

Consumer Grievance Redressal Forum
FOR BSES YAMUNA POWER LIMITED
(Constituted under section 42 (5) of Indian Electricity Act. 2003)
Sub-Station Building BSES (YPL) Regd. Office Karkardooma,
Shahdara, Delhi-110032
Phone: 32978140 Fax: 22384886
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SECY CHS DIS/88/88

CA No. 101476713
Complaint No. 50/2020

In the matter of:

Shri Pal,Complainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. Arun P Singh (Chairman)
2. Mrs. Vinay Singh, Member (Legal)
3. Dr. Harshali Kaur, Member (CRM)

Appearance:

1. Mr. Vinod Kumar, Counsel for the complainant
2. Mr. Imran Siddiqi & Ms. Ritu Gupta, On behalf of BYPL

ORDER

Date of Hearing: 14th December, 2020

Date of Order: 24th December, 2020

Order Pronounced by:- Mr. Arun P Singh, Chairman

Briefly stated facts of the case are that the complainant wants withdrawal of dues illegally transferred by respondent on her CA No. 101476713.

It is also his submission that he is using electricity through CA No. 101476713 for domestic purpose with sanctioned load of 4 KW, which was energized on 01.12.2007, in the name of Sh. Shri Pal, installed at the House No. 2, Khasra No.20, Shani Bazar Road, Gujar Mohalla, Johripur, Karawal Nagar, Delhi-94.

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He further added that he is regularly paying all the consumption charges as and when raised by the respondent against the said connection.

Complainant added that in the year 2015, respondent transferred dues and he made various visits to the office of respondent for withdrawal of dues, but all went in vain. It is also submitted that in the month of June 2020, the complainant received an inflated bill of Rs. 4,10,780/- against CA No. 101476713. He approached the office of respondent and requested to rectify the above said bill and respondent informed that the dues are transferred from CA No. 1250100366 to his CA No. Respondent company also send the District Court Order dated 20.06.2020 case titled as Mukesh Devi Vs BSES alongwith latest bill of Rs. 5,71,690/- with due date 27.08.2020.

The complainant further added that on 11.02.2008, the respondent revised the outstanding bill and after amendment the actual/correct bill amount comes to Rs. 1,13,800/- which was duly paid by the complainant on same day i.e. on 11.02.2008. Thereafter no outstanding dues were pending against the connection bearing CRNo. 1250100366. He also stated that he is ready to deposit the current dues bill.

Therefore, he requested the Forum to direct the respondent for withdrawal of transfer of dues. He also requested the Forum to direct the respondent for stay on disconnection of the electricity connection in respect of CA No. 150018130 till the final disposal of this complaint by the Forum.

Notice was issued to both the parties to appear before the Forum on 01.10.2020.

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Respondent company submitted their reply stating therein that this Forum has no jurisdiction to entertain the present complaint and as such present complaint is liable to be dismissed at its threshold itself. The DERC (Forum for the Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018.

13. Limitation of Jurisdiction of the Forum

(1) The Forum shall not entertain a grievance if it pertains to the same subject matter for which any proceedings before any court, authority or any other Forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum.

(2) The Forum shall not entertain grievances falling under Sections 126, 127, 135 to 139, 142, 152, and 161 of the Act.

(3) Subject to sub-regulation (1) and (2) above, no grievance shall be rejected by the Forum at any stage, unless the complainant has been given an opportunity of being heard.

It is also their submission that complainant is challenging the transfer of dues which took place in year 2015 and was the subject matter of civil suit titled as "Mukesh Devi Vs BSES" bearing CS No. 187/2016 which was finally decided by way of detailed judgment and decree dated 20.06.2020, passed by Hon'ble District and Session Judge, North East, Karkardooma Courts, Delhi. The complainant in the said suit sought the declaration against the outstanding dues of Rs. 3,54,896/- which was one-fourth share of Rs. 14,19,586/- by raising dispute on the quantum of dues outstanding against the disconnected connection registered in the name of Sh. Jiley Singh, bearing CA No. 100018001, pertaining to premises at Kh. No. 220, Village Johripur, Delhi-94.

It was also submitted that as per Judgment of court referring to site inspection report dated 09.10.2015, show cause notices, speaking orders dated 15/17.12.2015, dues transfer certificate and three profiles sheets pertaining to the disconnected connection bearing CA No. 100018001 and taking into

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consideration the billing parameters held that transfer of dues of Rs. 3,54,896/- was legal. Respondent further added that the complainant is misleading the Forum by giving the impression that he came to know about the factum of transferred dues after June 2020 when the fact of the matter is he is aware of factum of transferred dues since 2015 as is evident from documents filed by the Complainant.

Since the complainant is aware of transferred dues since 2015 hence the complainant cannot now after the period of five years challenge the same by the way of present complaint. It was also submitted that Sh. Jiley Singh in whose name the disconnected connection was registered is father of Complainant and Smt. Mukesh Devi who filed the suit titled as "Mukesh Devi Vs BSES" is daughter-in-law of Sh. Jiley Singh or to say sister-in-law of complaint. They all are resident of same premises which is apparent from the present complaint as well as Judgment/decree dated 20.06.2020 which further proves that complainant herein has been aware of the transfer of his father's dues to his live connection since 2015.

The matter was heard on 01.10.2020, when the respondent filed their reply, copy of same was provided to the complainant. During the course of hearing the respondent mentioned that the dues of Mr. Jiley Singh, amounting to Rs. 14 lakhs has been transferred in four connections of the same premises in the name of Shripal, Kamla, Mukesh and Sangeeta. Forum directed the respondent to not to disconnect the supply of the complainant till the pendency of the complaint before this Forum. The complainant was also directed to pay current dues of CA No. 101476713. Respondent was also directed to file statement of account of Mr. Jiley Singh, whose dues are transferred to other connections.

On hearing dated 16.10.2020, respondent submitted statement of account. Respondent also raised objection that dues have been transferred in the year

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2015. The same dues of Jiley Singh were transferred to one connection in the same building whose case has been decided by the District Court in June 2019. Complainant was again directed to submit current dues of the connections which are pending before the Forum within two working days. Both the parties were also directed to submit the documents such as Sanctioned load, whether the meter was direct or CT/PT connected; meter testing dates and reports, meter change report, MRI with phasor diagram for Feb 2005, July 2005, Aug 2006 and Oct. 2006 and layout of the premises clearly indicating the area of supply for past and present connections.

The respondent submitted further details/clarifications relating to billing and bill revisions through e-mail on 21st and 22nd of December 2020.

We have gone through the submissions made by both the parties. From the narration of facts and material placed before us we find as under:

The respondent has raised the issue of Jurisdiction of the Forum in the present case on the basis of Provisions in DERC/Forum for redressal of the Grievances of the consumers and Ombudsman) Regulations 2018; as under

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(2) The Forum shall not entertain grievances falling under Sections 126, 127, 135 to 139, 142, 152, and 161 of the Act.

(3) Subject to sub-regulation (1) and (2) above, no grievance shall be rejected by the Forum at any stage, unless the complainant has been given an opportunity of being heard.

Respondent has moved an application regarding limitation of jurisdiction of the forum as per regulation, CGRF 2018 defined in section 13 limitation of jurisdiction of the forum. "The forum shall not entertain a grievance if it pertains to the same subject matter for which any proceedings before any court,

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authority or any other forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum”.

But in the instant case, the objection raised by the respondent is not maintainable because the parties (plaintiff/petitioner/complainant) are different. The principle of res judicata is not applicable as section-11 of CPC is not very exhaustive as decided in case of Gitaram Kalsi Vs Prthivi Singh and others by Punjab and Haryana High court. In aforementioned judgment the Hon’ble court settled that any issue which is material to the right of the party, the matter of suit between them whether they actually contested or not shall not afterward be raised in subsequent suit between the same party. The learned judge consulted works of American Judgment which has a bearing on the point at issue. In para 430 of important work on judgment, Freeman observed as under -

“Parties to a judgment, in the strict sense, include only those persons who are named as such in the records and over whom the court has acquired jurisdiction. As to such person the judgment is of course conclusive, unless they have previously non suited or dismissed, or are joined merely as formal parties and have no control over the proceedings. In fact that they are merely ‘proper’ and not ‘necessary’ parties does not relieve them from the conclusive effect of the adjudication”.

As the principal of res judicata is not applicable in the instant case because parties or complainant are different but the content of the subject matter for which complainant filed is the same, therefore, it is well within purview of the forum to entertain the complaint and pass the order.

As objection raised by the respondent, the subject matter as decided by the civil court, Karakadoma in Mukesh Devi Vs BSES, a decree was passed on 20/06/2020 to effect the recovery of amount from Mukesh Devi .

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Decree as defined under section 2 (2) of the civil procedure code, is a formal expression which provides the determination of the interests of both the parties in a conclusive manner with regards to any of the controversial matter or concerns of a particular civil suit".

Shripal and Kamla Devi approached the forum that dues transferred upon them are unjustifiable and illegal. Since the complainant have not contested case in any civil court nor a party to any civil suit prior to approaching the forum or no decree has been passed against them, the forum has every right to hear the case and pass the appropriate order. So the application filed by the respondent is dismissed. In addition to above legal portion following facts were considered in deciding to hear the case by CGRF.

- Prima facie the action of respondent to recover dues of another consumer which became due (monthly bills were also raised) in 2008 after 12 years (that too from another consumer by way of transfer of dues) by threatening disconnection is against the established law as ordered by Hon'ble Supreme Court in Civil Appeal No. 1672 of 2020 (arising out of SLP (Civil) No. 5190 of 2019) titled Asstt EEngr. (D) Ajmer Vidyut Vitran Nigam & Anr. Vs Rahamatullah Khas alias Rahamjulla.
- Prima facie the respondent has raised demand by the way of Dues transfer (for a connection disconnected in the year 2008) in a manner which is clear violation of various provisions in the DERC Supply Code and Performance Standards 2007. Even the notice issued under Section 49 (ii) of the Regulations for transfer of dues is infructuous and invalid one.
- At the first glance itself, the amount claimed or demanded by way of dues transfer is not justifiable as per accounts statements and other details submitted by the respondent.

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There are following major issues involved in the matter, which shall be examined by us and shall be decided

1. Whether the notice for transfer of dues was valid? And respondent's right to recover the dues by the way of transfer of dues.
2. Whether respondent made sufficient efforts to recover the dues against Jiley Singh?
3. Who is responsible for huge amount of LPSC shown in the bills (claim)? And who is liable to bear it.
4. Correctness of the claim as dues against Jiley Singh and complainant's correct/lawful liability
5. Whether the action of the respondent to recover the dues against Jiley Singh from the complainant by the way of disconnection is lawful/in accordance with the provisions in Electricity Act/DERC Regulations.

The notices dated 14.10.2015 and 02.11.2015 were served by the respondent to complainant quoting notice under Section 49 (ii) of DERC Regulations 2007, which are given as under:

49. Disconnection on non-payment of the Licensees Dues

(i) The Licensee may issue a disconnection notice in writing, as per section 56 of the Act, to the consumer who defaults on his payment of dues giving him fifteen clear days to pay the dues. Thereafter, the Licensee may disconnect the consumer's installation on expiry of the said notice period by removing the Service Line / Meter or as the Licensee may deem fit. If the Consumer does not make the payment within six months of the date of disconnection, such connections shall be treated as Dormant Connection.

(ii) The Licensee may take steps to prevent unauthorized reconnection of such consumers disconnected in the manner as mentioned above. Wherever Licensee discovers that connection has been re-connected unauthorisedly, Licensee may initiate

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action as per provisions of section 138 of the Act. Further, in case Licensee discovers that the supply to such premises has been restored through another live connection, notice to registered consumer/user of such live connection shall be given to stop such illegal supply immediately failing which pending dues of disconnected connection shall be transferred to his account and nonpayment of such transferred dues may be dealt with as per Sub-Regulation (i) above.

This section is basically for disconnection on non-payment of Licensee's dues. The Section 49 (ii) deals with the situation when a disconnected connection is reconnected unauthorizedly or supply is restored through another live connection. In the present case the Industrial connection of Jiley Singh was disconnected in May 2008 and remained disconnected thereafter as per records submitted by the respondent themselves. So reconnection of non-existent connection cannot be factual. Respondent released an electricity connection in the name of complainant on 01.12.2007 vide CA No. 101476713 and thus complainant was authorized to use electricity as per this valid electricity connection in his name. Thus, this notice from respondent is not valid one. In fact, respondent also tried to cover/divert their responsibility for their lapses/willfully ignoring the compliances of the provisions in law as under

(i) The Regulation 27 of the DERC Regulations 2007 is as under:

27. Termination of Agreement

(i) If power supply to a consumer remains disconnected for a period of one hundred and eighty (180) days for non-payment of charges or dues or noncompliance of any direction issued under these Regulations, the Licensee shall issue a show cause notice to the consumer for termination of the agreement. The consumer may send a reply to the notice within seven days. In case no effective steps are taken by the consumer for removing the cause of disconnection and for restoration of power supply, the agreement of the Licensee with the consumer for power supply shall be terminated on expiry of the

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period of seven days, from the date of service of the notice. During the period of temporary disconnection the consumer shall be liable to pay the demand charges or fixed charges, as the case may be.

(ii) Domestic and single-phase Non-domestic category of consumers may terminate the agreement after giving a fifteen days notice after expiry of the lock in period of one year. The consumers other than domestic and single-phase non-domestic category can terminate the agreement after the expiry of the lock in period of two years by giving one month's notice. Provided that, if the agreement is to be terminated before the expiry of the initial lock in period of the agreement, for categories other than domestic and single phase non-domestic consumers, then the consumer shall be liable to pay fixed/ demand charges, as per the applicable tariff, for the balance of the lock in period.

Further, provided that, the Licensee shall arrange for special meter reading, at a mutually acceptable date and prepare final bill. Such bill shall be stamped as final bill. The agreement shall be terminated on payment of final bill. The receipt of the payment of the final bill shall be treated as "No dues certificate". (iii) On termination of the agreement, the Licensee shall be entitled to remove the service line and other equipment of the Licensee from the premises of the consumer. After permanent disconnection, if the consumer wishes to revive the connection, then it would be treated as an application for new connection and would be entertained only after all outstanding dues have been cleared.

According to this clause the respondent was required to finalize the dues and prepare the final bill against the Industrial connection in the name of Jiley Singh, which was lying disconnected since May 2008 latest by November 2008, which they failed to do.

However, even after these lapses on the part of the respondent and invalid/wrong notice for recovery of dues against Jiley Singh, we are of the opinion that the outstanding dues for the consumption of energy by Jiley Singh are payable by the complainant on proportionate basis, provided the

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genuineness is thoroughly checked and outstanding dues pertaining entirely for the consumption of energy, are payable as per provisions in law.

- (1) The respondent did not take any action for providing the final bill to Jiley Singh by November 2008 as required by law and also as per records submitted by the respondent they did not make any efforts to recover the dues against Jiley Singh during the period May 2008 to 2015. Thus, respondent did not show due diligence for recovery of dues. In fact they did not care even to finalize the dues and did not check the correctness of the amount shown as dues against Jiley Singh in their records/books.
- (2) As per account statements submitted by the respondent, the amount of dues after the disconnection in May 2008 on meter reading 4,46,251.8 KVAh (as per MRI report and energy/billing statements submitted by the respondent) were Rs. 7,25,177 (gross arrear amount) plus Rs. 1,03,858 (as LPSC) (bill for the month of June 2008 after disconnection in May 2008).

The gross arrear amount upto June 2008 of Rs. 7,25,177/- include LPSC amounts adjusted as LPSC against the payments made by Jiley Singh from time to time.

Scrutiny of the account statement submitted by the respondent reveals following facts:

The respondent charged Rs. 1,13,049/- as gross arrears in the bill, for the month of June 2002, which was obviously for the consumption prior to the date of taking over business by the respondent (i.e. the period when Delhi Vidyut Board was the supplier) hence, not payable to BYPL as per Govt. of Delhi, NCT of Delhi orders no. F-11/401/2007/Power/278 dated 16/19 May 2008. However, the consumer Jiley Singh paid this arrear amount to the respondent, which needs to be adjusted in final amount.

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(a) Jiley Singh paid the electricity dues regularly till December 2002 and dues against him became almost NIL. But in the month of February 2003, respondent raised a bill showing arrear amount of Rs. 1,13,178/- , which has not been explained by the respondent in their submissions or during hearings and clearly this created dispute between the parties and respondent started levying LPSC on this amount in the subsequent bills and respondent accepted current bill payment in few months. As per records, the issue was not resolved till January 2007, when the dues amount was revised to Rs. 7,46,217.10 plus Rs. 12,427/- as LPSC for the month of January 2007, but on the basis of consumption bills and payments by Jiley Singh, it is clear that unexplained arrear amount Rs.1,13,178/- as charged in Feb 2003 bill was not rectified and also credit for Rs. 1,13,049/- paid to the respondent by Jiley Singh, which was not payable to respondent, was allowed in the revision. However, Jiley Singh started paying again and the pattern of payments and acceptance (by respondent) indicates that this revision was still disputed and respondent again revised the bill in June 2008 (after disconnection in May 2008) whereas amount shown as arrears was Rs. 7,25,234/- after giving credit for the payments by Jiley Singh. Rs. 2,01,500/- in March 2008 and Rs. 51,000/- in April 2008, and other payment after bill revision in January 2007. Arrears Rs. 7,25,234/- included LPSC amounts adjusted against the payment made by Jiley Singh.

Thereafter, the consumer Jiley Singh made payments though at irregular interval but the amount of payments and acceptance by the respondent, clearly indicates that there was certain level of understanding between the two over the undisputed amount and accordingly the payment of Rs. 2,01,500/- against the bill of March 2008 appears to be amount payable excluding the gross LPSC amount charged till March 2008 and of course this disputed amount of Rs. 1,13,178/-.

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The consumer made payment of Rs. 51,000/- against the bill raised by the respondent for April 2008. The connection was disconnected in May 2008. Thus only small amount remains payable.

On the basis of above facts, the respondent is largely responsible for not resolving the genuine concern of the consumer Jiley Singh which resulted in accumulation of huge amount of LPSC.

LPSC amount of Rs. 6.87 lacs for the period July 2008 to 2015, as charged by the respondent in the final bill prepared in 2015 is not payable because the respondent was required to provide final bill by November 2008 as per Provisions of Regulation 27 (as explained earlier).

Thus we are of the opinion that LPSC amount charged by the respondent in the bills till date of disconnection (May 2008) is not payable by Jiley Singh and the whole amount of LPSC is to be borne by the respondent. Otherwise also the dues of Jiley Singh against electricity consumption only are payable on proportionate basis by the complainant.


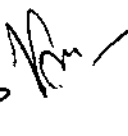
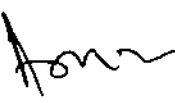
4) The complainant at point no. 7, in her complaint has claimed as under:-

"That on 11.02.2008, the respondent revised the outstanding bill and after amendment the actual/correct bill amount comes to Rs. 1,13,800/- only and that was deposited with the respondent on same day i.e. 11.02.2008. That on 11.02.2008, no any outstanding dues were pending against the connection bearing CRNo. 1250100366" in the name of Jiley Singh.

He has also submitted a copy of this amended bill which bears the stamp indicating the sl. No. etc., as details of receipt. However, this amount has not been shown by the respondent in the account statement and also they have remained silent on this in their submissions in the case. The final bill was prepared by the respondent in August 2015, i.e. almost seven years after the disconnection in May 2008.

Other charges - Rs. 7,31,835.97/-

LPSC - Rs. 6,87,750.84/-

  
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This LPSC is clearly for the period Oct 2008 to Aug 2015, hence not payable as the respondent is solely responsible for delay in preparing final bill (due to willful non-compliance of provisions of Clause 27 of the Regulations.)

The amount Rs. 7,31,835.97/- towards energy consumption almost tallies with amount shown in the account statement as under:

June 2008 (month of disconnection was May 2008)	Rs. 7,25,234.00
July 2008	Rs. 7,29,232.00
August 2008	Rs. 7,30,282.00

Respondent has confirmed (by e-mail) submissions on dated 21st and 22nd December 2020 as under;

- i) Security amount has been adjusted in the final arrear amount of Rs. 7,31,835/-.
- ii) During revision in January 2007, credit for DVB period dues to the tune of Rs. 1,06,000/- was allowed alongwith LPSC amount of Rs. 2,76,600/-.
- iii) They have confirmed receipt of amount of Rs. 1,13,800/- in February 2008, which is not reflecting in the account statement submitted by them.

So, considering all the records, meter readings, meter status-OK, etc, and submissions by the respondent as correct, adjustment as under is required as per rules-

- (i) Rs.1,13,800/- Paid by Jiley Singh and now also accepted by the respondent on 22.12.2020.
- (ii) Approx. Rs. 2,50,000/- towards LPSC paid by Jiley Singh as adjustment from the amounts paid by him.

Thus total adjustment of Rs. 3,63,800/- is to be allowed in the final arrear amount of Rs. 7,31,835/- to arrive at actual amount due for electricity consumption against

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the Industrial Connection in the name of Jiley Singh. Thus arrears payable as per Rules and Regulations is Rs. 3,68,035/- only and complainant is required to pay 25% on proportionate basis i.e. Rs. 92,010/-.

5. Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020, arising out of SLP (civil) no. 5190 of 2019) titled Asstt EEngr. (DI) Ajmer Vidyut Vitran Nigam & Anr. Vs Rahamatullah Khas alias Rahamjulla has given detailed analysis and legal stand while ordering (concluding) as under:

"If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation of two years after the sum became first due", it would defeat the object of Section 56 (2)" which is narrated below:

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

In the present case, the dues against the Industrial connection in the name of Jiley Singh where regular electricity bills were raised and supplied to the consumer till date of disconnection in May 2008 and final bill against permanent disconnection was due in November 2008 may be considered to be first due in November 2008. Hence, for recovery of proportionate amount of dues against Jiley Singh, from the complainant, the respondent is barred for taking recourse to disconnection of supply of electricity to complainant's connection CA No. 101476713, under sub-section (2) of the Section 56 (2) of the Electricity Act.

After considering all facts, analysis and scrutiny of accounts etc, the respondent is directed to withdraw the unlawful transferred amount of Rs. 3,54,896/- alongwith LPSC and accordingly revised bill be provided to the complainant within two weeks from the date of this order. The outstanding dues against consumption of

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electricity on the connection in the name of Jiley Singh, are payable on proportionate basis (25%) by the complainant. Thus the complainant is required to pay Rs. 92,010 /- towards these dues. Respondent is directed to accept this amount of Rs. 92,010/- from the complainant in five equal monthly installments starting from January 2021, thus the whole amount of Rs.92,010/- be paid by the complainant by 31.05.2021.

There have been other cases also where the Forum found that dues transfer was not as per provisions in law and amounts transferred were found inflated. The respondent is directed to be careful in future and should ensure thorough checking of accounts and related records and compliance of provisions in law in the matter.

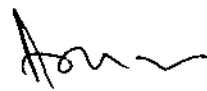
The case is disposed off with above directions.



HARSHALI KAUR
MEMBER (CRM)



VINAY SINGH
MEMBER (LEGAL)



ARUN P SINGH
CHAIRMAN