

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
AT PANCHKULA**

Case No. HERC/ RA-15 of 2020

Date of Hearing : 07.07.2021

Date of Order : 19.07.2021

In the Matter of

REVIEW PETITION UNDER SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003 READ WITH REGULATION 78 OF THE HARYANA ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004 SEEKING REVIEW OF THE ORDER DATED 05.08.2020 PASSED BY THE HON'BLE COMMISSION IN HERC/PRO 16 OF 2020

Petitioner:

Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Nagar, Hisar

VERSUS

Respondents:

1. M/s EIH Ltd. Gurugram.
2. M/s DLF Cyber City Developer Ltd. Gurugram.

Present

On behalf of the Review Petitioner

Ms. Rimali Batra, Advocate for DHBVN

On behalf of the Respondents

1. Sh. Ashwani Talwar, Advocate for R-1
2. Sh. Vinod Bhardwaj, Advocate for R-2

QUORUM

Shri Pravindra Singh, Member (in Chair)
Shri Naresh Sardana, Member

ORDER

1. Brief Background of the Case:

- 1.1 That the present petition has been filed by the Review Petitioners seeking review of the Order dated 05.08.2020 passed by the Commission in PRO 16 of 2020. The said petition being PRO 16 of 2020 was filed by the Respondent no. 1 seeking directions against Respondent No. 1 to 6, under the Haryana electricity Regulatory Commission (Duty to supply Electricity on request, Power to recover Expenditure in providing supply and power to require security) Regulations, 2016 ('Duty to Supply Regulations, 2016'), for release of electricity connection in the NDS category for a load of 950 kW on single point basis in pursuance of the Respondent no.1's Application for connection dated 22.05.2018.

FACTUAL BACKGROUND

- 1.2 The Review Petitioner is a government of Haryana undertaking engaged in the business of distribution of electricity in southern parts of Haryana and is governed by the Regulations issued by HERC from time to time.
- 1.3 The Respondent no. 1 is a public limited company, owning the commercial building no. 11 in DLF Cyber City, Sector 24, 25, & 25A Gurugram.
- 1.4 The Respondent no. 2, being M/s DLF Cyber City Developer Ltd. is the owner of land admeasuring 1.073 acres situated in Sector 24, 25, & 25A Gurugram. Respondent no. 2 was granted a license by the DTCP under the Haryana Development and Regulation of Urban Areas Act, 1975 ('HDRUA') to develop a commercial colony in Cyber City, Phase II and III, Sector 24, 25 and 25A Gurgaon. One of the conditions stipulated therein was that it is the duty of the licensee to arrange for power connection from UHBVN/DHBVN for electrification of the colony and for

installation of the electricity distribution infrastructure as per the peak load requirement of the colony for which the licensee shall get electrical service plans/estimates approved from the agency responsible for installation of external electric services and complete the same before taking completion certificate for the colony.

- 1.5 On 29.10.2013, the DTCP accorded its approval to Respondent No. 2 for revised building plans for commercial building no. 11 in Cyber City, Sector 24, 25 and 25A Gurgaon being developed by Respondent No. 7 subject to certain conditions.
- 1.6 On 06.06.2016, DTCP granted Occupation Certificate to Respondent No. 2 for commercial building no. 11 in Cyber City, Sector 24, 25 and 25A Gurgaon, subject to certain conditions. One of the conditions prescribed therein was that it was the responsibility of the licensee, i.e. Respondent no. 2 to apply for electricity connection.
- 1.7 On 14.06.2017, the Review Petitioner granted approval of electrification plan for Respondent no. 2 in Sector 24, 25 and 25A, Gurugram with ultimate load 56196 kW or 62440 kVA for DLF Phase -II and 56976 or 63307 for DLF Phase-III under 66 kV single point connection under HT/NDS category subject to compliance of certain terms and conditions.
- 1.8 On 29.06.2017, Respondent no. 2 executed a Sale deed with the Respondent No.1 for sale of Building No.11, in DLF Cyber City, Phase-II, Sector 24, 25 and 25A, Gurugram.
- 1.9 On 28.07.2017, Respondent No. 2 made an application to the Review Petitioner for sanction of load of 35000 kw for Phase II, Gurugram at single point connection under HT NDS category at 66 kV level and another application dated 02.08.2017 for sanction of load of 45000 kw for Phase III, Gurugram at single

point connection under HT NDS category at 66kV level.

- 1.10 On 30.08.2017, the Review Petitioner sanctioned of partial load of 45000 kw for Phase III, Gurugram at single point connection under HT NDS category at 66kV level and partial load of 35000 kw for Phase II, Gurugram at single point connection under HT NDS category at 66kV level.
- 1.11 On 22.05.2018, the Respondent no. 1 submitted an application to the Review Petitioner seeking NDS connection with a connected load of 950kW.
- 1.12 On 25.09.2018, the Review Petitioner approved the electrification plan for DLF Cyber City project at sector 24 and 35A in Gurugram, along with sanction of 113.17 MW with CD125.75 MVA, thereby revoking the previous sanctions of partial load of 35000 kw and 45000 kw for Phase II and Phase III, respectively.
- 1.13 On 06.03.2019, a meeting was held between the representatives of the Review Petitioner, Respondent no. 2 under the Chairmanship of CM, Haryana.
- 1.14 Pursuant to the meeting with the Hon'ble CM, Haryana, on 23.04.2019, the Review Petitioner accorded its approval for electrification plan along with sanction of 113.17 MW with CD of 125.75 MVA for M/s DLF Cyber City Project in Sector 24 and 25 A, Gurugram. By virtue of this approval, the Review Petitioner revoked the previous approval dated 25.09.2018. Moreover, the sanctions and approvals accorded to the Respondent no. 2 vide its communication dated 30.08.2017 were reinstated by the answering respondent. Accordingly, it was decided to release connection to the Respondent no. 2 after compliance of all statutory requirements and instructions issued by the Nigam.
- 1.15 With respect to approval for electrification plan along with sanction of 113.17 MW with CD of 125.75 MVA for M/s DLF

Cyber City Project in Sector 24 and 25 A, Gurugram, the Review Petitioner no. 3 sent a representation dated 29.04.2019 to the SE/RA, DHBVN to prepare a suitable petition for filing in the HERC soliciting its approval for release of connection to M/s DLF Cyber City Project in Sector 24 and 25 A, Gurugram.

- 1.16 On 02.05.2019, the Respondent no. 1 sent another representation to the Review Petitioner for release of electricity connection. It is submitted that by virtue of this letter the petitioner itself acknowledges that *'we further understand that since our premises falls in the cyber city project of DLF, therefore, after construction of 66kV/220 kV substation by DLF only our connection can be released'*.
- 1.17 Pursuant to the decision taken in the meeting held on 06.03.2019, as well as the approval for electrification plan along with sanction of 113.17 MW with CD of 125.75 MVA for M/s DLF Cyber City Project in Sector 24 and 25 A, Gurugram on 23.04.2019, the Review Petitioners issued a memo for preparation of a petition for filing before the HERC for soliciting its approval for release of Electricity connections to Respondent no. 7, M/s DLF Cyber City Project in Phase II and II, Sector 24 and 25 A, Gurugram.
- 1.18 Accordingly, DHBVN filed a petition before the Commission being PRO 39 of 2019 for removal of difficulties in implementation of HERC Electricity Supply Code 2014 and its amendments thereof and approval for release of 2 nos. single point electricity connections at 66 kV voltage level to the Respondent no. 2 for giving supply to DLF Cyber City Project in Phase II and III, Sector 24 and 25 A, Gurugram, and permit DHBVN to recover its cost and expenditure.
- 1.19 The Hon'ble Commission, vide its order dated 27.09.2019 passed

in PRO 39 of 2019, relaxed the provision of Regulation 3.2.2 of the HERC Electricity Supply Code 2014 and permitted DHBVN to release 2 nos. single point electricity connections at 66kV voltage level to Respondent no. 2 for giving supply to DLF Cyber City Project in Phase II and III, Sector 24 and 25 A, Gurugram, subject to certain conditions. The Commission further permitted DHBVN to recover cost and expenditure as per the HERC Duty to Supply Regulations, 2016.

- 1.20 While deciding the application submitted by the Respondent no.1, the Review Petitioners, vide its memo dated 24.12.2019, refused to release electricity connection for the reason that the building/premises of the Petitioner falls under the licensed area of Respondent no. 2 as per the license granted by DTCP. Further, the Hon'ble Commission vide its order dated 27.09.2019 passed in PRO 39 of 2019 approved the electricity connection to Respondent no. 2 by release of 2 nos. single point electricity connections at 66kV voltage level to Respondent no. 2 herein for giving supply to DLF Cyber City Project in Phase II and III, Sector 24 and 25 A, Gurugram.
- 1.21 Subsequently, Respondent no. 2 preferred a petition being PRO 19 of 2020 before the Hon'ble Commission under S. 142 read with S. 146 of the Electricity Act, 2003 with regard to certain disputes and differences with DHBVN pertaining to compliance with the directions by the Commission vide its order dated 27.09.2019 passed in PRO 39 of 2019.
- 1.22 Thus, aggrieved by the aforesaid communication, the Respondent no. 1 on 29.02.2020 preferred petition being PRO 16 of 2020 before the Hon'ble Commission seeking to set aside the same and seeking directions for sanction and release of electricity connection.

- 1.23 Thereafter the matter was listed for hearing on 10.06.2020. After hearing preliminary submissions by the parties, the Hon'ble Commission put forth the following queries to the parties: (i) Whether there was any specific clause in the sale deed regarding the party which is to obtain electricity connection; (ii) Whether the responsibility for removing the deficiencies in electrical infrastructure is of the Respondent no. 1 or Respondent No. 2? (iii) Whether there has been any similar case in the past and if there is any case law on the subject? (iv) Whether the „applicant“ under the Regulation 6.3 of Haryana Electricity Regulatory Commission (Duty to Supply Electricity on Request, Power to recover expenditure in providing Supply and Power to Require Security) Regulations, 2016 will be the Respondent No. 1 or respondent No.2?
- 1.24 The Review Petitioner filed its detailed Reply to the same, inter alia, submitted as under:
- I. As per the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 ('HDRUA') read with various Regulations issued by the Hon'ble Commission under the Electricity Act, 2003, it is the duty of the developer or colonizer, who has been granted a license by the DTCP, to erect adequate electrical infrastructure as per the prevalent load norms and regulations before electricity connection can be released by DHBVN.
 - II. A perusal of the Electricity Act, 2003 and relevant regulations being HERC Duty to Supply Regulations notified by the Commission settled the position as to the aforesaid obligation of the Respondent No.2 to create adequate electrical infrastructure:
 - i. Electricity connection under S. 43 can only be provided

by the distribution licensee, when infrastructure required for that supply of electricity is adequate to cater to the load of such consumer.

- ii. It is the duty of the developer or colonizer or the licensee, who has been granted a license by the DTCP, to erect adequate electrical infrastructure as per the prevalent load norms and regulations before release of electricity connection by DHBVN
- iii. As per Regulations 3 of the HDRUA, the colonizer/ developer is responsible for installation of internal electricity distribution infrastructure as per the peak load requirement of the colony.
- iv. Any change in existing developer/coloniser is required to be done after grant of license by the DTCP, it can only be allowed after an application made by the coloniser under S. 3D of and compliance with the terms and conditions as may be prescribed by the DTCP.
- v. Obligation of the distribution licensee to supply electricity for a premises as per Regulation 3 of the Duty to Supply Regulations distribution licensee is subject to compliance with Regulation 4 of Electricity Supply Code as well as Duty to Supply Regulations.
- vi. Regulation 4.12.2 of Duty to Supply Regulations casts an obligation on the developer or the colonizer to carry out the work relating to electrification of Urban Estates/Group Housing Societies/Employer's Colonies, after the approval of the electrification plan and the estimates prepared on the basis of Regulation 4.8.4 for such plans by the Distribution licensee.
- vii. The aforesaid Regulations carefully uses the term

‘coloniser’ instead of ‘applicant’, which goes on to show that it is the coloniser who is obligated to complete the electrification work as per the electrification plans and estimates approved by the distribution licensee.

- viii. Even as per Single point Supply Regulation 2013, the distribution licensee shall release single point supply connection only after ensuring that the Developer has completed the installation of complete electrical infrastructure within the complex as per the approved Electrical Layout Plan.
 - ix. Even under Single Point Supply Regulation, as notified in 2020 repealing the Principal 2013 Regulations, the distribution licensee has to ensure that such Developer has completed the installation of entire electrical infrastructure within its complex as per the approved electrification Plan before release of single point supply connection.
 - x. Single Point Supply Regulations, 2020 further goes on to say that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of Duty to Supply Regulations, 2016 and the connection cannot be released unless such bank guarantee has been deposited by such Developer to the Distribution licensee.
- III. The Electricity Act, 2003 read with Duty to Supply Regulations and Single Point Supply Regulations, release of

connection to the Respondent no. 1 at single point can only be done if the electrical infrastructure is completed as per the approved electrification plans by the developer, i.e. Respondent no. 2.

- IV. The Respondent No. 2 was seeking single point supply connection from the Review Petitioner by setting up 2 nos. 66kV substations, for ultimate load of 113.17 MW, which was a deviation from the requirements under the Electricity Supply Code. Since such an approval could not have been granted by the Review Petitioner without the approval of the Hon'ble Commission, the Review Petitioner preferred a petition being PRO 39 of 2019 for relaxation of the provisions of Electricity Supply Code and approval of the electrification plan of the Respondent No. 2 by allowing it to set up 2 nos. of 66kV substations. The Commission vide its order dated 27.09.2019, approved the electrification plan for the Respondent no. 2 for the entire Phase II, sector 24, 25 and 25A, Gurugram subject to certain conditions.
- V. Since the premises of the Respondent no. 1 falls within the area of the scheme which has been approved by the Commission and therefore, at this stage, it is legally impermissible to release electricity connection to the Respondent no. 1, without such infrastructure having been set up by the Respondent no. 2.
- VI. Once the Respondent no. 2 satisfies its obligation by setting up the infrastructure as per the order passed by the Commission in PRO 39 of 2019, single point connection as per the Single Point Supply Regulations can be issued to M/s DLF and electricity connected can be released to the Respondent no. 1 by the Distribution Licensee.

- VII. Alternatively, individual electric connection can only be permitted to Respondent no. 1 at this stage after an application is made in this regard to the DTCP for modification of zoning plans since Respondent no. 1 falls under the composite scheme approved for M/S DLF, and consequent modification of electrification plans as approved by the DISCOM and fulfilment of its liabilities thereunder.
- VIII. In the event of release of connection to the Respondent no. 1 without fulfilling the above requirements, the overall liability of the coloniser/developer to develop the electrical infrastructure for the complete scheme shall get diluted and there will be a loss to exchequer due to insufficient Electrical Infrastructure.
- IX. If such individual buildings falling within a scheme are permitted to be sold off with permission to such buyers to take single point supply connection by setting up separate feeders for such individual buildings, then every developer will split its load and obligations by executing separate deeds, and thus, absolving themselves of their liability to set up the electrical infrastructure of the entire area sanctioned by the distribution licensee and the financial burden of the same will ultimately fall on the distribution licensee.
- X. It is submitted that in the said Regulation 6.3, the reference to 'applicant' denotes an owner or occupier of any land/premises who files an application with a licensee for supply of electricity. Such a person can be either a developer/coloniser who applies for electric connection or current owner/occupier of the land/premises for which he wishes to take electric connection from the DISCOM. However, the stage of giving supply to the applicant shall

arise upon compliance with the provisions of Regulation 4 of the Electricity Supply Code read with Regulation 4 of the Duty to Supply Regulations (i.e. Regulation 3.1). Unless the infrastructure has been set up and installed as per the approved plans, the obligation of the distribution doesn't arise to take over the infrastructure and supply electricity.

XI. Unless the Respondent no. 2 being the licensed developer under the HDRUA act, lays down the electrical infrastructure as per the electrification plans approved by the DISCOM as well as the Commission, electricity connection cannot be released to the Respondent no. 1. It is submitted that allowing such a prayer would be contrary to the Regulations passed by the Hon'ble Commission.

1.25 The matter was next heard on 17.07.2020 wherein, the Respondent no. 1 clarified that there is nothing in the sale deed regarding the party which is to obtain electricity connection from the DISCOM. After hearing all the parties as regards other queries put forth, the Hon'ble Commission reserved order in the matter.

1.26 On 05.08.2020, the Hon'ble Commission passed the order under review. The Commission framed the following issues for consideration and decision:

- I. Whether the petitioner's statutory right of issuance of an electricity connection can be curtailed on the ground that application for the same is required to be submitted in the name of the Developer and that an application made by a subsequent purchaser does not merit consideration in view of the already approved electrification plan submitted by the Developer?
- II. Whether issuance of electricity connection to the petitioner shall cause loss to the exchequer due to insufficient

electrical infrastructure?

- III. Whether, to ensure realization of the statutory rights of the parties before it, the Commission can evolve mechanisms to remove difficulties in implementation of the applicable Regulations, directions and other statutory provisions?
 - IV. Whether the petitioner is required to furnish a Bank Guarantee in terms of the Regulations 4.12 of the Duty to Supply Regulations of 2016?
 - V. Whether any approval from the DTCP would be necessary in the present case before the electricity connection can be issued to the petitioner?
 - VI. Whether the petitioner's case for issuance of electricity connection can be considered under the (Single Point Supply to Employers" Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ) Regulations, 2020?
- 1.27 After answering the aforesaid issues, the Hon'ble Commission vide the order under review dated 05.08.2020 directed the Review Petitioner to release the connection to the Respondent no. 1 subject to bearing cost of line and switchgear for 11 KV feeder from nearest 66 KV substation (from where it is feasible to feed requisite load) as per its submission.
- 1.28 It is submitted that the order under review has been passed by the Commission without appreciation of the arguments advanced by the Review Petitioner and the admitted facts of the case and in ignorance of the Regulations notified by the Commission itself. The Hon'ble Commission has overlooked the true nature and import of the proceedings and the conclusion arrived is not in consonance with the HERC Regulations and thus, constitutes an

error apparent on the face of the record, which ought to be corrected by the Hon'ble Commission.

GROUND FOR REVIEW

1.29 The Review Applicant is seeking review of the order dated 05.08.2020 on the following grounds, which are in alternative and without prejudice to each other:

- I. Because the order under review constitutes an error apparent on the face of the record, misapprehension of facts as well as of law, hence the same deserves to be reviewed by the Hon'ble Commission;
- II. Because the Hon'ble Commission has incorrectly recorded submissions of the review petitioner and given contrary findings in the order under review.
- III. Because the Hon'ble Commission passed the Order dated 05.08.2020 overlooking relevant the materials placed on record and applicable law.
- IV. Because the Hon'ble Commission while deciding the issues involved, went beyond the provisions of law and devised its own interpretation contrary to the settled legal principles which is in violation of the legal principles and settled law on the subject.

RE: ARGUMENTS INCORRECTLY CONSIDERED

- V. BECAUSE the Hon'ble Commission has framed issue nos. (i), (iv) and (v) based on wrong considerations of the submissions of the Review Petitioner. In this regard, it is relevant to note as under:
 - i. Under issue no. (i) read with para 43 that the right of the Respondent no. 1 for issuance of electricity connection can be curtailed on the ground that the application for the same has to be submitted in the

name of the developer. It is submitted that the Review Petitioner has taken a categorical stand in its reply submitted before the Commission as well as oral arguments that the applicant under the Duty to Supply Regulations denotes an owner or occupier of any land/premises who files an application with a licensee for supply of electricity. Such a person can be either a developer/coloniser who applies for electric connection or current owner/occupier of the land/premises for which he wishes to take electricity connection from the DISCOM. However, the stage of giving supply to the applicant shall arise upon compliance with the provisions of Regulation 4 of the Electricity Supply code read with Regulation 4 of the Duty to Supply Regulations (i.e. Regulations 3.1 as quoted above). Unless required infrastructure has been set up and installed as per the approved plans, the obligation of the distribution licensee doesn't arise to take over the infrastructure and supply electricity.

- ii. Under issue no. (iv) that whether the Respondent no. 1 has to furnish a BG in terms of Regulation 4.12 of the Duty to Supply Regulations, 2016. It is submitted that the Review Petitioner laid emphasis on Regulation 4.12.2 to submit that the intention while framing the said Regulations was that it is the coloniser/developer who is obligated to complete the electrification work as per the electrification plans and estimates approved by the distribution licensee. Further, it was submitted that it is the duty of the distribution licensee to ensure at the time of energization of the system that the electrical

system has been laid down by the coloniser as per the approved electrification plan. However, if it has not been done by the Colonizer, the Distribution licensee shall not release single point connections or individual connections unless such coloniser furnishes required bank guarantee for the balance work to be executed as per the approved electrification plan.

- iii. The Commission has framed issue no. (v), read with para 24, based on incorrect appreciation of arguments advanced by the Review Petitioner to the effect that electricity connection to the Respondent no. 1 can only be issued after approval from the DTCP. It is submitted that the Review Petitioner, after relying on the HDRUA extensively argued that the Complete scheme of M/s DLF Cyber City including that of the Building no. 11 of M/s EIH has been approved by DTCP and accordingly for the electricity requirements applied by M/s DLF for the entire Cyber City Project has been approved by the Review Petitioner for an Ultimate Load of 113.12 MW. Further, the electrification plan for this composite scheme has been approved by the HERC vide its order dated 27.09.2019, however, the electrical infrastructure has yet not been set up by the Respondent no. 2 to enable release of connections by the Review Petitioner. However, since the Respondent no. 1 desired to be released connection dehors the incomplete infrastructure and expressed its intention to set up its own infrastructure for its requirement of 950 kW, it was submitted that electricity connection can be released to Respondent no. 1 if the zoning plan of the composite

scheme of M/s DLF Cyber City is modified after application and approval by DTCP for Phase II. Based on this modified zoning plan, the Respondent no. 1 shall approach the Review Petitioner for modification of the electrification plans and estimate, which was approved for the entire scheme of Cyber City Phase II and III, Sector 24, 25 and 25 A Gurugram for ultimate load of 113.12MW.

RE: CONTRADICTORY FINDINGS

- VI. Because the Hon'ble Commission overlooked the position of facts and the law governing the issues at hand and has given contradictory findings, which are an error apparent on the face of record. It is submitted that the Hon'ble Commission has recorded under para 32 that the right of an applicant to get electricity connection is kept at a high pedestal and the said right has been regulated in terms of the condition that the infrastructure commissioning is necessary for the said purpose that has to be undertaken by the developer, i.e. Respondent no. 2. In view of the admitted fact that infrastructure for the said purpose has not been laid down by the Respondent no. 2, the direction given by the Hon'ble Commission under the impugned order to the Review Petitioner to release connection to the Respondent no. 1 is an error apparent on the face of record.
- VII. BECAUSE the Hon'ble Commission has recorded another contrary finding in the order under review under para 35 overlooking the arguments advanced and admitted facts, in so far as the part owned by the Respondent no. 1 is concerned, the development of the same is complete. It is an admitted position that the requisite infrastructure for M/s

DLF Phase II and III, Sector 24, 25 and 25A has not been erected by the Respondent no. 2 as per the plans approved by the Commission itself vide its order dated 27.09.2019. It is submitted that the said finding has been recorded in the absence of any pleading or proof towards the same and deserves to be corrected and reviewed by the Hon'ble Commission.

- VIII. Because in view of the admitted fact that the part of the project under the ownership of Respondent no. 1 falls under the scheme of M/s DLF Cyber City approved by DTCP for which the Commission vide its order dated 27.09.2019 has approved the electrification plan for releasing 2 nos. single point connection to the entire project of M/s DLF Cyber City, Phase II & III in Sector-24 & 25A Gurugram, it is incorrect and incongruous finding rendered by the Commission that the issuance of electricity connection to the Respondent no. 1 in the absence of electrical infrastructure does not entail any modification of the electricity plan approved in the name of the Respondent no. 2.
- IX. Because the Hon'ble Commission took note of the submission made by Respondent no. 2, in as much as M/s DLF has no objection if the petitioner is issued an electricity connection from the same sub-station as approved in the electrification plan in support of its finding that the Respondent no. 2 be released electricity connection, yet it was overlooked that as of date, the electrical infrastructure required for the purpose of release of connection to the Respondent no. 1 does not exist.
- X. Because though the Hon'ble Commission has recorded that the responsibility of the setting up requisite infrastructure

as per the approved plans lies on the developers, yet it directs release of connection to the Respondent no. 1 without any basis or reasoning, in ignorance of the settled law and submissions made by the parties.

RE: FINDINGS RECORDED OVERLOOKING THE REGULATIONS

XI. Because the Hon'ble Commission has overlooked the relevant provisions of Electricity Act, 2003 read with the HERC Duty to Supply Regulations 2016 and Single Point Supply Regulations, 2020. It is submitted that the finding rendered by the Hon'ble Commission to release electricity connection to the Respondent no. 1 is in the teeth of the Regulations notified by the Commission itself and arguments made by the Review Petitioner. In this regard, it is a settled position in law that:

- i. Electricity connection under S. 43 can only be provided by the distribution licensee, when infrastructure required for that supply of electricity is adequate to cater to the load of such consumer.
- ii. The obligation of the distribution licensee to supply electricity for a premises as per Regulation 3 of the Duty to Supply Regulations is subject to compliance with Regulation 4 of Electricity Supply Code as well as Duty to Supply Regulations.
- iii. Regulation 4.12.2 mandates the distribution licensee to not release electricity connection unless the work relating to electrification of Urban Estates/Group Housing Societies/Employer's Colonies, after the approval of the electrification plan and the estimates prepared on the basis of Regulation 4.8.4 for such plans

by the Distribution licensee has been completed by the developer/coloniser or BG to the that effect has been furnished by such developer.

- iv. Even the Single Point Supply Regulation, as notified in 2020 repealed the Principal 2013 Regulations, the distribution licensee has to ensure that such Developer has completed the installation of entire electrical infrastructure within its complex as per the approved electrification Plan before release of single point supply connection.
 - v. The Single point Supply Regulations, 2020 further goes on to say that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per Regulations 4.12 of Duty to Supply Regulations 2016 and the connection cannot be released unless such bank guarantee has been deposited by such Developer to the Distribution licensee.
- XII. Because the Hon'ble Commission has not even recorded submissions made by the Review Applicant in respect of the aforesaid provisions of the relevant Regulations or give any finding to this effect before directing the Review Petitioners to release connection to the Respondent no. 1.
- XIII. Because the Hon'ble Commission has incorrectly placed reliance on Regulation 5.2 read with 6.3 of the Single Point Regulations, 2020 to hold under para 44 that individual connections to the occupiers of spaces in commercial

complexes can be issued by the competent authority. Admittedly, the Respondent no. 2 has applied to the Review Petitioner for release of connection on single point supply. It is submitted that there is no provision under the Single Point Supply Regulation to release individual connections, when single point connection is issued. Thus, the said finding rendered by the Hon'ble Commission overlooking the settled position as emerging from the Single Point Regulations, 2020 that individual connections cannot be released under the said regulations is an error apparent on face of the record.

- XIV. Because the Hon'ble Commission further overlooked that Regulation 6.3 of the Single Point Regulations, 2020 shall be applicable after release of single point supply connection to the developers for their Residential-cum- Commercial/ Commercial Complexes /Shopping Malls / IT Parks etc. and not at the time of application for release of connection. In this regard, the relevant extract of Regulation 6. 3 of the Single Point Regulations, 2020 is quoted as under:

'6.3 Developers" Commercial complex/Shopping Mall/IT Parks/ Users Association covered under regulation 5.2 The Developers having Single Point Supply connection for their Residential-cum-Commercial/ Commercial Complexes /Shopping Malls / IT Parks etc shall enter into an Agreement with the Distribution licensee of the area of supply through their Users Association and the connection shall be got changed in the name of Users Association once the complex is taken over by the Users Association and shall perform the function of Supply, Metering, Billing and Collection for supply of electricity to the users/residents, common services, NDS and other

category of loads if any in such complexes as per the terms and conditions specified in the Regulations.'

RE: SUBMISSION OF M/s EIH Ltd. ACCEPTED WITHOUT ENQUIRY INTO THE GROUND REALITIES:

- XV. Because the submission made by the Respondent no. 1, M/s EIH limited, in its petition being PRO 16 of 2020, that its limited requirement of 950 kW will be fed through 11 kV Feeder and within its premises, it will have its own distribution system by way of stepping down voltage at required level from 66 kV substation in the vicinity, has been accepted by the Commission without giving any sound basis or enquiring into the ground realities or practical or technical constraints. It is submitted that the ultimate direction given by the Commission in the order under review 'to release the connection to the petitioner subject to bearing cost of line and switchgear for 11 KV feeder from nearest 66 KV substation (from where it is feasible to feed requisite load) as per its submission' has been given in oblivion of the fact that the said nearest 66 KV sub-station does not fall either under Phase II or Phase III of Sector 24, 25 and 25A, Gurugram and such release of connection will be in complete violation of the extant Regulations of the Commission and approved electrification plan. Without enquiry into the said pertinent facts, the said finding is erroneous on face of record and deserves to be reviewed by the Hon'ble Commission.
- XVI. Because the Hon'ble Commission has incorrectly recorded under para 46 that the right of the Respondent no.1 to get electricity connection crystallised in 2018 when application for the same was made to the Nigam. It is submitted the said finding has been made in ignorance of the settled law as

discussed above and the arguments advanced by the Review Petitioner to the effect that an applicant becomes eligible to get connection from the Nigam only upon compliance with the Regulations notified by the Commission and the conditions imposed in the electrification plan. Further, there is a strict mandate under the Electricity Act, 2003 that electricity connection cannot be released unless the infrastructure required for that supply of electricity is adequate to cater to the load of the consumer. Lastly, the said finding runs contrary to the Commission's own finding under para 32 that the said right has been regulated on the condition that infrastructure commissioning is necessary for supply of electricity, which can be requisitioned from the developer.

- XVII. Because in the absence of requisite electrical infrastructure and compliance with the extant HERC Regulations, the right of an applicant, i.e. the Respondent no. 1, merely on making of an application to the Nigam cannot be said to be crystalized and the said finding is an error on face of record and deserves to be interfered with by the Commission.
- XVIII. Because if such a finding is permitted to be sustained, every such subsequent owner will make applications to the distribution licensee and urge the distribution licensee to release connection to them de hors whether adequate infrastructure exists or not or whether the developer has complied by the terms of the sanctioned electrification plan. In such an eventuality, every such case will become a 'peculiar case' forcing the distribution licensee to release connection to such applications in violation of the Electricity Act read with HERC Duty to Supply Regulations.

**RE: INCORRECT INTERPRETATION OF THE APTEL
ORDER DATED 03.10.2013**

- XIX. Because the Hon'ble Commission, in the order under review, has completely overlooked the true import and intent with which the order dated 03.10.2012 came to be passed by the Hon'ble APTEL, to hold that in view of the APTEL order, the Respondent no. 1 has rightly applied to the Review Petitioner for release of connection. It is submitted that the Hon'ble APTEL vide order dated 03.10.2012, inter alia, held that the distribution by M/s DLF is illegal and the entities which were receiving supply from DLF were liable to apply for connection from the Distribution licensee in that area and directed DHBVN to regularize supply to such consumers of M/s DLF by 31st March 2013. It is submitted that the crux of the order passed by the Hon'ble APTEL was that the supply of electricity shall be given by DHBVN within its licensed area, and not M/s DLF, which had set up its own generation and distribution facility. Further, DHBVN was directed to regularize supply of electricity to the existing consumers who were receiving supply from M/s DLF Ltd. It is submitted that the said order passed by APTEL was already being complied by the Review Petitioner. It is relevant to note that in furtherance of the same, M/s DLF Ltd. under the name of M/s DLF Cyber City Developers Pvt. Ltd submitted its application to DHBVN for release of 2 nos. Single point electricity connections at 66 KV level for their 15 buildings in cyber city Gurugram and expressed their inclination to close down their own generating facility as soon as they get power from the state utility. This fact has also been recorded by the Hon'ble Supreme Court in its order dated 23.08.2013

in the appeal filed by M/s DLF Utilities being CA no. 2029 of 2013, to the effect that DHBVN has decided to implement the APTEL order dated 03.10.2012 and since complicated issues were involved in the matter, the Hon'ble Supreme Court granted status quo in the matter. However, the Commission, while relying on the order dated 03.10.2012 completely lost sight of the fact that the electricity connection can only be released to the existing consumers once the requisite infrastructural requirements are satisfied by M/s DLF.

XX. Because the Hon'ble Commission overlooked the fact that the said order dated 03.10.2012 passed by APTEL was specifically regarding regularization of supply of electricity to the 15 buildings in Cyber City, Gurugram, which were earlier being supplied by M/s DLF. Further, the said order mandated that only the distribution licensee can supply electricity to such buildings and thus directed such consumers to apply to DHBVN for release of connections. However, the commercial building no. 11 owned by the Respondent no. 1 does not come within the purview of the said order as it was not in existence at the relevant time. Therefore, the reliance placed by the Commission on the order dated 03.10.2012 is misconstrued and ought to be reviewed.

XXI. Because the Hon'ble Commission failed to appreciate that the Hon'ble APTEL, in its order, does not imply the Distribution Licensee to overlook the Regulations governing the field and direct release connections in absence of electrical infrastructure to cater to the load of its consumer base, as has sought to be done in the instant case. Thus, in

view thereof, the findings passed by the Hon'ble Commission deserve to be reviewed.

XXII. Because the findings recorded by the Commission are beyond the facts pleaded, settled law and the scope of the case. It is submitted that the conclusions recorded by the Hon'ble Commission are contradictory and have travelled beyond the scope of the case and relevant Rules and Regulations. Thus, in the absence of adequate infrastructure to that effect, the Hon'ble Commission directed the Review Petitioner to release electricity connection to the Respondent no. 1, which is an error apparent on face of record. Further, no observation has been made by the Hon'ble Commission to the effect that the Review Petitioner has not been in compliance with any Regulations issued by the Hon'ble Commission to issue the directions in the order under review.

XXIII. Because in view of the above, it is submitted that a petition for review would be maintainable under Order 47 Rule 1 of Civil Procedure Code not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some inadvertent mistake or for any other sufficient reason. Order 47 Rule 1 of the Code of Civil Procedure reads as follows:-

'1. Application for review of judgment.- (1) Any person considering himself aggrieved - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred. (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from

the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

- XXIV. Because in this context it is noteworthy to examine the judgment in the case of the **Board of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.**, [2005] 4 SCC 74, wherein the Hon'ble Supreme Court observed as under:-

'Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47 Rule 1 of the Code are wide enough to include

a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit.'

- 1.30 The instant petition filed by the Review Petitioner seeking review of the Order dated 05.08.2020 has been filed within the limitation period for filing Review i.e. 45 days from the date of receipt of the order. That the relevant provision of the Conduct of Business Regulations as reproduced here-in-under for ready reference:

‘Review of the decisions, directions, and orders

57(1) All relevant provisions relating to review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply mutatis mutandi for review of the decisions, directions and order of the Commission.

Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit

(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.

(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.

58 The Commission may on its own motion or on the

application of any party correct any clerical or arithmetical errors in any order passed by the Commission.

59 An application for such review shall be filed and dealt with in accordance with Chapter II of these Regulations.'

- 1.31 That the Review Petitioner has not filed any appeal against the order under review passed by the Hon'ble Commission in any Court of law.
- 1.32 That the Review Petitioner undertakes that in case if an appeal of the order under review is filed by the Review Petitioner then it shall be immediately informed to the Hon'ble Commission.
- 1.33 That the Review Petitioner undertakes to provide such information or document as may be required by the Hon'ble Commission for adjudication of the present Review Petition.
- 1.34 The present Petition is being filed bona fide and in the interest of justice.

Prayer:

In light of the above submissions, it is most respectfully prayed that the Hon'ble Commission may be pleaded to:

- I. Admit the present petition, review the order dated 05.08.2020 and reject PRO 16 of 2020 filed by the Respondent No.1;
- II. Pass such other and/or further order or orders and/or direction or directions as, the Hon'ble Commission, may seem fit and proper.

2. Proceedings of the Commission:

- 2.1 Case was initially heard on 15.12.2020, as scheduled, through video conferencing in view of Covid-19 Pandemic.
- 2.2 The counsel of Petitioner has presented the case; however, the Commission observed that in a similar case along with other

connected issues involved in development of an areas under the license issued by the Town and Country planning department to license holder/developer, the Commission has issued directions vide interim Order dated 01.12.2020 in PRO-65 of 2020 that Principal Secretary Town and Country Panning shall hold discussion with respondent Nigam and developer/Licensees to redress the issue.

- 2.3 The case again came for hearing on 09.06.2021. The counsel of review petitioner has requested the Commission to hear this matter along with PRO-65 being the matter of similar nature and pending for adjudication. The proxy counsels appeared on behalf of Shri Ashwani Talwar, Advocate for Respondent-R1 and Shri Vinod Bhardwaj, Advocate for R-2 have submitted that they have no objection. Acceding to the request of review petitioner, the Commission decided to hear this matter along with PRO-65.
- 2.4 Finally, the Case was heard by the Commission on 07.07.2021, as scheduled, through video conferencing in view of Covid-19 Pandemic.

3. Commissions analysis and order :

- 3.1 At the outset, counsel of review petitioner raised the concerns as enumerated in the review petition and submitted that it is builders/developers who are absolving from their duties of creating adequate electrical infrastructure as per approved plan. Per contra, the counsel of the Respondents-R2 citing to the reference of Order dated 05.08.2020 passed in main petition (i.e. PRO 16 of 2020) submitted that the Commission had already considered the issues including inadequate electrical infrastructure and after reviewing the same passed the impugned Order dated 05.08.2020. Further during the hearing on 07.07.2021, the counsel for

Petitioner in PRO-65 of 2020 submitted that a meeting by DTCP with DISCOMs and developers including Housing Board Haryana was held on 25.01.2021 to issue separate license for part of land reserved for EWS but without any outcome. The Director, DTCP submitted that the release of electricity connection is sole responsibility of DISCOMs, the DTCP has no role to play.

3.2 The Commission has carefully examined the review petition and submissions made in writing as well as submission made during the course of hearing and upon hearing all the parties at length in the matter observes that since the connection to EIH stands released on creation of independent feeder at their cost as per direction of the Commission and the issue of creation of Electrification infrastructure by the licensee i.e. M/s DLF stands resolved by deposit of BG as per order of the Commission in PRO - 16 of 2020, the prayer by the review petitioner is rendered academic. The Commission observes that there is no error apparent in the Order dated 05.08.2020 on the face of records, which ought to be corrected and calls for review of the order. Moreover, the conscious decision taken by the Commission for release of connection to EIH after deposit of requisite charges/ creation of infrastructure at their cost in relaxation of the HERC Single Point Supply Regulations, 2020 will not be precedent for adjudication of any case.

3.3 This review petition is disposed of in above terms.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 19/07/ 2021.

Date: 19.07.2021

(Naresh Sardana)

(Pravindra Singh)

Place: Panchkula

Member

Member