVPN/DHBVN so far including the bank guarantee, the balance lying with them etc. along with necessary ingredients of comprehensive audit and to make report public which is infringement of aforesaid judgements of Hon'ble Supreme Court and violation of settled law and thus the Impugned Order dated 28.11.2021 is liable to be set aside being illegal, arbitrary and this unstainable in eyes of law.'*

***10.** In this regard, it is submitted that the no such direction has been passed by the Ld. CGRF in the impugned order. It is evident from paragraph 6 of the Impugned Judgement that no such direction has ever been passed. The direction passed in paragraph 6 of the Impugned Judgement is reproduced hereunder: -*

"6. The Appellants were directed to get a comprehensive audit for two years within a month from 28.11.2021 relating to electricity accounts that includes bills received from DHBVNL, bills issued to individual residents, common

area consumption and DG sets units booked, any interest on ACD received from DHBVNL, any other incentives received, any penalties imposed on account of late payments or for any other reason, the tariff levied to domestic and commercial establishments within Park Floor-II to further make such audit report public to be shared with RWA/Users Association and DHBVNL for scrutiny purposes.

11.*The Appellants have also contended vide paragraph 8 of this Appeal that 'Ld. CGRF travelled beyond pleadings to order a comprehensive audit into pecuniary obligations between Developers and Allotees arising out of bilateral agreement executed with mutual consent which was purely in private domain.' It is submitted that no such directions of audit have been passed relating to any breach of bilateral agreement signed between the parties. In fact, direction issued in paragraph 6 of the Impugned Judgement is noticeably clear and comprehensive audit was ordered relating to electricity bills received from DHBVNL and bills issued to residents etc. which are actually related to DHBVNL. It nowhere says anything related to 'amounts collected so far in name of EDC; EDC paid to Huda including bank guarantee.'*

12. *It is submitted that the Single Point Supply Regulations allows and empowers CGRF pass such orders as may be necessary to ensure that the bills are being raised by the developer/ RWA upon the residents in accordance with the provisions of the said regulations. Thus, there is no infirmity in CGRF's direction for audit of bills received from DHBVNL, bills issued to individual residents, common area consumption and DG sets units booked, any interest on ACD received from DHBVNL, any other incentives received, any penalties imposed on account of late payments or for any other reason, the tariff levied to domestic and commercial establishments within Park Floor-II. In this regard, relevant provisions of the Single point supply regulations are reiterated as under:*

"ii) In case of supply on Single Point, the tariff charged by the society/employer should not be higher than the rates determined by the Commission and the developer/RWA, are estopped from recovering the tariff in variance with the tariff determined by the Commission.

iii) The Commission in its various order(s) has made it clear that common area maintenance charges (CAM)/backup supply charges should not be

clubbed with the licensee's supply charges and the connection ought not be disconnected in case the consumer has paid the charges for grid supply.

iv) Further, the Commission is of the view that for proper accounting of energy, no consumption points in the Colony/complex be allowed unmetered. The meter deployed be of standard specifications, accuracy and healthiness of the metering is to be ensured. The defective or dead stop meter should be replaced expeditiously to avoid billing on average bases and adjustments in bills later.

v) Commission further observed that recovery of electricity bills, DG supply charges as well as electricity charge for the common area supply may be recovered by the supplier through prepaid meter arrangement, provided, these are separately indicated in the bill.

…

5.3 The individual consumers in the GHS/Employer's Colonies/Residential cum Commercial/Commercial Complexes/ Shopping Malls/Industrial Estates/IT Park where Single Point Supply has been provided shall be treated at par with the consumers of the distribution licensees and shall have the same rights and obligations as that of other consumers of distribution licensee. These consumers shall also be covered under all other relevant Regulations of the Commission including CGRF and Ombudsman Regulations.…

6.6…

b) In case any Employer /GHS/Users Association charge the individual consumers with in its complex for electricity supplied at rates higher than the Domestic supply tariff/ other relevant category tariff (as per usage of electricity) approved by the Commission, the aggrieved Residents/Members shall have the right to jointly file a complaint against such GHS/Employer/Users Associations before the CGRF/Ombudsman as per these Regulations for Redressal of their grievances.

13. *It is submitted that the Appellants have challenged the Impugned Judgement based on direction which was never issued by Ld. CGRF, therefore this appeal is liable to be dismissed with exemplary cost. It is evident from such flimsy grounds made by the Appellants that present appeal has been filed to circumscribe Section 142 proceedings pending against the Appellants which amounts to wasting time of this Hon'ble Commission.*

RE: LD. CGRF HAS POWER TO CALL FOR RECORD AND ORDER FOR AN AUDIT

14. *The Appellants have contended that the Ld. CGRF has no power to call for records or order for an audit. It is submitted that this appeal has been filed based on a finding that cannot find its place in the Impugned Judgement. In addition to above made submissions, Answering Respondents submit that in principle, Ld. CGRF has rightly passed the directions in the Impugned Judgement.*

15. *It is submitted that Answering Respondents are placing reliance on the Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020. ("Regulations, 2020"). In terms of Regulation 2.38 of the Regulations, 2020, the Ld. CGRF may call for further information or record from the parties to the complaint and the parties shall be under obligation to provide such information or record as the Forum may call for. It is further mentioned in the said regulation that if a party fails to provide such information within stipulated time, the adverse inference may be drawn against such party.*

16. *Further in terms of Regulation 2.40 of Regulations, 2020, Ld. CGRF can also direct the concerned licensee to undertake an inspection with regard to the grievance and has power to engage a third party (other than the licensee) at the instance and request of the complainant, to undertake inspection and obtain an independent report. Similar provisions are also there in Regulation 2.20 and 2.31 of the Haryana Electricity Regulatory Commission (Forum and Ombudsman) (1st Amendment) Regulations, 2022 which came into effect from 06.04.2022. Thus, it is submitted the Ld. CGRF has wide powers under the extant regulations, and Forum is empowered to pass directions calling for information or record from the parties to fulfill purpose of the Act and Regulations.*

RE: APPELLANTS ARE NOT CONSUMERS UNDER REGULATIONS

17. *It is further imperative to point out that in terms of Regulation 2.45 of the Regulations 2020, any complainant aggrieved by orders of the Forum may prefer a representation before the Ombudsman appointed / designated by the Commission. It is important to highlight definition of 'Complainant' at this juncture. Regulation 1.5 (d) defines complainant which includes consumer/consumer association/consumer's legal heirs and any other person being authorized by such consumer.*

18. *It is important to highlight that the Appellants herein are not the complainant under regulation 1.5(d) of regulations, 2020, thus, the present appeal before this Hon'ble Ombudsman is not maintainable and Appellants have no locus to file present Appeal before this forum.*

RE: APPELLANTS ARE LIABLE TO DEPOSIT 40% OF THE AMOUNT ASSESED

19. *It is submitted that the appeal is filed in violation of Regulation 3.18 (iii) Regulation 2020 which requires the Appellant to make payment with the licensee equivalent to one third of the amount assessed by the Ld. CGRF. Regulation 3.18 (iii) of Regulation 2020 is reproduced hereinunder for ease of reference: -*

"3.18 No representation to the Ombudsman shall lie unless:

…. iii)The person filing the representation makes a deposit of 40% (forty per cent) of the amount assessed by the Forum (inclusive of amount already deposited on this account), with the Licensee, in cash or through demand draft payable at the headquarters of the concerned sub-division and submit documentary evidence of such deposit."

RE: PRESENT APPEAL HAS BEEN FILED BY THE APPELLANTS TO EVADE THE OBLIGATION TO CURE INADEQUACY

20. *It is submitted that on several occasions the Hon'ble HERC has noticed and upheld the need and requirement of creation of the adequate electrical infrastructure and submission of requisite bank guarantee by the developers in terms of the extant Regulations. The Hon'ble Commission in its Order dated 09.08.2021 passed in Anandvilas 81 Resident Welfare Association v. DHBVNL, HERC/PRO-48/2020 held that: "It is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers".*

21. *In this regard, the Answering Respondents further seek to draw the attention to the fact that the issue of lack of adequate infrastructure created by the developers in the properties developed by them is a matter of grave concern which has also been raised by the Answering Respondents in a petition before this Hon'ble Commission bearing PRO No. 55 of 2021 under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of*

the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 ("Duty to Supply Regulations") and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 ("Supply Code") read with Section 142 and 146 of the Electricity Act, 2003. In the said Petition, the Answering Respondents have sought for immediate and urgent directions to resolve this acute problem of existing deficient electrical infrastructure in the interests of all stake holders. The complaint has been filed by Respondent No. 1 based on this inadequacy of the Appellants.

22. *The Appellants have annexed the electrification scheme dated 29.08.2017 annexed as Annexure A-6 of this appeal. It is submitted that the Appellants reliance on the said memo scheme is wrong and in fact the Appellants have not laid any adequate infrastructure as per terms and conditions of the sanctioned memo dated 29.08.2017. The builders including the Appellants have not laid separate independent feeder for its partial load of 2 MVA on 33 KV level which has already been approved vide CE/Commercial DHBVNL, Hisar memo dated 29.08.2017. It is shocking to note that the Appellants have approached for change of source for partial load of 2 MVA on 11 KV level from 220 KV substation and case was transferred for approval, however, same was returned with following remark: -*

"Before taking any action put up the latest status of B.G. submitted by the builder for internal and external infrastructure developed by the builder including 33 KV line and sub stations. As per Nigam's instruction, builder have to complete the work of 33 KV switching station within 3 years, but the work is still pending even after passing of more than 5 years."

23. *It is submitted that from above made submissions, it is evident that Appellants are un-prepared towards laying adequate electrical infrastructure. In view of foregoing facts and submissions, it is evident that the present Appeal has been filed to by Appellants to evade from its responsibilities and obligations and to circumscribe proceedings of Section 142 which has rightly been initiated by Hon'ble HERC. Therefore, this appeal is liable to be dismissed with exemplary costs.*

Para Wise Reply

1. *The contents of paragraph 1 are denied. The reliance by the Appellants on judgement of DLF Qutub Enclave is wrong and erroneous. It is*

submitted that power of calling for records are already envisaged in the Regulations referred above. It is submitted that the appeal is not maintainable in terms of preliminary submissions raised by Answering Respondents and same is not repeated for sake of brevity.

2. *The contents of paragraph 2 are denied in toto. It is submitted that the Ld. CGRF has passed the Impugned Judgement adjudicating on the complaint filed by Respondent No. 1. It is submitted that the Ld. CGRF has not passed any such directions which have been assailed by the Appellants while challenging the Impugned Judgement. It is important to note that Ld. CGRF has directed for a comprehensive audit but not for charges collected by Appellants under Bilateral Agreements. Therefore, Ld. CGRF acted well within its powers in terms of regulation 2.38 and 2.40 of Regulations, 2020 and called for records. This Appeal has been filed challenging a finding which cannot be found in the Impugned Judgement and this appeal is liable to be dismissed.*

3. *The contents of paragraph 3 are denied. It is submitted that Appellants are not consumers within the Regulations, 2020. The contents of preliminary submissions may be read as part and parcel of present reply and same is not repeated for sake of brevity.*

4. *The contents of paragraph 4 are denied. It is submitted that the Ld. CGRF has not passed any such directions which have been assailed by Appellants while challenging the Impugned Judgement. It is important to note that Ld. CGRF has directed for a comprehensive audit but not for charges collected by Appellants under Bilateral Agreements, which is evident from paragraph 6 of the Impugned Judgement. Therefore, Ld. CGRF acted well within its powers in terms of regulation 2.38 and 2.40 of Regulations, 2020 and called for records. The Appeal has been filed challenging a finding which cannot be found in the Impugned Judgement and this appeal is liable to be dismissed. It is further submitted that the power of audit and call for records has been given to Ld. CGRF to ensure transparency in the process. Therefore, reliance by the Appellants on judgements quoted in answering paragraph are erroneous and not applicable in present case.*

5. *The contents of paragraph 5 are denied. It is submitted that power of calling for records is clearly stipulated in the Regulations and Ld. CGRF has rightly exercised such power. Therefore, reliance by the Appellants*

on quoted judgements in answering paragraph is erroneous and misplaced.

6. *The contents of paragraphs 6 and 7 are denied in toto. It is submitted that Ld. CGRF has acted within its jurisdiction while passing the Impugned Judgement. It is important to mention that Ld. CGRF has not passed any direction relating to collection of amounts towards EDC, EDC paid to HUDA etc. In fact, such finding cannot be found in the Impugned Judgement. Thus, the appeal has been filed on wrong facts and grounds. It is denied that findings of comprehensive audit are perverse. The regulations clearly envisage the power for calling of records which has been exercised by ordering for comprehensive audit.*

7. *The contents of paragraph 8 are denied. It is submitted that Ld. CGRF has not ordered for any demand of the amount(s) collected by the Appellants, however, merely ordered for forensic audit, and calling for records relating to electricity bills issued by DHBVNL etc. There are no directions that are arising out of bilateral agreements between Developers and Allotees.*

8. *The contents of paragraph 9 are denied. It is submitted that the complaint was filed by Respondent No. 1 because of continuous defaults of Appellants. The allegations are rightly contended by Respondent No.1 which culminated into Impugned Judgement.*

9. *The contents of paragraph 10 are denied except what is a matter of record. In addition to what is stated by Appellants, there are certain facts which are necessary for this Hon'ble Ombudsman: -*

(a. On 05.05.2022, DHBVNL issued demand notice to Appellants requesting to furnish bank guarantee of INR 13 Crores against ultimate load of 14.419 MVA, which was calculated for its project Park Floor-2 i.e., project involved in present petition.

(b. Thereafter, on 07.05.2022, Appellants have applied for phasing in terms of the extant regulations and requested the Answering Respondents for submission of bank guarantee (phase wise).

(c. On 13.06.2022, Answering Respondents requested Appellants to review phasing plan submitted by him for Park Floor-2 and requested him to resubmit phasing plan upto 2027 in accordance with the terms and condition stipulated in sale circular D-12/2020.

(d. On same day i.e., 13.06.2022, Appellants revised the phasing from 11 years to 10 years. Based on this request of Appellants dated 13.06.2022 for phasing, the Answering Respondents have issued a notice dated 23.06.2022 to Appellants wherein demand of bank guarantee was revised to Rs. 7.22 crores in terms of the extant regulations. It is submitted that the phasing of ultimate electrical load of 14.419 MVA has been approved and vide letter dated 23.06.2022, DHBVNL issued demand to the Appellants for furnishing an amount of Rs. 7,22,10,028/- towards first phase.

(e. Thereafter in compliance of order dated 29.06.2022 passed by the Hon'ble Commission in Pro 11 of 2022 which involves Appellants herein, MD, DHBVNL has chaired the meeting on 08.07.2022 and 11.07.2022 with the Petitioners and Developer at Hisar and Hetri House, Gurugram respectively.

(f. Vide the said meeting, it was decided that Appellants will have to submit the bank guarantee immediately for the part of both the societies wherein construction has been completed and structures are standing therein in form of buildings. It was also decided that for the rest part of societies, Appellants may also opt for phasing of internal electrical infrastructure.

(g. The said decision has been taken by MD, DHBVNL to safeguard the interests of consumers towards basic electrical amenities. Therefore, after the above said meeting, in addition to the bank guarantee of Rs. 6.29 crores against external infrastructure, Answering Respondents have calculated the amount towards bank guarantee payable by Appellants at present towards constructed portion of buildings in lieu of developing internal electrical infrastructure is Rs. 8.18 crores. Remaining amount of Rs. 4.82 crores are payable by Developers in phases as per terms of Sales Circular D-12/2020.

(h. Thereafter, Appellants have given an undertaking in form of chart wherein Appellants have accepted to submit the bank guarantee immediately, amounting to Rs. 8.18 crores and Rs. 4.82 crores as per phasing which is up to July 2026. Copy of undertaking/calculation sheet submitted by the Developer is annexed hereto and marked as Annexure R/8.

(i. It is important to mention that during hearing dated 14.07.2022 in Pro 11 of 2022, Appellants has undertaken that he will be furnishing bank guarantee of Rs. 8.18 crores.

10. *The contents of paragraph 11 are a matter of record.*

11. *The contents of paragraph 12 are a matter of record.*

12. *The contents of paragraph 13 are not denied except what is a matter of record. It is submitted that the Appellants have approached for change of source for partial load of 2 MVA on 11 KV level from 220 KV substation and case was transferred for approval, however, same was returned with following remark: -*

"Before taking any action put up the latest status of B.G. submitted by the builder for internal and external infrastructure developed by the builder including 33 KV line and sub stations. As per Nigam's instruction, builder have to complete the work of 33 KV switching station within 3 years, but the work is still pending even after passing of more than 5 years."

Therefore, Appellants are not even prepared to erect any new feeder from nearby substation.

13. *The contents of paragraphs 14 to 17 are denied. It is submitted that Appellants are not ready to create any infrastructure. In fact, this appeal has been filed to circumscribe the proceedings under section 142 pending before Hon'ble HERC. It is noteworthy that DHBVNL has requested the Appellants for furnishing bank guarantee, however, Appellants have miserably failed to abide by it. Despite applying for change of feeding source to release the partial load of 11 KV level, Appellant has not even completed the work of 33 KV switching substation within 3 years and pending from last 5 years, which is also admitted in paragraph 17 of the appeal and same has been answered in paragraph 34. Contents of paragraph 31 may also be considered in answer to this paragraph and same is not repeated for sake of brevity. It is submitted that 220 KV substation sector 78 is likely to be commissioned by August/September 2022 but not after delay of 10 months as stated by Developers in answering paragraph.*

14. *The contents of paragraph 18 to 35 are denied. It is submitted that Ld. CGRF has acted within its jurisdiction while passing the Impugned Judgement. It is important to note that the Appellants are assailing such direction that has never been directed by Ld. CGRF. It is submitted that there are no directions be found in the Impugned Judgement relating to amounts towards EDC etc. The reliance on judgements by the Appellants are misplaced as Regulations, 2020 envisages the power to call for*

records under which Hon'ble Commission may order for an audit. It is submitted that the directions in paragraph 6 of the Impugned Judgement makes it clear that the comprehensive audit is not towards amounts collected under EDC, paid to HUDA etc. In addition to the above made submissions, it is submitted that Appellants have violated the conditions of laying down the adequate electrical infrastructure. It is further submitted that all the residents are facing the problem of long power cuts which is completely attributable to the Appellants.

15. *The contents of paragraph 36 are denied. It is submitted that there is no prima facie case because findings assailed by Appellants are misplaced and cannot be found in the Impugned Judgement.*

16. *The contents of paragraph 37 and are denied. It is submitted that the complaint was filed within limitation period as Hon'ble Supreme Court has already excluded limitation period from 15.03.2020 till 28.02.2022 and thereafter 90 days from 01.03.2022.*

17. *The contents of paragraph 38 to 42 are denied except what is a matter of record. It is submitted that Ld. CGRF has not given any directions qua EDC. It is submitted that Ld. CGRF has not ordered for any audit relating to amounts received by Appellants. It is submitted that the appeal is not maintainable in terms of preliminary submissions raised by the Answering Respondents and same is not repeated for sake of brevity.*

18. *The contents of prayer clause are denied. It is submitted that the appeal is not maintainable in terms of preliminary submissions raised by the Answering Respondents and same is not repeated for sake of brevity.*

19. *The Answering Respondents crave leave of this Hon'ble Forum to submit further reply/ submissions if required at a later stage to assist this Hon'ble Forum in adjudication of the issue.*

F. The hearing was held on 19.07.2022, as scheduled. The counsel for the respondents no. 3 & 4 submitted that the reply of the appeal has been provided to all the concerned parties. The counsel for the appellant requested to grant time to file rejoinder as the reply of the respondent no. 3&4 has been received just a day before the hearing. Acceding to the request of counsel for the appellant, the matter was adjourned for 04.08.2022.

G. The hearing was held on 04.08.2022, as scheduled. The counsel for the appellant vide email dated 02.10.2022 has submitted that he is not feeling well and his parents and domestic help become Covid positive. He has

quarantined himself and is not able to hold his office. He requested for short adjournment in the matter. Acceding to the request of the counsel for the appellant, the matter was adjourned for 17.08.2022.

H. The hearing was held on 17.08.2022, as scheduled. The counsel for the appellant vide email dated 16.08.2022 has submitted that he is not feeling well and requested for short adjournment in the matter. Acceding to the request of the counsel for the appellant, the matter was adjourned for 31.08.2022

I. The appellants vide email dated 31.08.2022 have submitted replication which is as under: -

1. *That it is humbly submitted that the appellants are in the process of complying with various directions passed by DHBVN. With regard to the order of CGRF that the Developers M/s Countrywide Promoters Private Limited and M/s BPTP Limited shall complete all the formalities and requirement of the licensee DHBVN for sanctioning of the total load as per the approved electrification plan, it is submitted that total load of 14.419 MVA was sanctioned vide Memo No.CH-13/SE/C-SOL-250 dated 29.08.2017 with Electrification Plan (EP) by Commercial Department, Hisar.*

   The aforementioned load of 14.419 MVA, as mentioned earlier, was sanctioned, but the same has not been released till date, on account of the fact that 220/33 KV Substation in Sector 78, Faridabad, from where the aforementioned load was to be released, has still not been energized by the DHBVN till date.

   It was ordered by the CGRF that the developer should create adequate electrical infrastructure either by themselves or by paying the cost to the licensee DHBVN for providing an independent Single Point Connection to Park Floors 2. In response to this, it is submitted that the appellants are ready to create Internal and External Infrastructure as per the approved electrification plan. Even as per the regulations of DHBVN, the Internal Infrastructure can be developed in 5 phases. The appellants have developed the first phase of the infrastructure to meet the current load demand. A Bank Guarantee of Rs.8,18,00,000/- (Rs. Eight Crores and Eighteen Lakhs only) has already been submitted towards the External Infrastructure. The appellants have already applied for release of independent single connection which is pending with DHBVN.

2. *That CGRF had ordered that the developer, after obtaining a separate independent Single Point Connection for the Park Floors 2, should without any delay transfer the connection in the name of RWA/ Users Association of Park Floors 2 to manage internal affairs of electricity by themselves.*

With regard to this it is submitted that the appellants will transfer the independent connection to RWA as soon as the same is released by DHBVN. It is humbly submitted that as per the present requirement, sufficient electric infrastructure has already been created by the appellants, for facilitating the 2 MVA electricity load.

3. *That CGRF had ordered that after the transfer of the electricity connection in the name of RWA/ Users' Association, it will be responsibility of the RWA/ Users' Association to run the affairs within and serve the individual consumer strictly in accordance with the provisions of single point regulation of April 2020.*

As submitted earlier, the load has to be released by DHBVN from 220/33 KV Substation, which is in the process of completion by DHBVN and has not been energized till date. The moment electric substation stands energized and the electricity is released, the appellants will immediately pass it on to RWA.

4. *That as per CGRF, it was observed as followed: -*

   i) *The sub-meter of the main Single Point Meter, which has been installed for Park Floors 2, should be got checked up and sealed from M&P Wing of the licensee DHBVN for its accuracy. Also, that this sub-meter should be read every month in presence of authorized representative of RWA/ Users' Association of Park Floors 2.*

   ii) *Electricity bills to the residents of Park Floors 2 should be issued strictly as per the Single Point Regulation of April, 2020.*

   iii) *Residents of Park Floors 2 should be billed strictly in accordance with the tariff order of the Hon'ble HERC for different categories of consumers.*

   iv) *Not to disconnect electricity supply of any consumer who pays the grid electricity supply bills honestly.*

   v) *All the dual energy meters and reference meters installed for recording of DG units and common area consumption should be put in order within one month of issue of this order.*

vi) *Not to charge any non-electricity maintenance charges through the meter meant for recording electricity consumption.*

With regard to point (i) it is submitted that DHBVN M&P Department has refused to check those meters which are not installed by DHBVN. If permission is granted the appellants can calibrate to check the accuracy of these meters from other private labs.

In response to point (ii) it is submitted that the appellants are currently raising bills to customer in accordance with the bills received from DHBVN. The formula applied is as follows: -

Total Bill Amount/ Unit consumer – Rate per unit

With regard to point (iv), it is submitted that the appellants are acting against only those errant consumers, who are not paying the electricity bill regularly.

As regards point (v), it is submitted that all the meters are working property.

As regards point (vi), it is submitted that the appellants are not charging any maintenance amount other than electricity consumption charges. It is submitted that the process of completion of audit is in progress. The appellants are getting the audit conducted from third party in the present case.

5. *That CGRF had ordered that the developer should get an audit completed for the last 2 years of the electricity accounts viz-a-viz bills received from DHBVN, bills issued to individual residents, common area consumption and DG set units booked, and interest on ACD received from DHBVN, etc. In this regard, it is humbly submitted that the requisite limited information is being provided by the appellants.*
6. *That in response to the prayer of the complainant that bills be raised to the residents every two months and that the common area electricity consumption should be charged in terms of electricity units instead of applying it in terms of sq. feet area of apartments, it is respectfully submitted that the same is not tenable because it is against the provisions of Regulation and various orders passed by the Hon'ble Commission in this regard. Furthermore, the DHBVN raises the monthly bills to the appellants and accordingly, bills are further issued to the consumers.*
7. *That the appellants are trying their level best to comply with the orders of the Hon'ble CGRF.*

J. Hearing was held on 31.08.2022 as scheduled. The counsel for the appellant has submitted that he has sent the replication today to all the concerned parties and requested for short adjournment to argue in the matter. Acceding to the request of the counsel for the appellant, the matter was adjourned for 12.09.2022.

K. Hearing was held on 12.09.2022 as scheduled. The counsel for the appellants has requested for adjournment of at least ten days with the consent of the counsel for respondent no.1. Acceding to the request of the counsel for appellant, the matter was adjourned for 27.09.2022 as a last opportunity, since it has already been over delayed in disposal of the appeal due to frequent request of adjournments by the appellant.

L. Hearing was held on 27.09.2022 as scheduled. The counsel for the respondent 3 & 4 has requested for short adjournment to argue in the matter, on account of unavailability due to a matter listed in the Hon'ble Supreme Court. Acceding to the request of the counsel for respondent 3 & 4, the matter was adjourned for 06.10.2022.

M. Hearing was held on 06.10.2022 as scheduled. The counsel for the appellant has requested for short adjournment to argue in the matter due to his illness. The counsel for respondent no. 1 and the counsel for respondent no. 3 & 4 also agreed for the request made by the counsel for the appellant. Accordingly, acceding to the request, the matter was adjourned for 11.10.2022.

N. Hearing was held on 11.10.2022 as scheduled. All the parties were present through video conferencing. At outset, the counsel appeared for the appellant submitted that the client is no more interested in pursuing the appeal as the CGRF order dated 28.11.2021 has been implemented and the appeal has become infructuous. Per contra the counsel for respondent no. 1 stated that the said order has not been implemented and the petition no. 11 of 2022 regarding noncompliance of the order dated 28.11.2021 is pending before Hon'ble Commission. The Counsel for DHBVN argued that the delay in filing the appeal is not argued and condoned, and requested to record it.

O. In view of the above, the appeal is dismissed as withdrawn.

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

Given under my hand on 14th October, 2022.

(Virendra Singh)

Dated: 14th October, 2022 **Electricity Ombudsman, Haryana**

CC-

Memo. No. HERC/EO/Appeal No.14/2022/ Dated: -

1. M/s. Country Wide Promoters & M/s. BPTP Ltd., OT-14 ,3rd Floor, Next Door, Parklands, Sector 76, Faridabad,121004.
2. The Managing Director, DHBVNL, Vidyut Sadan, Vidyut Nagar, Hisar .125005 (E-Mail: - cmd@dhbvn.org.in)
3. The Chief Engineer 'Op.', DHBVNL. Shakur Basti, Punjab Bagh, New Delhi.110035. (E-Mail: - ceopdelhi@dhbvn.org.in)
4. The Superintending Engineer 'Op' Circle, Sector – 23, DHBVN, Faridabad
5. The Executive Engineer (Operations), XEN/OP, Greater Faridabad.
6. The SDO (OP), Sub Division, Badrola, DHBVN, Faridabad (sdoopbadrola@dhbvn.org.in)
7. Sh. R.P.Uniyal, R/o Park Floor -2,Flat no. T-13/Goo4, Sector-76, Faridabad
8. Consumer Grievances Redressal Forum, Dakshin Haryana Bijli Vitran Nigam, DHBVN Complex, Sector-16, Mehrauli Road, Gurugram-122007.