

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

Appeal No. 164 of 2020

Dated: 20th September, 2021

**Present: Mr. Ravindra Kumar Verma, Officiating Chairperson
Mr. Justice R.K. Gauba, Judicial Member**

In the matter of:

**M/s. Greenyana Solar Private Limited,
Unit No. 903, 9th Floor, EROS Corporate
Tower,
Nehru Place, New Delhi – 110019** **Appellant(s)**

Versus

- 1. Haryana Electricity Regulatory
Commission,
Through its Secretary,
Bays 33-36, Sector 4, Panchkula – 134112** **Respondent No.1**
- 2. Haryana Vidyut Prasaran Nigam Ltd.,
Through its Managing Director,
Shakti Bhawan, Sector-6, Panchkula –
134109** **Respondent No.2**
- 3. Uttar Haryana Bijli Vitran Nigam Limited,
Through its Chairman-cum-Managing
Director,
Vidyut Sadan, Sector-6, Panchkula -134109** **Respondent No.3**
- 4. Dakshin Haryana Bijli Vitran Nigam Limited,
Through its Chairman-cum-Managing
Director,
Vidyut Sadan, Vidyut Nagar, Hisar – 125005** **Respondent No.4**
- 5. Haryana Power Purchase Center,
Through Chairman-cum-MD of UHBVN,
Shakti Bhawan, Sector-6,
Panchkula – 134109** **Respondent No.5**

Counsel on record for the Appellant(s): Mr.Anand K. Ganesan
Ms.Swapna Seshadri
Mr.Damodar Solanki

Counsel on record for the Respondent(s): Mr. Anil Grover, Sr. AAG, Haryana
Mr.Parwinder Chauhan
Mr. Rahul Khurana for R-1

Mr. Samir Malik for R-2

Mr.Tushar Mehta, Ld. Solicitor
General of India
Mr.Basava Prabhu S. Patil, Sr. Adv.
Mr. Samir Malik
Ms. Nikita Choukse
Mr.Geet Ahuja for R 3 to 5

JUDGMENT

PER MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. The present appeal has been filed by **M/s. Greenyana Solar Private Limited** (hereinafter referred as “**the Appellant**”) against the impugned order dated 24.09.2020 passed by the Haryana Electricity Regulatory Commission (hereinafter referred as “**the Commission/State Commission or Respondent No.1/HERC**”), in Case No. HERC/PRO-23/2020
2. The Appellant, M/s Greenyana Solar Private Limited is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003, being in the process of establishing a 20 MW solar power project (having completed 10.72 MW) at Kuranganwali, Sirsa in the State of Haryana.

3. The Respondent No. 1, Haryana Electricity Regulatory Commission is the State Regulatory Commission for the State of Haryana, exercising powers and discharging functions under the provisions of the Electricity Act, 2003.
4. The Respondent No. 2, Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as the “**Respondent No.2 or HVPN**”) is a transmission licensee and the State Transmission Utility in the State of Haryana. HVPN is also the nodal agency for grant of connectivity under the HERC (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012.
5. The Respondent Nos. 3 & 4, Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited are Distribution Licensees in the State of Haryana.
6. The Respondent No. 5 is a joint venture of the distribution companies in the state of Haryana and the nodal agency for Banking Facility in the State of Haryana. The Respondent Nos. 3 to 5 hereinafter are collectively referred to as the “**Distribution Licensees**” or “**Discoms**”.
7. **Relief Sought**
 - (a) Set aside the impugned order dated 24.09.2020 passed by the State Commission in Case No. HERC/PRO-23/2020 to the extent challenged in the present appeal;

- (b) Allow the prayers of the Appellant in the Petition bearing Case No. HERC/PRO-23/2020 filed before the State Commission;
- (c) Direct the Respondent No. 2 to 5 to forthwith sign the Connection Agreement and grant Long-Term Open Access to the Appellant as applied for;
- (d) Pass appropriate orders to the Respondent Nos. 2 to 5 to compensate the Appellant for loss of generation since 13.02.2020, as prayed for in the petition filed before the State Commission;
- (e) Pass such other further orders as the Tribunal may deem just in the facts of the present case.

Background of the case

Haryana Solar Power Policy, 2016 (*Solar Policy*) released on 14.03.2016

- 8. With a view to promote renewable sources of energy and in particular solar energy in line with the mandate of the Electricity Act, the National Tariff Policy and also the other policies of the Government of India, on 14.03.2016, the Renewable Energy Department of the State Government released Haryana Solar Power Policy, 2016 (*Solar Policy*).
- 9. The said Solar Policy enumerated certain promotional benefits to be given to the solar projects. The Renewable Energy Department

of the State Government thereafter released two addendums to the said Solar Policy on 19.05.2016 and 23.06.2017. In terms of Clause 6.3 of the Solar Policy, HAREDA is the nodal agency for implementation of the Solar Policy.

10. The Clause 4.16 of the Solar Policy, *inter-alia*, read as under:

“4.16 Minimum Equity to be held by the Promoter

The project developer may be individual/company/firm/group of companies or a Joint venture/Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. This shall not be applicable to the Solar Power Projects developed by the public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. ...”

HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (RE Regulations) dated 24.07.2018

11. To give effect to the above Solar Policy, the State Commission, on 24.07.2018, formulated the HERC (Terms and Conditions for

determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (*RE Regulations*) and defined a control period from FY 2017-18 to FY 2020-21 for implementation of the said Regulations.

12. The RE Regulations provided for the terms and conditions in relation to supply of power by solar projects to the Distribution Licensees, and also where the solar projects were to supply power through open access. The RE Regulations provided for HVPN, being the State Transmission Utility, to be the nodal agency, and further provided for registration of projects with HAREDA, and that connectivity would only be granted to those projects which are registered with HAREDA.
13. The RE Regulations, which underwent an amendment on 27.08.2018, *inter-alia*, provided as under:

“60.

.....
.....

It is further clarified as under:-

1. *The cap of 500MW is the aggregate installed capacity of the Solar PV projects commissioned in Haryana for consumption of power within Haryana and availing waivers/concessions provided under these Regulations. Accordingly, HVPNL shall consider grant of connectivity subject to feasibility, date of registration of the project and financial closure.*

2. *HAREDA, being the Nodal Agency shall monitor the progress of projects set up in the State in terms of milestones related to:-*
 - a) *Installed capacity of Plant & Location.*
 - b) *Installed capacity tied up for consumption in Haryana.*
 - c) *Land acquisition.*
 - d) *Grant of connectivity for open access.*
 - e) *Financial closure.*
 - f) *Commissioning date.*

For this purpose, HAREDA shall develop a suitable interface on their website, within two months, so that developers can directly upload the status of progress of their projects as and when there is any change in status with respect to above mentioned milestone. The data shall be easily visible to all those visiting the HAREDA website.

All developers desirous of availing waivers/concessions under these Regulations shall register specific project with HAREDA. Connectivity for such Solar PV project shall be granted by the Utility provided they are found to be registered on the HAREDA website.”

It was only on 14.09.2019 that the said Regulations were further amended, and the aforesaid Regulation 60 was substituted.

Application for connectivity dated 05.06.2018

14. The Appellant proceeded to establish a 20 MW solar PV project at Kuranganwali, District Sirsa in the State. The Appellant envisaged the said solar plant to be for captive use of its shareholders.
15. On 05.06.2018, the Appellant applied to HVPN for connectivity for its solar plant at 132 kV substation at Kurangawali at 33kV voltage

level for the purpose of captive supply of electricity from the Project. The Application was made under Regulation 2 read with Regulation 6 of the Connectivity Regulations which provided that a person may apply for connectivity, and that such an application shall be made to the STU (i.e., HVPN), being the nodal agency in the form and manner prescribed in the detailed procedure. The Appellant mentioned the status of its solar power plant as '*Group Captive/independent power producer*'. This was in a Standard Format of HVPN, which provides the heading as LTOA, but the application was only for connectivity. No open access was sought for, as no drawal entity was provided, which is a pre-requisite for open access.

Application dated 21.08.2018 and 15.10.2018 for Registration with HAREDA rejected due to non-availability of guidelines

16. The Appellant thereafter on 21.08.2018 applied for registration of the project, which was not considered and no registration was granted. HAREDA thereafter, on 09.10.2018 came out with its guidelines and the Appellant again applied for registration on 15.10.2018 and had sent certain documents, including a Bank Guarantee to HAREDA as per the guidelines issued. Even this application of the Appellant, along with the documents, including the Bank Guarantee was returned by HAREDA on 14.12.2018, for the reason that the guidelines are yet to be finalized.

17. On 08.03.2019, the New & Renewable Energy Department of the State Government issued an amendment to the Solar Policy by substituting clause 4.3 to provide that the wheeling and

transmission charges will be exempted for 10 years from the date of commissioning for all solar captive projects which have submitted applications to HAREDA for registration of the project and purchased land or had taken land on lease for 30 years, etc. **till 13.02.2019.**

Clause 4.3 under original Solar Policy.	Clause 4.3 after Amendment dated 08.03.2019
<p><i>“4.3 Exemption of Electricity Duty & Electricity Taxes & Cess, Wheeling, Transmission & distribution, cross subsidy charges, surcharges and Reactive Power Charges:</i></p> <p><i>All electricity taxes & cess, electricity duty, wheeling charges, cross subsidy charges, Transmission & distribution charges and surcharges will be totally waived off for Ground mounted and Roof Top Solar Power Projects.”</i></p>	<p><i>“4.3 Exemption of Wheeling, Transmission, cross subsidy charge and additional surcharges.”</i></p> <p><i>Wheeling and Transmission Charges will be exempted for ten years from the date of commissioning for all Captive Solar Power Projects which have submitted applications to Haryana Renewable Energy Development Agency (HAREDA) for registration of project, purchased land or have taken land on lease for thirty years and have bought equipments & machinery or invested at least Rs. one crore per MW for purchase of equipments & machinery for setting up of such Captive Solar Power Projects till 13th February, 2019, while cross subsidy surcharges and additional surcharges are not applicable for Captive Solar Power Projects as per provisions of Electricity Act, 2003. For</i></p>

	<p><i>determining the investment of Rs. One crore per MW, payment of equipment should be made into the bank accounts of equipment supplier before 13th February, 2019 and proof of the same is to be submitted. No waiver of wheeling and transmission charges, cross subsidy surcharges and additional surcharges shall be given to solar power Projects set up for third party sale. ...”</i></p>
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18. Based on the above amendment, HAREDA on the same day, i.e., on 08.03.2019 issued its guidelines for approval of solar power projects for availing exemptions under the Solar Policy, 2016 (“HAREDA Guidelines”). On its applicability, the HAREDA Guidelines, inter-alia, read as under:

“It is for the information to all the Solar Project Developers who have submitted solar projects proposals for approval before 13.02.2019 to Haryana Renewable Energy Development Agency (HAREDA) for registration of projects for proving the exemptions as per Haryana Solar Policy 2016.

Now it has been decided by the Council of Ministers, Haryana in its meetings held on 13.02.2019 & 08.03.2019 that Wheeling and Transmission Charges will be exempted for ten years from the date of commissioning of all Captive Solar Power Projects which have submitted applications to HAREDA for registration of project, purchased land or have taken land on lease for thirty years and have bought equipments & machinery or invested at least Rs. one

Croreper MW for purchase of equipments & machinery for setting up of such Captive Solar Power Projects till 13th February, 2019.

In view of the decision of the Council of Ministers, Haryana, the solar power projects with following criteria will be approved by Haryana Renewable Energy Development Agency (HAREDA) for availing the exemptions provided under Haryana Solar Policy, 2016:

.....
.....”

19. The same was again clarified by HAREDA itself in its clarification dated 18.04.2019, where it clarified that the said HAREDA Guidelines are only applicable to the 13 nos. of projects approved and registered by HAREDA on 08.03.2019. The clarification, inter-alia, reads as under:

“In this regard it is clarified that 13 nos. of projects approved & registered by HAREDA on 08.03.2019 under amended Haryana Solar Power Policy 2016 are to be dealt as per the guidelines dated 8.3.2019. Rest of the projects are to be dealt as per the provisions as laid down in the Solar Policy. Further, the projects set up in the Solar Parks are to be dealt as per the conditions mentioned in the NOC issued by HAREDA for setting up of private solar parks from time to time.”

Final Guidelines regarding connectivity to solar power projects issued by HVPN in March, 2019

20. After the said Amendment was made to the Solar Policy, HVPN in March, 2019 issued its ‘Final Guidelines regarding connectivity to solar power projects’ under the RE Regulations, under which the

generators were asked to submit an undertaking clearly specifying the nature of the project. The Appellant on 15.03.2019 submitted an undertaking in terms of the final guidelines mentioning the status of its power plant as 'Captive'.

21. The Final Guidelines further provided that the applications for connectivity shall be processed in two stages viz. In-Principle Feasibility and the Final Connectivity, and had also enumerated the procedure for each stage thereof. The Final Guidelines also provided for submission of the following documents by the generator as a condition precedent for grant of Final Connectivity. The relevant extract from the Final Guidelines, *inter-alia*, reads as under:

"II. Out of the applications available with HVPNL, HVPN will grant connectivity to the generators as per procedure as under:

A. Applications for Connectivity shall be processed in two stages i.e.

- (i) In-Principle Feasibility and*
- (ii) Final Connectivity by HVPNL.*

.....
C. Final Connectivity:

The applicant shall have to broadly submit the following documents within 90 days of the letter of issue of in-principle feasibility for assessing the technical and financial eligibility of the applicant.

- i) Proof of ownership or Long Term lease rights or land use rights for 100% of the land required for the capacity applied*

ii) Achievement of financial closure (with copy of sanction letter and CA certification). Sanction letter from financial institution to be submitted as proof of financial closure

iii) Submission of the Bank Guarantee from a scheduled bank in favour of HVPNL...

On receiving and scrutiny of the above said documents, if found eligible, letter of final connectivity will be issued to the applicants.

The applicant who has been given In-Principle Feasibility, if fails to submit the required documents for final connectivity within 90 days from letter of issue of In-Principle Feasibility along with the above documents complete in all respects, the in-principle feasibility shall stand cancelled along with other legal penal actions like blacklisting and next applicant will be considered for grant of connectivity.

D. After Final Connectivity, the applicant shall sign the Connection Agreement and the LTOA within 30 days of issue of final connectivity. No extension of time shall be granted and in case of failure to sign the Agreement, this Final Connectivity shall be cancelled and the BG shall be forfeited.

.....
.....”

In-Principle Connectivity Approval by HVPN on 06.05.2019

22. On the basis of the above Final Guidelines issued by HVPN, the Appellant was thereafter granted In-Principle Connectivity Approval by HVPN on 06.05.2019. HVPN however, placed a restriction on the drawl by captive consumers only upto their

contract demand. The In-principle Approval, *inter-alia*, reads as follows:

“Further, you have agreed vide letter dated 06.05.2019 to construct the evacuation structure including transmission line and bay at your own cost. Accordingly, the in-principle feasibility of 20 MW is granted through 33 KV independent line from 132 KV substation, HVPNL, Kurangawali to the Solar Power Plant of M/s Greenyana Solar Pvt. Ltd., subject to the following conditions:

.....
viii) The Power drawn by the consumers/applicant shall not be more than its contract demand during any time slot of the day.

x) After issue of final connectivity, the applicant shall sign the Connection Agreement and the Long Term Open Access agreement within 30 days of issue of final connectivity. No extension of time shall be granted and in case of failure to sign the Agreement, the Final Connectivity shall be cancelled and the BG shall be forfeited.

.....
xxii) The final connectivity shall be issued after fulfilment of terms and conditions & submission of documents as stipulated in the final guidelines of HVPNL & registration of the project from HAREDA.”

23. While the Appellant was constructing its solar plant, the State Commission passed an order dated 13.05.2019 in Case No. HERC/PRO-22/2019, holding that the banking facility shall be provided for Captive Renewable Plants for the entire life of the project, with only variations in the banking charges from time to time.

24. As stated earlier, it was only on 31.05.2019 that HAREDA issued a notice seeking fresh applications for registration of the Solar Power Projects in the prescribed format from solar project developers under the Solar Policy.

Application dated 20.08.2019 for registration with HAREDA

25. The Appellant submitted a fresh application on 20.08.2019 to HAREDA for registration of the solar power project, which came to be approved for 'Captive Consumption' by HAREDA on 22.08.2019. The Cleantech Solar Asia Group, which is the promoter held the majority shareholding of the Appellant to the extent of 73.528% as on 20.08.2019.
26. The shareholding pattern of the Appellant as on 20.08.2019, stood as under:

S. No.	Name of the Shareholder	Percentage Capital Contribution
1.	Leading Shareholder - Cleantech Solar Asia Group (<i>through its subsidiary Cleantech Solar Energy (India) Pvt. Ltd.</i>)	73.528%
2.	Captive User - Exide Industries Limited	26.471%
3.	Prashant Kothari	0.001%

27. The Appellant vide letter dated 17.06.2019 submitted the details of the land, financial closure etc. as a condition for the grant of Final Connectivity to HVPN.

HVPN granted the Final Connectivity Approval on 12.09.2019

28. HVPN granted the Final Connectivity Approval for the solar power plant of the Appellant on 12.09.2019. HVPN placed restrictions on the drawl of power by the consumers and also the agreement to be entered into by the consumers for the drawl of power from captive open access sources. The Final approval dated 12.09.2019, *inter-alia*, provided as under:

“The terms & conditions of final connectivity are as under:

.....

viii) Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation.

(ix) After issue of final connectivity, the applicant shall sign the Connection Agreement and the Long Term Open Access agreement within 30 days of issue of final connectivity. No extension of time shall be granted and in case of failure to sign the Agreement, the Final Connectivity shall be cancelled and the BG shall be forfeited.”

29. The Final Connectivity was issued to the Appellant after the same was recommended by a committee consisting of representatives of all the Respondents – HVPNL, DISCOMs and HAREDA, formed specially for this purpose, which consisted of the following members:

1.	Director/Technical, HVPNL, Panchkula	Chairman
2.	Representative on behalf of Director General HAREDA. Panchkula	Member
3.	Chief Engineer / SO & Commercial, HVPN, Panchkula	Member
4.	Chief Engineer/Commercial of the respective DISCOM or Chief Engineer/HPPC	Member
5.	Controller of Finance/HVPN, Panchkula	Member
6.	Legal Remembrancer, Haryana Power Utilities	Member

30. In the In-Principle Approval, HVPN placed a restriction under Clause (viii) that power drawl by the open access consumer from the Appellant's plant shall not be more than its contract demand during any time slot of the day. Further, under Clause (viii) of the Final Approval, HVPN further restricted the above specifying that even the agreement of the open access consumer shall not be more than its contract demand. Under Clause (ix), the Final Approval also provided that the Connection Agreement has to be signed within 30 days from the date of the Final Approval.
31. The Appellant wrote a letter dated 13.09.2019 to HVPN and sought for clarification and also amendment in Clause (viii) of the Final Connectivity Approval. The Appellant stated that the clause inserted is not in line with the Regulations of the State Commission. The Appellant further stated that the clauses in the In-Principle Approval and Final Approval are conflicting in nature, in as much as the condition imposed by way of Clause (viii) of the In-Principal Approval restricts drawl of energy to the contracted

demand of the open access consumer, whereas the condition imposed by Clause (viii) of the Final Approval has sought to restrict the PPA Capacity/Long-Term Open Access Capacity to the contracted demand of the open access consumer, which is inconsistent with the governing regulations in the State of Haryana.

32. HVPN by letter dated 19.09.2019, stated that both the clauses of the Final Approval and the In-Principle Approval provides that the open access consumer going for tie-up with Solar Power Generator shall not have agreement of drawl of power more than its respective contract demand and asked the Appellant to seek more clarity in the matter from the Distribution Licensees.
33. The Appellant signed the Connection Agreement (as circulated by HVPN) on 03.10.2019, while reserving its right to challenge the restrictions imposed in the In-principle and the Final Connectivity Approval. The Appellant submitted the signed Connection Agreement to HVPN on the same date.
34. Since the Appellant did not receive any communication for days, the Appellant thereafter, citing Clause (ix) of the Final Connectivity Approval which provides that the Connection Agreement has to be signed within 30 days from the date of the Final Connectivity, sent various reminders on 23.11.2019, 23.12.2019 and 09.03.2020 to HVPN to sign the Connection Agreement and resolve the issues arising out of the conditions imposed under the In-Principal Connectivity and the Final Connectivity Approval. However, the Appellant has received no response.

35. The Appellant further vide its letter dated 14.01.2020 also apprised HVPN that M/s Exide Industries Limited has 27.2% equity in the captive power project being developed by the Appellant and re-applied for grant of Long-Term Open Access for a quantum of 8 MW.
36. HVPN thereafter sent an email dated 11.02.2020 seeking information from the Appellant on the SPV developing the solar power project and to furnish shareholding pattern of the SPV. In response, the Appellant vide its letter dated 13.02.2020, provided its shareholding pattern, mentioning the stake held by the promoter – Cleantech Solar Asia Group and the Captive User – M/s Exide Industries Limited. The Appellant also communicated a regulatory disclosure dated 18.04.2019 made by Exide Industries Ltd. to the Bombay Stock Exchange and National Stock Exchange as per SEBI LODR Regulations.

Chief Electrical Inspector permitted to energize the plant on 13.02.2020

37. The solar power plant of the Appellant was completed to the extent of 10.72 MW on 13.02.2020 and was ready to begin generation of electricity, the only hold up being signing of connection agreement by the Respondents. The Chief Electrical Inspector also certified plant completion and gave permission to the Appellant to energize the plant.

38. In response to the Appellant's letter dated 11.03.2020, HVPN sent a letter dated 18.03.2020 to the Appellant stating that a meeting of the Coordination Committee has been scheduled on 27.03.2020. In the said letter, a direction was also passed to HPPC and the Discoms to file their response by 25.03.2020 with a copy to the Appellant on the delay in grant of connectivity and open access. However, no such response was filed by both the Respondents.
39. Appellant filed a petition being Case No. HERC/PRO-23/2020 on 04.05.2020 (through email) before the State Commission along with an application for interim directions and an application for urgent listing requesting to hear the matter through video conferencing mode.
40. However, even after various reminders, when the State Commission did not convene to hear the matter, the Appellant sent the hard copies of the petition along with an application for interim directions to the State Commission on 22.05.2020 and requested to take up the matter urgently.
41. Subsequently, the State Commission convened a hearing on 03.06.2020. When the Appellant pressed for interim orders for physical connectivity and commissioning of the plant on the said date, the Respondents stated that a coordination committee meeting was convened by the Respondents on 04.06.2020 and the issue would be resolved in the said meeting.

42. The Respondents convened the first meeting of the Coordination Committee on 04.06.2020. The Respondents took the view that certain conditions were not fulfilled by the Appellant, and thus, connectivity was not granted. The Respondents however gave no details as to what conditions had not been fulfilled by the Appellant.
43. The minutes of the Coordination Committee Meeting held on 04.06.2020 were thereafter circulated on 12.06.2020 to the Appellant, whereby the parties were granted a liberty to file their additional submissions within 4 days, in pursuant to which, the Appellant filed its response on 17.06.2020 once again stating that no specific issue was pointed out to the Appellant in relation to the Regulations of the State Commission, the terms of the In-Principle Connectivity, the Final Connectivity or the Connection Agreement.
44. Thereafter, another meeting of the Coordination Committee was held on 22.06.2020 (through telephonic communication) whereby the Appellant again enquired as to for what reasons it has not been granted connectivity. The Respondents again, without giving any details, stated that certain conditions have not been fulfilled by the Appellant. The Appellant stated that it has complied with all the conditions imposed under the Electricity Rules, the relevant Regulations of the State Commission, Final Guidelines issued by HVPN for granting connectivity to solar power plants as well as those imposed in the In-principle Connectivity, Final Connectivity and also the Connection Agreement forwarded by HVPN; and the Respondents must point out the specific conditions which they

claim are not being fulfilled, instead of merely stating the same again and again.

45. When the Petition was listed for hearing before the State Commission on the next date, i.e., on 23.06.2020, the Appellant sought an interim order to provide connectivity to the project for the reason that its power project was lying idle and stranded for the past 4 months, and the Respondents have been simply dragging their feet over the matter and keeping the project stranded. However, the State Commission did not grant any interim relief and left it to the Coordination Committee to decide on the issue pursuant to its meeting held on 22.06.2020.

46. The minutes of the coordination committee meeting held on 22.06.2020 were then circulated on 03.07.2020. The minutes stated that the Distribution Licensees have taken a position that the document verification to ascertain the captive status needs to be done by HVPN, whereas HVPN has stated that it is to be verified by the Distribution Licensees. It further recorded that the matter has been referred to the State Government, after the Final Connectivity had been granted to the Appellant. The Coordination Committee thereafter decided that the Distribution Licensees shall seek clarification from the Appellant and the Appellant shall provide such clarification. However, there was no timeline mentioned, nor was the prayer of the Appellant for immediate connectivity, commissioning and open access dealt with.

47. The Discoms thereafter issued a letter dated 08.07.2020 to the Appellant requesting for various details/information since the incorporation of the Appellant Company and various details/information regarding shareholding from the date of 'application for registration of the solar power project with HAREDA'. The Letter dated 08.07.2020, *inter-alia*, reads as under:

"Subject: Submission of requisite documents/information in compliance of the decision of the Coordination Committee for Open Access in the matter of M/s Greenyana Solar Pvt. Ltd. circulated vide office memo dated 03.07.2020 – Regarding.

.....
2. In compliance of the ibid decision of the Coordination Committee, it is hereby requested to provide the following documents/information:

a. Notarized affidavit sworn by Chief Executive Officer (CEO) or a person in the capacity of CEO irrespective of the nomenclature of the post held, duly authorised to execute such affidavit by the Company, containing particulars at the time of applying for registration of solar project under consideration (Project) with HAREDA along with subsequent change till date, if any, as mentioned below:

.....
b. Following documents duly attested by Notary/Salutatory Auditor, as the case may be, are required to be enclosed with the aforesaid notarized affidavit:-

.....
v. Certificate issued by a Statutory Auditor containing details (as per FORMAT-I), along with the Certification that there is provision in Memorandum of Association and Article of Association for taking up captive generation. Respective change(s) in ownership or equity holding in the Company till date since the date of application with HAREDA for registration of the Project, if any, shall be submitted

separately as per Table A and B of FORMAT-I duly certified by the Statutory Auditor.

vi. Statutory Auditor's certification (as per FORMAT-II) regarding holding of Equity Shares with voting rights in the Company by the captive user. Auditor Certificate shall include the details of change in equity shares holding of the captive user from time to time till date since applied with HAREDA for registration of Project.

.....
x. Annual Report and Return filed by the Company with the Registrar of Companies since the date of application with HAREDA for registration of the Project till date.

.....
.....”

48. In the circumstances, the Appellant filed Appeal No. 112/2020 before this Tribunal, whereby this Tribunal heard the matter in length and vide its order dated 17.07.2020, directed the State Commission to list the petitions of the Appellant and two similarly situated generators on or before 31.07.2020 and adjudicate the same, including the request of interim connectivity, within a period of 4 weeks thereafter (i.e., on or before 28.08.2020) keeping in view the urgency involved. This Tribunal, inter-alia, held as under:

“.....The prime grievance here, however, has been that in spite of being approached, the State Commission has not been responsive and the disputes remain unaddressed for prolonged period, the power plant of the Petitioners and the Appellant meanwhile lying idle and unused.

After some hearing, having taken instructions, Mr. Anil Grover, learned senior counsel for the State Commission assured that the petitions which are subject of these matters

will be taken up by the State Commission on a date suitable to its calendar but definitely on or before 31.07.2020 and adjudicated upon in accordance with law within four weeks thereof by reasoned orders being passed. The Appellant and the petitioners herein before us are satisfied with such assurance. They, however, also insisted that the State Commission should address their requests for interim connectivity expeditiously. We are confident that such prayer would be considered and appropriate orders passed thereupon by the State Commission keeping in view of the urgency involved.

While we find the above to be an appropriate resolution to the present controversy, we would add that the State Commission would proceed to decide the disputes which are subject of the petitions presented before it within the above time frame de hors the connected matters which may be pending before Coordination Committee.

We order accordingly. No further directions are required. The Petitions and the Appeal along with pending applications are disposed of.”

49. On the next date of hearing, i.e., on 24.09.2020, the Respondents represented to the State Commission that they are attempting to resolve the issues with the two similarly situated generators to that of the Appellant and sought for an adjournment for a week. The Appellant submitted that no such rounds of negotiations have been initiated by the Respondents with the Appellant, and thus, is not agreeable to the adjournment. The Appellant was seeking adjudication of the petition at the earliest as the plant was lying stranded and the Respondents were unduly delaying the issue.

50. The State Commission however went to direct the Respondents to hold similar consultations with the Appellant and posted the matter to be listed on 10.09.2020.
51. Pursuant to the above, the Appellant met the officers of the Respondents on 25.08.2020 seeking details as to how the issues could be resolved. However, during the discussions, it was represented by the Respondents that the Appellant should agree to supply electricity only to the Discoms and that long-term open access would not be permitted if they choose to remain captive. The Appellant was also asked to give a formal proposal to this effect indicating the intent to sell power to the Discoms.
52. The Appellant sent a letter dated 25.08.2020 to the Respondents stating that it is not possible for the Appellant to agree to supply power to the Respondents and that the request of the Respondents is against the very ethos of the Electricity Act, 2003, the National Tariff Policy, 2016, the Guidelines of Ministry of Power on adoption of competitive bidding dated 03.08.2017 and the Haryana Solar Policy, 2016 which under clauses 2.1 and 2.8 mandates HPPC/HAREDA to procure power through open competitive bidding to keep the cost of power low.
53. The Appellant thereafter also filed an additional affidavit on 26.08.2020, apprising the State Commission of the developments and requested the State Commission to list the Appellant's petition at the earliest, so as to enable it to adjudicate the same within the time prescribed by this Tribunal.

54. The State Commission however did not accept the Appellant's request, and in fact went to postpone the hearing from 10.09.2020 to 11.09.2020.
55. In the above circumstances, since the State Commission had not adjudicated the matter or passed an appropriate relief of interim connectivity to the Appellant within the time prescribed by this Tribunal in its order dated 17.07.2020, the Appellant approached this Tribunal again by way of Appeal No. 144/2020 seeking urgent interim orders for granting connectivity to the solar power plant of the Appellant which has been completed since 13.02.2020 and is left stranded only on account of non-signing of the connection agreement by the Respondents.
56. This Tribunal heard the Appellant's appeal on 04.09.2020, wherein the Respondent-State Commission assured this Tribunal that the Appellant's petition would be listed and a decision would be rendered expediently.
57. The State Commission subsequently heard the Appellant's petition on 11.09.2020 and 14.09.2020, whereby the Appellant and the Respondents completed their respective arguments. Upon conclusion, the State Commission directed the parties to file their respective Written Submission within a period of three days.
58. The Respondent Discoms however, in their written submissions mentioned that the Appellant had submitted an application with

HAREDA for approval for setting up of the solar plant on 21.08.2018, which information was not only misleading, but was only mentioned in their written arguments after the arguments were over. Neither the date, nor any reference was made by the Respondent Discoms neither in its reply nor during its arguments before the State Commission. The Respondent Discoms further did not disclose that the said application dated 21.08.2018 was thereafter returned by HAREDA, and that the only effective application made by the Appellant to HAREDA for registration of the Project was made on 20.08.2019, based upon which, HAREDA registered the Appellant's project on 22.08.2019. The Respondent Discoms further annexed a letter from another generator – AMP Solar Park Private Limited which was never pleaded nor was a part of the record of the State Commission.

59. The State Commission, thereafter, on 14.09.2020 passed an order in the case of a similarly situated generator – Amplus Sun Solutions Private Limited (Case No. HERC/PRO-45/2020), which was also conceptualized as a Captive Power Project. However, since Amplus, upon being approached by the Discoms, agreed to supply power to the Discoms, was cleared to be commissioned without any hindrance or insistence upon any of the conditions mentioned in the Solar Policy or the HAREDA Guidelines, as was being done in the case of the Appellant.
60. The Appellant has submitted that it was in records of the State Commission that Amplus had changed more than 26% of its shareholding after the HAREDA Guidelines dated 08.03.2019 were

issued. While, the Respondents had denied connectivity to the Appellant based on the contention that the Appellant has changed its shareholding, the same was not insisted upon and was deliberately overlooked by the State Commission in the case of Amplus which was also conceptualized under the same Solar Policy. Further, the Respondents have not gone into any of the issues of shareholding, land requirement, date of application etc. in the said case, which itself shows that the Respondents are not acting *bona fide* and are acting with the only object of preventing the Appellant from supplying power to its captive consumers. Such conduct from the Respondent Discoms reeks of institutional bias and discrimination towards the Appellant.

61. In the said case, the State Commission also approved the PPA, without making any reference to the conditions contained in the Solar Policy or the HAREDA Guidelines, even though the 'Amplus Case' was also being heard along with the case of the Appellant till its last date of hearing.
62. Appellant has submitted that Case No. HERC/PRO-45/2020 has been disposed of by the State Commission within 4 days of the petition being filed by the Discoms. The Petition was filed by the Discoms seeking approval of the power purchase, without a bidding process, on 10.09.2020 (Thursday), and the final order granting the approval was passed on 14.09.2020 (Monday). No issue of shareholding, date of application, compliance with Solar Policy etc. as is sought to be raised in the case of the Appellant, were raised in the said case. The entire proceedings were

completed and an order had been passed on 14.05.2020 within 4 days (including a weekend) of the petition being filed after holding only one hearing on 14.05.2020.

63. in the 'Amplus Case' the Discoms themselves submitted to the State Commission that in case these projects start selling power under the captive route, this will lead to loss of Cross Subsidy Surcharge and Additional Surcharge from the industrial consumers who will be the captive users of these projects, and thus, it is preferred that these projects sell power to the Discoms rather than selling to consumers under captive route. The said order, inter-alia, reads as under:

“Benefit to Haryana Discoms, consumers at large and State economy

u) That this Project was conceptualised as an Open Access/ Captive Power Project. In case this Project starts selling power under the captive route, this will lead to loss of Cross Subsidy Surcharge and Additional Surcharge from the industrial consumers who will be the captive users of this Project. At this stage, these charges amount to Rs.1.77 / kWh (CSS of Rs. 0.62/- and AS of Rs. 1.15/-) and that will be a direct loss to the Discoms which is ultimately be borne by the end consumers by the way of distribution and retail supply tariff. In the overall interest of the consumers of the state, it may be preferred that these projects sell power to the Discoms rather than selling to consumers under captive route.

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64. The above makes it abundantly clear that it is only because the Appellant had not accepted the proposal of the Discoms to sell power to them, it is being treated unkindly and with bias, which is unwarranted from any state utility and is in violation of the rights guaranteed under the Electricity Act to the Appellant.
65. The State Commission thereafter passed the impugned order dated 24.09.2020 denying connectivity and open access to the Appellant, and also disallowing any relief to the Appellant on other issues of conditions restricting drawl of power and contract demand. The State Commission also refused to grant any compensation to the Appellant towards the loss of generation being faced since 13.02.2020 on account of non-signing of Connection Agreement by the Respondent-Discoms.

Aggrieved by the impugned order dated 24.09.2020, the Appellant has presented the instant appeal.

Submissions of Appellant

66. By the impugned order, the State Commission has held that the Appellant is not entitled to connectivity to the grid for its 20 MW solar plant (10.72 MW already commissioned), for purportedly violating Clause 4.16 of the Haryana Solar Policy, 2016 and the Guidelines dated 08.03.2019 of the Haryana Renewable Energy Development Agency (HAREDA).

67. It is submitted that the issues which require adjudication in the present appeal are as follows:

(i) The State Commission has upheld the action of the distribution licensees to deny connectivity to a solar developer, contrary to the right of every person under the Electricity Act, 2003 to be connected to the grid.

(ii) The actions of the State Commission reeks of institutional bias of favouring the distribution licensees, which is evident by the following:

(a) Going into issues not even raised by the parties;

(b) Appointing officers of the distribution licensees as commissioners after the hearing is over and behind the back of the Appellant;

(c) Purportedly getting a report on 22.09.2020 and passing an order on 24.09.2020 on the basis of the said report, as detailed herein below;

(d) For solar developers such as Amplus, which was initially conceptualised as a captive generator but agreed to sell to the distribution licensees, approving the procurement by disposing of the petition within 4 days (including a weekend), without raising any issue of compliance / non-compliance of the Solar Policy or the HAREDA Guidelines;

(e) Raising issues on the Solar Policy, when the Government of Haryana and HAREDA (who are authors of the Policy and with the right to interpret and clarify the Policy) have clarified that the view of the State Commission is wrong.

- (iii) Clause 4.16 of the Solar Policy, which applies to bidding processes, and for Joint Venture / Consortium, has been erroneously applied to the Appellant.
- (iv) The State Commission has erroneously applied the HAREDA Guidelines dated 08.03.2019, when admittedly even by HAREDA it applies only to 13 projects who applied before 13.02.2019 and were registered by 08.03.2019 (The Appellant is admittedly not one of those 13 projects).
- (v) The State Commission has erroneously approved conditions of restriction of contracted capacity and also drawal up to only the contract demand, even for long-term open access.
- (vi) Not appreciating that the procedure for ascertaining the captive criteria for a captive project is exhaustively provided for in Rule 3 of the Electricity Rules, 2005.

68. The submissions on behalf of the Appellant on the issues are as under:

I. Connectivity is a right of every project developer under the Electricity Act, 2003.

69. Connectivity is only the physical connectivity to the grid, and the technical parameters to be fulfilled for the same. The Electricity Act, 2003 provides the right for every person to be connected to the grid, without any restriction.

70. On the other hand, for renewable project developers, the Electricity Act, in Section 86(1)(e) mandates that the State Commission has to promote such projects in their connectivity to the grid.
71. However, by the impugned order, the State Commission, perhaps for the first time in the Country, has denied connectivity to a project developer, for reasons other than technical issues.
72. The issues raised in the appeal are of importance to the sector as a whole, as it provides for a precedent for every State to deny connectivity to projects, where the State Commission perceives loss of tariff and revenue to the distribution licensees.
73. The Government of India, in the Electricity Act as well as the National Tariff Policy and the National Electricity Policy have mandated the promotion of solar projects. Further, the Government of Haryana has also come up with the State Solar Policy to promote solar projects. HAREDA has also facilitated the project development and has in fact come on record against the distribution licensees and the State Commission for their actions.
74. By the impugned order, a 20 MW project in the State has been left stranded, when the project has been developed and implemented pursuant to the State Policy and the Regulations of the State Commission.
- II. The State Commission, as also the Distribution licensees have proceeded with institutional bias, lack of bonafide and perversity in the present case qua the Appellant:**

(i) *With respect to findings in the impugned order:*

75. From the impugned order, it appears that the State Commission appointed two officers of the contesting Respondent-Discoms themselves as 'Local Commissioners' to provide a report after site visit to the Appellant's plant. Not only this is against the very basic principle of law that one cannot be a judge in its own case, this was also done by the State Commission after the hearing was over in the matter. This is a procedure unknown to law, reeks of institutional bias, where the Distribution Licensees are favoured, when they also are contesting parties to the petition of the Appellant, and is also in gross violation of the principles of natural justice.
76. It is but obvious that the individual officers will follow the mandate of their management to give a biased report against the Appellant, a copy of which is also not made available by the State Commission to the Appellant.
77. It transpires from the impugned order that the officers have represented that they surveyed the project site in detail and have given a report, which also was not made to the Appellant, but had been relied upon by the State Commission in the impugned order. The Appellant was not even put to notice on the same, was not given a copy or provided an opportunity to contest the same. It is obvious that the officers of the contesting Respondents, who were blocking the connectivity to the Appellant for one year, will try and state something to deny connectivity.

78. Further, it is not even clear as to what verification was even made. As per the register entry at the Appellant's plant, only one of the persons mentioned in the impugned order, Mr. D. R. Verma, visited the site on 22.09.2020 after the business hours, at 6:30 PM, when no officer of the Appellant, except the security guards were present at the site, and left at 6:50 PM. It is pertinent to note that on 22.09.2020, the sunset occurred at 6:20 PM and the Appellant's project site was sitting in complete dark as there is no electricity since it is not connected to the grid.
79. The project site of the Appellant is also spread over approx. 52 acres. Hence, it is not understood as to how the said person was able to survey the whole land to check the land area available, in a span of 20 minutes (in which the said person also spoke to the people present for around 8-10 minutes), that too in complete darkness.
80. Relying on the above report, the State Commission has come to an astonishing finding that the land of the Appellant is not sufficient for the project capacity. The Appellant has already established the project to the extent of approx. 15 MW and is fully prepared to commission the project of 20 MW. It is not understood as to how the State Commission can assume insufficiency of land, when it was nobody's case in the petition before the State Commission.
81. This issue was not even brought out by the Respondent-licensees, but the State Commission on its own has entered into this enquiry.
82. The Appellant has arranged for about 52 acres of land for the project. The Appellant has also arranged for an additional 36 acres

of land, for possible expansion, storage requirements, change in configuration etc.

83. Further, the details mentioned in the impugned order having relied upon the said report are factually incorrect, as 45000 panels of 340W capacity amounts to 15.3 MW and not 10.72 MW. The land that the Appellant initially bought and submitted to HVPN was sufficient to set up a 20 MW plant with 1:1 AC:DC Ratio and the Appellant will be able to put 20 MW with 1:1 AC:DC ratio in this land easily. In any event, it is for the Appellant to decide on the configuration, and if the Appellant proceeds for a different configuration, it is for the Appellant to arrange for sufficient land. It is not understood as to how the Respondent-licensees are affected by this.
84. There is no question of any short-changing as mentioned in the impugned order. As per MNRE Circular No. 283/63/2019 – Grid Solar dated 05.11.2019, the developer can set up a higher DC capacity as generation is an unlicensed activity as per the PPA/Power Sale Agreement. The Appellant could have easily installed 20 MW in the land as 15.3 MW is already installed. Further, buying more land and setting up the plant for DC overloading beyond 20 MW is the developer's prerogative as per the above MNRE Circular. It is not even understandable as to how this is even relevant to the issue at hand.
85. The State Commission has grossly erred in imputing default on the part of the Appellant in arranging for land for the project. The Appellant has provided the full details of land being procured on 17.06.2019, which is a condition precedent for grant of Final

Connectivity. Only after verification and scrutiny of the said details, Final Connectivity was granted to the Appellant by HVPN, which was recommended by a committee of the Respondents themselves.

86. Further, the obligation to procure land is that of the Appellant and it is not even understandable as to how this issue even affects the Respondent-licensees. Neither the Respondent-licensees nor the State Commission earns any revenue from the land procured by the Appellant or are otherwise affected by the same. The entire exercise has been undertaken only to find out an excuse to deny connectivity to the Appellant.
87. The State Government / HAREDA have fully accepted the position of the Appellant. In fact, HAREDA filed a review petition, seeking the State Commission to set aside the impugned order, which has not been accepted by the State Commission.
- (ii) *With respect to the conduct of the distribution licensees and the order dated 14.09.2020 passed by the State Commission in 'Amplus Case':*
88. The State Commission, on 14.09.2020, had passed an order in the case of a similarly situated generator – Amplus Sun Solutions Private Limited (Case No. HERC/PRO-45/2020), which was also conceptualized as a Captive Power Project. However, since Amplus, upon being approached by the Discoms, agreed to supply power to the Discoms, was cleared to be commissioned without any hinderance or insistence upon any of the conditions mentioned

in the Solar Policy or the HAREDA Guidelines, as was being done in the case of the Appellant.

89. In fact, it was in records of the State Commission that Amplus had changed more than 26% of its shareholding after the HAREDA Guidelines dated 08.03.2019 were issued. While the Respondents had denied connectivity to the Appellant based on the contention that the Appellant has changed its shareholding, the same was not insisted upon and was deliberately overlooked by the State Commission in the case of Amplus which was also conceptualized under the same Solar Policy.
90. Further, the Respondents have not gone into any of the issues of shareholding, land requirement, date of application etc. in the said case, which itself shows that the Respondents are not acting *bona fide* and are acting with the only object of preventing the Appellant from supplying power to its captive consumer. Such conduct from the Respondents is in violation of the principles of natural justice and reeks of institutional bias and discrimination towards the Appellant.
91. In the said case, the State Commission also approved the PPA, without making any reference to the conditions contained in the Solar Policy or the HAREDA Guidelines, even though the 'Amplus Case' was also being heard along with the case of the Appellant till its last date of hearing.
92. What is more shocking is that the said Case No. HERC/PRO-45/2020 has been disposed of by the State Commission within 4 days of the petition being filed by the Discoms. The Petition was

filed by the Discoms seeking approval of the power purchase, without a bidding process, on 10.09.2020 (Thursday), and the final order granting the approval was passed on 14.09.2020 (Monday). No issue of shareholding, date of application, compliance with Solar Policy etc. as is sought to be raised in the case of the Appellant, were raised in the said case. The entire proceedings were completed and an order had been passed on 14.05.2020 within 4 days (including a weekend) of the petition being filed after holding only one hearing on 14.05.2020.

93. In fact, the Solar Policy does not even permit procurement without a bidding process, despite the above the State Commission has approved the said procurement.
94. It is further interesting to note in the 'Amplus Case' that the Discoms themselves submitted to the State Commission that in case these projects start selling power under the captive route, this will lead to loss of Cross Subsidy Surcharge and Additional Surcharge from the industrial consumers who will be the captive users of these projects, and thus, it is preferred that these projects sell power to the Discoms rather than selling to consumers under captive route.

"Benefit to Haryana Discoms, consumers at large and State economy

u) That this Project was conceptualised as an Open Access/ Captive Power Project. In case this Project starts selling power under the captive route, this will lead to loss of Cross Subsidy Surcharge and Additional Surcharge from the industrial consumers who will be the captive users of this Project. At this stage, these charges amount to Rs.1.77 /

kWh (CSS of Rs. 0.62/- and AS of Rs. 1.15/-) and that will be a direct loss to the Discoms which is ultimately be borne by the end consumers by the way of distribution and retail supply tariff. In the overall interest of the consumers of the state, it may be preferred that these projects sell power to the Discoms rather than selling to consumers under captive route.

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- 95. The above makes it abundantly clear that it is only because the Appellant had not accepted the proposal of the Discoms to sell power to them, it is being treated unfairly and with bias and is being discriminated against, which is unwarranted from any state utility and is in violation of the rights guaranteed under the Electricity Act to the Appellant.

- 96. It seems that the only reason that the Respondent Discoms are treating the Appellant with bias is its anti-captive and anti-renewable stand, which is evident from the facts and circumstances of the present case as well as the communications held between the Respondents viz. HVPN and the Discoms. In fact, HVPN had even went on record to state the same in its letter dated 26.07.2019 incorporating the comments of ACS Power, right after the In-Principle Connectivity had been granted to the Appellant and accordingly, the Appellant had started structuring its financial positions.

“Attitude of Discoms/HPPC is anti-renewable energy which I have expressed in my forums including during the presentation of power Department before the new Chief

Secretary on 05.07.2019. The observation in my note dated 24.06.2019 at NP/12 are reiterated and therefore, there will not be any cap on connectivity for solar power plants. HPPC's fears in this regard are misplaced and are, therefore, rejected. The Government must encourage renewable energy sources in overall national interest. Otherwise also, the Government has already curtailed the exemptions/concessions which were being given to Solar Power Projects and limited it to only 38.10 MW. Now, the concessions as allowed by the Central Electricity Act read with HERC Regulations shall be applicable on such projects. We will review the position only after the solar power projects to the extent of 1000 MW are installed in the State."

III. Clause 4.16 of the Solar Policy, 2016 is not applicable on the Appellant's captive power project and in any case, the Appellant is not in violation of the same.

97. As has already been mentioned, for the solar projects who intended to supply electricity to the Distribution Licensees, the Solar Policy mandated a bidding process to be followed and various conditions to be fulfilled by the bidders. One of the conditions was in relation to disclosure of information about the promoters and their shareholding in the generator during the bidding process and a subsequent condition on the said promoters to not cede their majority shareholding of the said generator who would supply electricity to the Distribution Licensees.

"4.16 Minimum Equity to be held by the Promoter

The project developer may be individual/company/firm/group of companies or a Joint venture/Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. This shall not be applicable to the Solar Power Projects *developed by the public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. ...*”

98. The said clause 4.16 itself specifically states that the details of shareholding etc. are to be given along with the bid documents. The bid process starts when electricity is procured by the Distribution Licensees, wherein the said clause has been inserted to place an obligation on the project developer, who is to supply electricity to the Distribution Licensees, to disclose its promoters and their shareholding in the project developer, and that the said promoter should continue to hold majority control till one year after the execution of the project.
99. However, the Appellant has established its project for captive consumption, in which case, there is no obligation on the Appellant to disclose details of its promoters and their shareholding in the Appellant, since there is no bidding whatsoever in such cases. Consequently, there is no obligation whatsoever on the Appellant regarding change of its shareholding under the Solar Policy. Therefore, clause 4.16, on its plain and simple terms, has no application to the case of the Appellant as there is no bidding process.

100. The same is also evident from the clarification issued, vide communication dated 11.12.2020, by the New & Renewable Energy Department, Government of Haryana and HAREDA, with the approval of the Additional Chief Secretary, Renewable Energy Department, and Director General of HAREDA to the distribution licensees. It needs no reiteration that HAREDA is the nodal agency for renewable energy projects and for implementation of the Solar Power Policy, 2016 and the Additional Chief Secretary, Renewable Energy Department is the authority competent to issue clarifications on the said Solar Policy.

101. The distribution licensees had by their communication dated 26.08.2020 sought the views of the Department of New and Renewable Energy, Government of Haryana and HAREDA for further action to be taken against another project developer. In response, the communication dated 11.12.2020 to the distribution licensees specifically states that Clause 4.16 of the Solar Power Policy is applicable only to those solar projects where bids have been invited for purchase of power by a Government entity and that the said Clause is not applicable to the projects similar to those of the Appellant.

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3. Points raised by HPPC

Further, para 4.16 of the said Solar Policy provides for the minimum equity shareholding to be held by the promoter of the project. The relevant para of the solar policy is quoted as under:

“Minimum Equity to be held by the Promoter: The project developer may be individual / company / firm / group of companies or a joint venture / consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developers shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of their project. This shall not be applicable to Solar Power Projects developed by public limited companies. Therefore, any change may be undertaken only with information to Renewable Energy Department / HAREDA or HPPC, as the case may be.”

Comments of the HAREDA

As per clause 2.8.1 of the solar power policy 2016 (stating that: For setting up of MW scale solar power project in the State, Haryana Power Purchase Centre (HPPC) shall invite the bids through open competitive bidding process and issue LOI to the project developer(s)/power producer(s), on the basis of evaluation parameters contained in the tender document), the HPPC has been mandated for inviting the bids for Ground mounted solar power projects. HPPC has also been mandated to invite bids for Ground mounted solar power projects for purchase of solar power under clause 2.2 of the Policy, while New & Renewable Energy Department / HAREDA has been mandated for inviting the bids for setting up of Grid Connected Rooftop Solar Power Projects on cluster of buildings under Clause No. 3.2 of the solar power policy.

Under clause 4.16, it is mentioned that

The project developer may be individual / company / firm / group of companies or a Joint venture / Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application till one year of execution of the project. This shall not be applicable to the Solar Power Projects developed by the public limited companies. Therefore, any change may be undertaken only with information to Renewable Energy Department / HAREDA or HPPC, as the case may be.

Regarding shareholding of lead shareholder was less than 51% at the time of applying for approval with HAREDA, it is observed that:

As per first para of clause no. 4.16 of Haryana Solar Power Policy “The project developer may be individual / company / firm / group of companies or a Joint venture / Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.”

Regarding the interpretation of the above para, it is submitted that there are two phrases, one is “individual / company / firm / group of companies” and second is “a Joint venture / Consortium of maximum 4 partners having minimum 51% shareholding of leading partner”. Here the partners are meant for the partner firms / companies of a Joint venture / Consortium as mentioned in the first para.

As there is no terminology as “Partner” known in case of a “Company” as the Company consists of Shareholders / Directors. So the partner word in clause 4.16 of the Policy is for the partners firms / companies of a Joint venture / Consortium while in the Company, the word shareholders is being used.

In view of the above, it is stated that the condition of 51% shareholding is applicable in case where the developer is a Joint venture / Consortium of more than one firm.

But M/s LR Energy is a single company & not a Joint venture / Consortium of more than one firm, so the condition of 51% shareholding of leading partner is not applicable in this case and developer fulfils first para of clause no. 4.16.

The second para of the above clause is applicable for the solar power projects for which bid have been invited for purchase of solar power.

But in the present case of M/s LR Energy, bids have not been invited and power is not being purchase by any Govt. entity, so this clause is not applicable.

The shareholding of the members of the company as mentioned at sr. no. 18 of the guidelines dated 8.3.2019 of HAREDA shall be applicable in the present case, the developer fulfils this condition.”

102. The State Commission has in the impugned order merely stated that the clauses are to be read as a whole and therefore, it applies to the Appellant. The said conclusion is not even understandable, as by no stretch of interpretation can specific words be deleted in a particular clause on the ground that it has to be read as a whole. In the present case, the State Commission undertook selective

reading of the provision so as to arrive at a pre-decided conclusion. The said Clause 4.16, in plain and simple language, required the details of shareholding etc. to be given only in case of a bidding process, which is not the case with the Appellant.

103. The State Commission has proceeded on the basis that the later part of clause 4.16 of the Solar Policy refers to the term '*application*', which is submitted by the solar developer and thus, this would include all 'Project Developers' taking benefit by getting themselves registered under the Solar Policy. This interpretation is grossly erroneous as the former part of clause 4.16 provides that a solar developer shall provide information regarding its promoters and their shareholding thereof, along with the bid documents. Thus, when the details themselves were not required to be disclosed by the generators who were not desirous of participating in a bidding process, the later question of change in the leading shareholder does not even arise pursuant to the later part of clause 4.16.

104. In any event and without prejudice to the above submission, as summarised above, the conditions are also fulfilled by the Appellant.

105. Further, the details of the shareholding were given at various points of time to the Respondents, wherein no objection whatsoever was taken. The Cleantech Solar Asia Group, being the promoters held the majority shareholding of the Appellant to the extent of more than 70% as on the date of application to HAREDA, i.e., on 20.08.2019 and continues to hold more than 70% shareholding till date. The details of shareholding pattern were

provided in numerous CA certificates by the Appellant, and the same were provided to the State Commission with the Written Submissions filed by the Appellant on 17.09.2020. There is no question of going below 51% and, as evidenced above, the same has not happened until date.

106. Even assuming clause 4.16 to be applicable to the Appellant, the State Commission has further proceeded on a grossly erroneous basis that the application date for the purposes of clause 4.16 is the date of application for connectivity made by the Appellant on 05.06.2018. The said conclusion, apart from being contrary to the provisions of the Solar Policy and the RE Regulations, is also contrary to the record and the admitted position of the parties. The State Commission has not provided any basis for arriving at this finding. The Solar Policy and the RE Regulations require registration to be made with HAREDA for the purposes of taking benefit under the Solar Policy. This application was made on 20.08.2019, which was accepted by HAREDA on 22.08.2019.

107. The State Commission has failed to appreciate that even the case of the Respondent-Discoms all throughout was that the date of application to HAREDA was the relevant date for the purposes of clause 4.16, even assuming that the clause applies to the Appellant. This is evident from the Respondent-Discoms' letter dated 08.07.2020, wherein various details regarding shareholding etc. from the said date of application being made to HAREDA were sought from the Appellant. However, evidently because no issue can be pointed out from the said date of 20.08.2019, when the Appellant applied for registration to HAREDA, the State

Commission has erroneously proceeded on the basis that the relevant date of application for the purpose of clause 4.16 is the date of application for connectivity which was made on 05.08.2018 to HVPN.

108. Further, the application dated 05.08.2018 for connectivity was made to the Transmission Licensee, i.e., HVPN under the Connectivity Regulations, 2012 and without any reference to the Solar Policy. The said Connectivity Regulations have been formulated as long back as on 11.01.2012 and thereafter amended on 03.12.2013, whereas the Solar Policy has only been formulated on 14.03.2016.
109. An application for connectivity can be made by any generator, notwithstanding whether it is covered under the Solar Policy or not. Even a non-solar generator has to make an application for connectivity to the transmission licensee under the Connectivity Regulations. The application for grant of connectivity has no correlation to the Solar Policy or clause 4.16 of the Solar Policy. It is evident that only because no other issues could be found against the Appellant that this interpretation has been made to deny the Appellant from commissioning its project and as a result, being stranded.
110. The perversity in the finding given by the State Commission on clause 4.16 is also evident by the fact that even assuming clause 4.16 to be applicable, it only refers to HAREDA or HPPC, as the case be. The Appellant has not made any application to HPPC, as it would arise only in case of a bidding process. The Appellant has made an application to HAREDA, which date has been ignored by

the State Commission. HVPN is not even referred to in clause 4.16, however the said application has been considered by the State Commission, evidently, because that is only date by which the State Commission could prevent the Appellant from commissioning its project by alleging some default.

111. Further, in second addendum dated 23.06.2017 to the Solar Policy, it had clearly been mentioned that HPPC will have no role to play with respect to captive projects in the state, and thus, even if clause 4.16 is said to be applicable on the Appellant, the only relevant authority with respect to the Appellant, being a captive project, is HAREDA.

112. The gross injustice caused by the State Commission is further evident by the fact that even assuming that a particular project does not fulfil the conditions laid down in the Solar Policy, the consequence can only be that the project is not entitled to the benefits under the said Policy. However that would not, in any manner, affect the physical connectivity of the project to the grid under the provisions of the Electricity Act and the Regulations framed thereunder or otherwise the captive criteria of the project to be fulfilled which is in terms of Rule 3 of the Electricity Rules, 2005. The issue of connectivity to be given to any solar project and the captive conditions to be fulfilled have no correlation to the provisions of the Solar Policy.

IV. The guidelines dated 08.03.2019 issued by HAREDA are not applicable on the Appellant's captive solar project:

113. The State Commission has further grossly erred in holding that the HAREDA Guidelines dated 08.03.2019 applies to the case of the Appellant. During the hearing before the State Commission, HAREDA itself confirmed that the said Guidelines do not apply to the Appellant. In fact, HAREDA also filed a review petition against the impugned order on this very ground, which the State Commission refused to accept.
114. Further, the said Guidelines itself specifically state that it is for the information to all the project developers who have submitted solar project proposals for approval before 13.02.2019 for registration of projects for proving the exemptions under the Solar Policy, 2016.
115. It is pertinent to note that the said Guidelines were issued in line with the amendment to the Solar Policy on 08.03.2019 which provided that the exemptions of wheeling charges, transmission charges etc. would only be given to those solar power projects who have applied for registration and purchased land, equipment etc. till 13.02.2019. The HAREDA Guidelines were thereafter issued for the benefit of only these projects which were eligible for the above said exemptions of wheeling charges, transmission charges, etc. under the above amendment to the Solar Policy.
116. Further, the same was also specifically clarified by HAREDA on 18.04.2019 that its Guidelines dated 08.03.2019 are applicable only to those 13 projects approved and registered by HAREDA on 08.03.2019 under the amended Solar Policy, 2016. The Appellant does not, admittedly, fall within the 13 projects that were identified by HAREDA. In such circumstances, it is not even understandable as to on what basis has the State Commission held that the

HAREDA Guidelines would also apply to the case of the Appellant. As stated above, this was not even the case of HAREDA which had specifically clarified that its Guidelines are not applicable to the Appellant and has also specifically stated so, at the time of hearing before the State Commission.

117. Further, the said HAREDA Guidelines provided for 6 months for completion of the project from the date of final approval by HAREDA as these projects had already invested Rs. one Crore per MW and had made significant progress, whereas the Appellant, which did not fall under the same category as that of the above-referred projects, had been granted 9 months for completion of its project, which clearly shows that the said HAREDA Guidelines were not applicable on the Appellant and in fact were not even applied to the Appellant's project while prescribing a timeline for completion of the project.
118. The gross misinterpretation by the State Commission is also evident by the fact that the Final Guidelines for grant of connectivity (which were in fact issued by HVPN after the amendment to the Solar Policy and the issuance of HAREDA Guidelines on 08.03.2019), do not contain any such restriction on shareholding etc.
119. Even assuming that the grant of connectivity and the conditions mentioned under the Solar Policy and the HAREDA Guidelines were so inter-linked and the intention was to apply the restrictions in relation to shareholding etc. to all the power generators, the same would have specifically been incorporated in the Final

Guidelines which prescribed the procedure for grant of connectivity to the power generators in the state of Haryana. Not having been so incorporated, it is evident that the intention of HAREDA was never to apply such restrictions to all the projects, but only to those 13 projects which got registered on 08.03.2019.

120. It has further been clarified in the communication dated 11.12.2020 issued by the New & Renewable Energy Department, Government of Haryana and HAREDA, with the approval of the Additional Chief Secretary, Renewable Energy Department and Director General of HAREDA that the restrictions contained in the Guidelines of HAREDA dated 08.03.2019 are applicable only for the 13 projects who were registered prior thereto, which admittedly does not include the Appellant. The Communication dated 11.12.2020, inter-alia, reads as under:

“4. Points raised by HPPC

Conjoint reading of above provision of Solar Policy and guidelines restricts any change in shareholding of leading partner from the date of submission the application and till one year of execution of their project besides restriction of four partners.

Comments of the HAREDA

The shareholding condition (Sr. No. 18) of the Guidelines dated 08.03.2019 is applicable to all 13 projects (including this project) approved by HAREDA on 08.03.2019 for exemption of wheeling and transmission charges.

As stated above, second para of clause 4.16 is not applicable for this project as bids have not been invited to

select this project and power is not being purchased by the Government entity.

As per these Guidelines, no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the Project till the execution of the Project without approval of the Govt.

As stated in point no. 2, from the date of application till the commissioning of the project, the developer has changed the shareholding of its shareholders in the company within the limits prescribed under the ibid guidelines of HAREDA and not violated these guidelines / solar policy.”

- V. The Connection Agreement is for physical connectivity of the project to the Grid and has no correlation whatsoever with the captive criteria to be fulfilled by the Appellant.
121. The State Commission has failed to appreciate that in the State of Haryana, the grant of connectivity with the grid is governed by Section 7 of the Electricity Act, 2003 read with the Connectivity Regulations, 2012. The Section 7 provides for the requirements for setting up of a generating station by a generating company, whereas the Regulations 5 & 6 of the said Connectivity Regulations provide for ‘Eligibility for connectivity’ and ‘Procedure for grant of connectivity’, respectively.
122. The State Commission failed to appreciate that neither Section 7 of the Electricity Act, 2003 nor Regulations 5 & 6 of the Connectivity Regulations, 2012 provide for any other conditions except adherence to the technical standards for connectivity to the grid prescribed by CEA and the Grid Code for grant of connectivity to

the generator. The Section 7 of the Electricity Act, *inter-alia*, read as under:

“Section 7. Generating company and requirement for setting up of generating station:

Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

.....”

123. A bare reading of the above provisions makes it clear that with respect to connectivity with the grid, a generating station is only required to adhere to the technical standards prescribed by the Central Electricity Authority under Section 73(b) of the Act. It is not at all in dispute that the Appellant is not adhering to the said technical standards.
124. The State Commission further failed to appreciate that HVPN, being the nodal agency under the Connectivity Regulations, had issued Final Guidelines for grant of connectivity to the solar power projects, which provided that the applications for connectivity shall be processed in two stages viz. (i) In-Principle Feasibility, and (ii) the Final Connectivity, and had also enumerated the respective procedures thereof.
125. Neither the Connectivity Regulations nor the Final Guidelines issued by HVPN provide for any fishing and roving enquiry to be undertaken after the technical feasibility has been ascertained and the Final Connectivity has been granted to the applicant. Any

enquiry, if need be made, needs to be undertaken before grant of Final Connectivity Approval by HVPN.

126. It is pertinent to note that the Final Guidelines issued by HVPN for grant of Connectivity clearly stipulated that certain documents viz. proof of ownership or long-term lease rights of the land, documents for financial closure and submission of Bank Guarantee needs to be submitted by the applicant within 90 days of issuance of the In-Principle Connectivity. On receiving and scrutiny of the same, if found eligible, the Final Connectivity was to be issued to the applicant. The Final Guidelines further provided that failure in submitting such documents would lead to cancellation of the In-Principle Approval.

127. In pursuant to the above, the Appellant had already submitted the details required under the In Principle Connectivity and the Final Guidelines for Connectivity on 17.06.2019, which had been scrutinized by the Respondents and it was only upon verification of the said details that HVPN granted Final Connectivity Approval to the Appellant, after being recommended by a committee consisting of various representatives of all the Respondents themselves viz. HVPN, HAREDA and the Discoms, formed specially for this purpose, which consisted of the following members:

1.	Director/Technical, HVPNL, Panchkula	Chairman
2.	Representative on behalf of Director General HAREDA. Panchkula	Member
3.	Chief Engineer / SO & Commercial, HVPN, Panchkula	Member

4.	Chief Engineer/Commercial of the respective DISCOM or Chief Engineer/HPPC	Member
5.	Controller of Finance/HVPN, Panchkula	Member
6.	Legal Remembrancer, Haryana Power Utilities	Member

128. The above makes it abundantly clear that the State Commission has grossly erred in justifying the actions of the Respondent-Discoms in sitting over the Connection Agreement without any reason for the past almost one year, after the Final Connectivity has been granted to the Appellant on 12.09.2019 after it had fulfilled all the conditions mentioned in the In-Principle Approval and the said Connection Agreement had been executed by the Appellant as well as by HVPN on 03.10.2019, which was merely a formality.
129. The State Commission has further erred in holding that the issue of connectivity cannot be separated from the Solar Policy and HAREDA Guidelines opining it is an integral part of package of benefits and conditions prescribed under the Solar Policy and has to be examined in conjunction with the Solar Policy and the HAREDA Guidelines, without appreciating that neither the Solar Policy nor the HAREDA Guidelines govern the issue of Connectivity to a generator, which needs to be made under the Electricity Act read with the Connectivity Regulations. The said Regulations governing the grant of Connectivity did not envisage any such restriction, and the impugned order of the State Commission is in teeth of its own Connectivity

Regulations, 2012 which governs the grant of connectivity to a generator in the state of Haryana.

130. The State Commission, in para 11 of the impugned order, has further erred in stating that in terms of clause II(C)(iii) of the Final Guidelines, the issuance of the In-Principle and the Final Approval involved procedures undertaken by HVPN at the initial stage of the grant of connectivity and ascertainment of the fulfilment of various conditions including factual, on ground position by the Respondent-Discoms at the subsequent stages for establishment of the plant. The State Commission erred in holding that it is in compliance of this responsibility entrusted upon the Discoms, that the requisite documentation has been sought from the Appellant, which the Appellant refused to submit.

131. The above observation of the State Commission is factually incorrect as in terms of Clause II(C)(iii) of the Final Guidelines, the Appellant was required to only furnish the proof of ownership or long-term lease rights of the land, documents regarding Financial Closure and submission of a bank guarantee within 90 days of the In-Principle connectivity. Neither does the said Clause II(C)(iii) provide for submission of any other details by the Appellant, nor does it entrust the Discoms with any responsibility.

VI. The procedure for ascertaining the captive criteria for a captive project is exhaustively provided for in Rule 3 of the Electricity Rules, 2005:

132. The State Commission has confused the fulfilment of the 'captive status' criteria with the conditions to be fulfilled under the Solar

Policy and the HAREDA Guidelines, which conditions were not even applicable on the Appellant. The criteria of 'captive status' is exclusively and exhaustively covered by the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005 and no policy or guidelines can add or relax such conditions in relation to captive status.

133. The captive criteria require minimum 26% shareholding throughout the year and minimum 51% consumption on an annual basis to be fulfilled. This by its very nature, can only be ascertained after the end of each financial year. It is also possible that the captive status be fulfilled in a given particular year and not fulfilled for the subsequent year. This would in no manner affect the connectivity of the project or the open access to be granted to the project developer to supply electricity to its consumers during the year. Rule 3 of the Electricity Rules, inter-alia, provides as under:

“3. Requirements of Captive Generating Plant.-

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant -

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) notless than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

.....

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

134. In terms of the above Rule 3, what is required of the Respondents is to verify the fulfilment of the said captive requirements on an annual basis. If the conditions are not fulfilled, the electricity will be treated as supplied by a generating company for that year. The question of advanced fulfilment of the captive conditions is an impossibility in law.

135. The law on this subject is also settled by various decisions of this Tribunal. In fact, in the case of '*Kadodara Power*' (Judgment dated 22.09.2009 in Appeal No. 171/2008), it has been clarified that there is no restriction on the change in shareholding of captive consumers. Though there is no such change in the present case, the contention of the Respondents in fact go contrary to the settled principle of law.

VII. The restrictions imposed on drawl of power and on contracted capacity in the In-Principle and the final connectivity approvals granted to the Appellant by HVPN are not correct in law:

136. The State Commission has erred in holding that the conditions imposed under the In-Principle Connectivity and the Final Connectivity restricting the quantum of drawl by the open access consumers to that of its contract demand, and the capacity for which an agreement can be entered into between the captive

consumer and the generator to that of the contract demand of the captive consumer, respectively are legally valid.

137. The In-Principle Approval restricts the quantum of power to be drawn at the consumer's end to that of the contract demand, which is contrary to the Orders passed and Regulations framed by the State Commission. The State Commission specifically in its previous orders, had itself held that the capacity cannot be linked to the contract demand.
138. The Final Connectivity further restricted even the PPA to be entered into by the consumer with the renewable generator to the contract demand of the consumer. This is also contrary to the Regulations and Orders of the State Commission.
139. A solar plant generates about 20% of capacity on an annual basis. Thus, by the above condition, the consumption from solar generation is being restricted to 20% of the total consumption. This is not supported by any order or Regulations.
140. The Commission had issued the RE Regulations, 2017 as an annexure to its Order dated 30.06.2018 passed in Case No. HERC/PRO-46 and 67 of 2017, wherein while replying to the comments of the stakeholders, the State Commission *inter-alia* held as under:

'The Commission has considered the issues raised above and is of the considered view that Regulation relating to reduction of contractdemand shall not be applicable for Solar PV Power. Further no provision is envisaged in the RE

Regulation on the restriction of capacity of Solar Plant upto the Contract Demand.”

141. Despite the above specific decision of the State Commission, the licensee inserted a contrary condition, which has been approved by the State Commission in the impugned order. The State Commission has not even referred to the above previous decision.
142. Further, the open access in the present case is Long-Term Open Access, which is not based on the margins available in the system. Therefore, the question of margins available in the system, technical conference etc. have no application whatsoever, even under its own Regulations.
143. The Tribunal, in the recent decision dated 27/04/2017 in the case of *“RohaDychem Pvt Ltd v. Maharashtra Electricity Regulatory Commission”*, in Appeal No. 319 of 2018, has settled the principle that the open access has to be granted based on the technical capacity of the line and cannot be restricted based on the contracted capacity maintained by the consumer. The Tribunal has, inter-alia, held as under:

“78. We have noted that the Practice Directions dated October 19, 2016 issued by Respondent No. 1 on processing the MTOA applications (“Practice Directions, 2016”) inter alia deals with the issue of restricting open access to the extent of contract demand.

DOA Regulations do not limit the quantum of power to be sourced through Open Access to the consumer’s Contract Demand. Regulations 8.10, 12.1 and 12.2 of the DOA Regulations specify that the Distribution Licensee has to

verify the feasibility of infrastructure/capacity of the distribution system, and grant Medium or Short Term Open Access if the resultant power flow can be accommodated in the existing distribution system.

If the existing distribution system/metering system requires any augmentation or upgradation, the Licensee has to communicate it to the Open Access Applicant and follow the procedure specified in the Commission's Electricity Supply Code and Standards of Performance Regulations. Under Regulation 4.2 of the DOA Regulations, whether or not to seek an increase, decrease or retain his level of Contract Demand is entirely left to the consumer and is governed by the relevant provisions of the Supply Code and Standards of Performance Regulations.

.....

85. It is clear from the reading of the open access regulations and the practice directions on open access that the only test to be applied by Distribution licensee is to verify the feasibility of infrastructure/capacity of the distribution system so that the resultant power flow can be accommodated in the existing distribution system. It further provides that if the existing distribution system/metering require any augmentation or upgradation the licensee has to communicate it to the open access applicant and follow the procedure specified in the Commission electricity supply code and standard performance of regulation.

We have noted that prior to this impugned order wherein open access quantum sought by the Appellant has been curtailed, the Appellant was enjoying the open access as sought by it without any difficulty. The distribution company has not intimated any inadequacy in terms of distribution infrastructure, any augmentation required to strengthen the

distribution infrastructure. In that view of the facts It is apparent that the system is adequate and therefore there is no reason to not allow the open access quantum as sought by the Appellant.”

144. In addition, the Tribunal has also opined the requirement of promoting renewable sources and also providing banking of energy to wind and solar projects.
145. There cannot be any such provision, nor is there such a provision in the Regulations of any Electricity Regulatory Commission in the country, where even the Long-Term Open Access is to be restricted up to the contract demand. In fact, Regulation 24 as is sought to be relied on by the State Commission, in relation to penalty for drawl of power, has no restriction in relation to contract demand and only provides for Imbalance Charges for over drawl / under injection or under drawl / over injection of power.
146. Further, the reliance placed by the State Commission on Regulations 24, 42, 43 and 45 of the Open Access Regulations in regard to the admissible drawl is completely misconceived. Regulation 24 deals with imbalance charges, in relation to the over-drawl/under-drawl as against the schedule finalised. This has nothing to do with the open access to be granted within the contract demand. Regulation 42 also does not restrict in any manner the open access to be granted or otherwise the drawl of power from open access with the contract demand. Similarly, Regulations 43 and 45 also have no such provision as is sought to be applied by the Respondents in the present case.

147. Further, Regulation 42(1) as is relied on by the State Commission applies to day-ahead transactions, either bilateral or to the power exchange, under Short-Term Open Access. The State Commission has erred in applying the said provision to the Appellant in the present case, who has applied for Long-Term Open Access.

148. In the circumstances, the provision in the In-principle and Final connectivity approvals are contrary to the Regulations and the Electricity Act and are liable to be set aside.

VIII. Whether the condition in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy is correct in law?

149. In the Tripartite Banking Agreement unilaterally circulated by HPPC, the licensees have inserted the following clauses:

“1.1 DEFINITIONS

d. “Banking” means the facility by which electrical energy remaining unutilized by way of difference between the energy scheduled by the Captive User(s) from the CPP for own usage and injected by the Company into the transmission and/or distribution system of HVPNL/Discoms, which is allowed to be banked for later use, as per the terms and conditions set forth in this agreement. The injection by the generator for Captive use shall be limited to total contracted capacity of the Captive User(s).

.....

4.2 BANKING

Terms and conditions for Banking

xii) Any power injected by the Company over and above the contracted capacity of Captive User(s) in any time block will be treated as dumped energy and not accounted for."

150. By the above provision, the licensees would take supply of electricity free of charge from the project developer on the ground that the project capacity cannot exceed the contract demand of the consumer.

151. The State Commission has erred in holding that the above provision of the Tripartite Banking Agreement is in consonance with its orders as well as the RE Regulations and is thus valid.

152. The above conclusion of the State Commission is contrary to its own order dated 13.05.2019 in Case No. HERC/PRO-22 of 2019, wherein the State Commission had specifically held and clarified that there shall be no restriction or linkage of the project capacity vis-à-vis the contract demand for solar PV projects. This is also specifically provided for in Clause 64(a) of the RE Regulations framed by the State Commission itself wherein it is provided as under:

"The provisions, if any, contained in any other regulation relating to reduction of contract demand shall not be applicable for solar PV Power.

153. The State Commission had also specifically clarified that there shall be no restriction or specifically the capacity up to which the banking is allowed as long as the plant meets the captive requirement under Rule 3 of the Electricity Rules, 2005.

154. This is evidently clear by a plain reading of the order, which makes it abundantly clear by the very definition of 'Capacity' in the Procedure annexed with the above order in PRO-22, which differentiates between Contracted Capacity of the plant and the Contract Demand of the consumer.
155. The State Commission in its Regulations has provided that any power injected over the contracted capacity of the project in any time block will be treated as dumped power. However, in the impugned order, the State Commission has overlooked the same, confusing the contracted capacity of the project and the contract demand of the consumer, and accordingly, treating the injection of power by the generator over and above the contract demand of the captive consumer as free supply to the licensees.
156. This issue has also been settled by the recent decision of the Tribunal dated 27/04/2017 in the case of RohaDychem Pvt Ltd v. Maharashtra Electricity Regulatory Commission, Appeal No. 319 of 2018, wherein considering a similar condition wherein the electricity generated beyond the contract demand in each time block was treated as surplus electricity and taken free of cost by the licensee without giving the benefit of banking, the Tribunal, inter-alia, held as under:

74. From the reading of the Wind Tariff Order, 2003 we observe as under:

i) 100% delivered energy to MSEB grid from wind farm project could be banked for a period of 1 year. As such the period of banking is one year.

ii) The State Commission has permitted banking any time during the day and night.

iii) At para 2.4.3 the State Commission is dealing with the issue arising out of the policy of MSEB according to which the MSEB is not liable to purchase any energy once the producer opts for sale to third party.

iv) The State Commission has decided that Surplus energy at the end of the financial year, limited to 10% of the energy (kWh) fed into the grid during the financial year, will be purchased by the utility at the lowest TOD slab rate for HT energy tariff applicable on 31st March of the financial year in which the energy was banked.

v) From the narration of the State Commission wherein the Commission has discussed the plant size and also the need for making provision for procurement of unutilized energy generated by the Distribution company it is apparent that the whole discussion is primarily aimed at making an assumption regarding the extent of unutilised energy which will remain as balance at the end of the year. The whole discussion of energy generation, its utilisation and banking of unutilised energy is in terms of annual energy.

vi) The Commission understands that the developers generally plan the size of their wind projects after taking

into account their own energy requirement as well as that of the third party purchaser if it is contemplated. Therefore, under normal circumstances, the developer will not have to bank a substantial portion of the energy with the utilities. Even if the developer had to bank substantial portion in one month, he could use it in the next month.

vii) Though there is no explanation for the use of the term '10%' of total energy however, it is evident that it is based on the assumption, that the State Commission has made, that normally unutilised energy will be of the order of 10% only. On the basis of this assumption the State Commission has decided that DISCOM should purchase this balance energy limited to the extent of 10%. Nevertheless one thing is very clear that the use of "10% of total energy" is in the context of total energy that will be generated by the RE generator during one full year. This fact is also apparent at many places from the Wind Tariff Order.

.....

77. In view of the fact that the whole discussion, as given in the Wind Tariff Order, 2003 is about energy generation by the RE Generators, it's consumption for self-use/third party sale and the procurement of the balance energy is all in terms of annual energy generation and not in terms of instantaneous generation, it would be wrong to infer that the limitation of 10% is on banking of excess energy generated instantaneously by the RE generator. This is more so in view of the provision of banking of energy generated by RE generator because if that be so then it would defeat the very purpose of provision of banking. As such we are of the opinion that the finding of the State Commission that the provision of the banking as provided by the State Commission in their Wind Tariff Order dated 24.11.2003

passed by the State Commission are essentially to be used for adjusting excess generation only on margin is wrong.

157. The above decision applies on all fours to the present case. The only factual difference in the above case to the present case is that in Maharashtra, the provision was for 10% of the surplus electricity at the end of the year to be procured by the licensee, whereas in Haryana the entire electricity banked and unutilised at the end of the year would lapse.
158. The Tribunal has also, in the case of Tamil Nadu Spinning Mill Association v. Tamil Nadu Electricity Regulatory Commission, Appeal No. 191 of 2018, dated 28/01/2021, has recognised and reiterated the importance of banking for renewable electricity such as solar and wind.
159. The impugned order, which has the effect of restricting the injection of electricity only up to the contract demand for every 15 minute time block basis, and the excess electricity to be available free of cost to the licensee is erroneous and is liable to be set aside.
- IX. The State Commission has erred in not granting compensation for the losses suffered by the Appellant on account of loss of generation:
160. The State Commission has erred in holding that the delay occurred in signing of the connection agreement is not attributable to the Respondents and thus, the Appellant is not entitled to any

compensation, which is erroneous and is not born out of the facts and circumstances of the present case.

161. The State Commission further stated that the project is still not complete, without appreciating that the Appellant's power project has been completed to the extent of 10.72 MW with around 15 MW of modules being installed and is ready for commissioning since 13.02.2020, which has also been certified and approved by the Chief Electrical Inspector on 13.02.2020.
162. The project of the Appellant has been left stranded by the distribution licensees, who did not proceed to execute the Connection Agreement and grant open access to the Appellant. The Final Connectivity was granted on 12.09.2019 and the Connection Agreement was to be signed within 30 days. No response whatsoever was forthcoming from HVPN and the distribution licensees till filing of their replies before the State Commission on 10.08.2020 and 14.08.2020, respectively.
163. There was no response whatsoever by the licensees, due to which the project was stranded. The Respondents are liable to compensate the Appellant for the loss of generation since 13.02.2020, when the project was completed to the extent of 10.72 MW. This has been erroneously rejected by the State Commission.
164. Further, the Electricity Act, 2003 provides the State Commission with a power to issue appropriate directions if any licensee abuses its dominant position, as is the case in the present matter.

“Section 60. Market domination:

The Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.”

165. However, the State Commission has erred in not dealing and giving any finding on the issue of abuse of dominant position by the Respondent-Discoms raised by the Appellant.

X. Appellant to be governed by the Regulations and banking provisions applicable till 31.03.2021:

166. One further aspect that has now become relevant is that the project has been prevented from being commissioned by 31.03.2021 to the full extent of 20 MW. The control period was to normally terminate by 31.03.2021, by which time the Appellant would have completed the project. However, on account of the actions of the Respondents in not signing the Connection Agreement and keeping even the completed capacity of 10.72 MW stranded for many months, the Appellant has been prevented from completing the project till date to the extent of 20 MW.

167. The State Commission has now framed new Regulations relating to Banking for the projects to be commissioned after 31/03/2021, wherein the banking charges and fees are in the region of about Rs. 3 per unit, which is completely unsustainable. Further, the State Commission has provided that banking would be provided only to such captive plants, where 100% ownership is maintained. This is not even understandable as the Electricity Rules provide for

26% ownership for captive, whereas the State Commission by Regulations has provided it at 100%.

168. The said charges and provisions have been incorporated in the Regulations itself, perhaps for the reason that Regulations cannot be challenged before the Tribunal. This would by itself kill renewable projects in the State after 31.03.2021.
169. However, the Appellant was prevented from commissioning its generating station by the Respondents. The Respondents cannot take advantage of the delay and apply new Rules and banking charges to the Appellant. The Appellant ought to be entitled to all the benefits of banking facility and charges as applicable for projects that were to be commissioned by 31/03/2021.
170. The Final Connectivity Approval provides a time period of 9 months to be Appellant to commission the project upon the execution of the Connection Agreement. The Connection Agreement was never signed by the Respondents. The Appellant has already completed more than 75% of the project and would be able to commission the balance well within 9 months of the order of the Tribunal.
171. It is submitted that upon the disposal of the present appeal, the Appellant be given a reasonable time to complete the balance capacity out of 20 MW and be entitled to the benefits under the Regulations of the State Commission, which were available up to 31.03.2021. The principle of *lispendens* squarely applies to the present case, and the Appellant cannot be prejudiced by the

issues being pending before the State Commission and this Tribunal.

Submissions of Respondent No. 1

172. In response to the Appellant's contention that while placing reliance on the Report dated 22.09.2020 submitted by the Local Commissioner for passing the Impugned Order, the Respondent no. 1 has allegedly violated the principle of natural justice as the Appellant was not given opportunity of being heard in respect of the same, it is submitted as under:

- (i) While the matter i.e. PRO 23 of 2020 ("Petition") was pending before the Commission, the Appellant along with certain other similarly placed generators had filed Appeal No. 112 of 2020 before this Tribunal seeking directions for early disposal of the matters by the Commission.
- (ii) This Tribunal vide order dated 17.07.2020 passed in the said Appeal 112 of 2020 had directed the Commission to list the petition of the Appellant on or before 31.07.2020 and adjudicate the same, including request for interim connectivity within a period of 4 weeks i.e. on or before 28.08.2020.
- (iii) Accordingly, in compliance of the Tribunal's order, the Petition was listed and heard by the Commission in a time bound manner.

- (iv) During arguments, the parties in the Petition and the other connected matters had submitted that they are attempting to resolve the issues amicably. While two other similarly placed generators resolved their issues with the Respondents through negotiations, the Appellant was not agreeable to negotiation and requested the Commission for listing of the matter. Simultaneously, the Appellant once again filed another appeal being Appeal No. 144 of 2020 before this Tribunal seeking urgent interim orders for connectivity. In the said proceedings before the Tribunal, on 04.09.2020, the Commission had undertaken that the Petition would be listed and the decision would be rendered expeditiously.

- (v) Thereafter, the arguments were heard by the Commission so that the Petition can be disposed off expeditiously.

- (vi) The issue relating to the Project being incomplete and thus being in violation of HAREDA's registration came to light during the arguments. Accordingly, the Commission deemed it appropriate to delve into this issue to ascertain the factual position on existent ground for proper and complete adjudication of the matter before passing the Impugned Order.

- (vii) Considering the above-stated urgency in adjudication of the matter, the Commission requisitioned Commissioner assistance from the office of Superintending Engineer, operation Circle, DHBVN, Sirsa who submitted its report on 22.09.2020 ("Report").

- (viii) On a perusal of the said report, it emerged that the Appellant has misrepresented as the Appellant had already utilized 90% of the land parcel and installed 340 Watt panels, thus the proposed Solar Plant project of 20 MW capacity cannot be set up in the land capital shown to be available by the Appellant before the grant of final connectivity.
- (ix) It is imperative to note that the Appellant in the present Appeal before the Tribunal has failed to demonstrate any fallacy in the factual situation that has emerged in the Report. In fact, the Appellant itself has admitted that additional land has been procured due to change in configuration. Such admissions on the part of the Appellant reflect that correctness of the Report. Thus, it is apparent that the land capital of 52 acres shown to be available by the Appellant within 90 days of the issuance of the 'In Principle' Connectivity (for ensuring compliance of the HVPNL guidelines dated 08.03.2019 and for grant of final connectivity) was insufficient.
- (x) Hence, it is submitted that no actual prejudice or grievance has been suffered by the Appellant due to non-observance of the principles of natural justice. The fact that the Appellant has misrepresented is undeniable and is supported by its own admissions as stated in the preceding paragraphs. In this regard, it may be noted that it is a settled principle in law that in cases where the result will not be different even if natural justice is followed, relief to such a party complaining non-observance of the principles of natural justice can be refused.

173. In view of the above, it is submitted the Commission's assistance was sought merely to meet the ends of justice in the compelling circumstances narrated above.

174. It is further submitted that the plea of institutional bias is unfounded and baseless considering that the other two similarly placed generators i.e. Amplus Sun Solutions Private Limited and Ananth Solar Power Maharashtra Private Limited have themselves negotiated with the Respondents and withdrawn their petitions after amicably resolving their issues for grant of connectivity. Reliance in this regard is placed on Commission's order dated 30.09.2020 passed in PRO 25 and 26 of 2020 respectively. While the Appellant chose not to negotiate with the Respondents and, therefore, the Commission had proceeded to hear the matter and adjudicate it on the basis of the available facts and documents.

In case of Vidarbha Industries Power Limited Vs. Maharashtra Electricity Regulatory Commission{2020 SCC OnLine APTEL 73} this Tribunal, while negating the allegation of 'Institutional Bias' has clearly held that the "Electricity Act has enjoined the Commission with multifarious responsibilities and the adjudicatory function being only one of them. It discharges, inter alia, legislative function by framing regulations that have the force of law and also oversees, as the regulator, the conduct of players in power sector engaged in the work of generation, transmission, trading, distribution et al granting approvals and securing compliances." Therefore, no exception can be taken if the Commission has chosen to carry out close scrutiny of conduct of Appellant which is merely a player in the power sector.

The plea of 'Institutional Bias' also flies in the face of own submission of the Appellant to the effect that the HAREDA had moved an application for review which was not entertained by the Commission. In substance, the plea of the Appellant seems that the Commission has shown 'Institutional Bias' in favour of DISCOMS owned by the Government. Hypothetically saying, had the commission possessed of any bias, it was supposed to entertain the application for review and allow the same.

175. In the given facts and circumstances, it is submitted that all allegations made by the Appellant against the Commission are without any merit. The Impugned Order has been passed by the Commission, after considering all facts and submissions placed before it, to the best of its knowledge and wisdom.

Submissions of Respondent No. 3 to 5

I. Conspectus of the Case

176. The Primary issue in the present matter relates to grant of connectivity to the Appellant who is a solar power generator and who has registered its 20 MW project with HAREDA under the Haryana Solar Policy, 2016 (Solar Policy).

Re: Solar Policy

177. The Solar Policy provides for certain benefits and incentives to the solar power generators intending to set up their power plants under

the Policy but subject to the following terms and conditions. These terms and conditions were to ensure that the developer is invested in the project so as to encourage only serious/dummy/shell investors to apply to HAREDA/HVPNL under the Policy.

- i. Para 4.16 of policy prescribes:
 - There should be Maximum 4 partners
 - Minimum 51% Shareholding be held by leading partner
 - No change in the leading shareholder, developing the Solar Power Project from the date of application till one year of execution of the project.
 - Thereafter any change in the leading shareholder may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be.
- ii. Further, the HAREDA guideline dated 08.03.2019 and clarification dated 18.04.2019 prescribed - *no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till the execution of the Project without approval of the Govt.*

178. The investors/ generators are bound to scrupulously comply with the above-stated terms and conditions of the Solar Policy read with the HAREDA Guidelines.

179. In the Petition before the Commission, the Appellant inter alia sought for directions to the Respondents for execution of the Connection Agreement with Haryana Transmission utility (HVPNL)

and the DISCOMS and for grant of LTOA. It is submitted that the signing of Connection Agreement is intrinsically linked to the compliance of the terms and conditions of the Solar Policy by the Generator who set-up their power plant pursuant to and avail benefits under the said Solar Policy. Therefore, in the instant case, unless the conditions prescribed in the Solar Policy and guidelines issued by HAREDA and HVPNL are complied with, the Connection Agreement cannot be executed with the Appellant.

Re: Impugned Order

180. The present appeal has been filed against the Impugned Order dated 24.09.2020 passed by Haryana Electricity Regulatory Commission (HERC). It is submitted that all the issues raised by the Appellant in the present appeal have been already elaborately addressed by the Commission in the Impugned Order. The relevant findings/observations of the HERC in the Impugned Order are as under:

- i. That the Appellant's case is a clear case of misrepresentation aimed at attaining the benefits and exemptions available under the Solar Policy without having the intention and resources to meet the requirements of the Policy. The record reflects that the Appellant's project of 20 MW capacity cannot be set up in the land capital shown to be available by the Appellant as 90% of the total available land i.e. 51 acres already stands utilized for setting up of 10.72 MW part of the plant. Further, the Appellant has been in default as the conditions which were

required to be fulfilled within 90 days of the issuance of the In Principle Connectivity have remained unfulfilled hitherto. Such default has the effect of disentitling the Appellant from being considered under the solar policy.

- ii. The condition qua lock-in of shareholding is essential to ensure that the developer should not set up a project merely for profiteering by way of availing benefits under the policy and exiting the project before taking all permissions and execution of connection agreement.
- iii. The Appellant after having once elected the Solar Policy route, shall have to follow the route till the very end of the road i.e. till the point all conditions and/or restrictions imposed under the Solar Policy read with HAREDA and HVPNL guidelines are complied with.
- iv. Para 4.16 of the Solar Policy is applicable to the Appellant. Accordingly, the insistence of the DISCOMS to satisfy the requirements of demonstrating lock-in of 26% shareholding of captive users as prescribed in the guidelines and the policy are correctly borne out of the provisions of the policy and the guidelines issued by HAREDA/HVPNL.
- v. That for reckoning compliance of Para 4.16 of the Solar Policy, it is necessary that the first application made by Generator must be seen which in the present case is the application for LTOA for Connectivity. Thus, the term “application” in para 4.16

of the policy refers to the first application made for grant of connectivity and not the application made to HAREDA.

- vi. The HAREDA Guidelines dt. 08.03.2019 and the clarification dated 18.04.2019 are applicable to the Appellant.
- vii. On perusal of the shareholding pattern of the Appellant from the date of first LTOA application dated 05.06.2018, it emerges that the shareholding of the Appellant has been changed in breach of the terms and conditions of the Policy. Thus, no direction for execution of connection agreement can be passed.

II. Arguments on merits

A. Para 4.16 of the Solar Policy, the HAREDA Guidelines dated 08.03.2019 and the clarification dated 18.04.2019 are all applicable to the Appellant.

181. The Appellant contends that Para 4.16 of the Solar Policy is not applicable to the Appellant as the said para allegedly applies only to bidding processes. The Appellant also contends that HAREDA's guidelines dated 08.03.2019 are not applicable to them since the same only apply to those developers who have submitted their application before 13.02.2019 to HAREDA and the Appellant had submitted its application only thereafter on 20.08.2019. In this regard, the Appellant has heavily relied on HAREDA's Communication dated 11.12.2020.

182. The aforesaid Paragraph 4.16 is reiterated as under:

“4.16 Minimum Equity to be held by the Promoter:

The project developer may be individual/company/firm/group of companies or a joint venture/consortium of maximum 4 partners having minimum 51% shareholding of leading partner. The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the Company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of their project. This shall not be applicable to Solar Power Projects developed by public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. Further, only new plant and machinery shall be allowed under this policy”. (emphasis supplied)”

183. It is submitted that the above-mentioned submission of Appellant is wrong on account of the following reasons:-

- (a) The reference to the term “bid document” in the para 4.16 is the application which is made for setting up of the Project and the same is evident from the next lines of the said para which uses the term “application”. The term “application” as referred in Para 4.16 refers to the first application/proposal which a project developer makes to the concerned utility for setting up of the

Project i.e. the LTOA application for connectivity made to HVPNL by the Appellant.

- (b) Further as per para 4.16, HPPC has been tasked with the responsibility of monitoring implementation of the aforesaid prescription since HPPC has a role to play in grant of connectivity to a solar power generator as the DISCOMS are a party to the Connection Agreement and HPPC is a joint forum that acts for both DISCOMs. For grant of “Connectivity” / execution of connection agreement by ensuring compliance of the conditions of the Solar Policy, it is necessary that the first application made by Generator for Connectivity is seen for the purposes of reckoning compliance of Para 4.16 of the Solar Policy.

- (c) This is further substantiated by the fact that there is a queue formed for issuance of in-principle feasibility for grant of connectivity to the Generators on “*first come first serve basis*” as stipulated in the HVPNL Guidelines dated 19.03.2019. This in-principle feasibility is necessary for the registration with HAREDA as can be seen from the HAREDA Registration granted to the Appellant on 22.08.2019. Further, said HAREDA registration clearly provides that this registration was issued subject to the Appellant following the instructions/guidelines of HAREDA/HVPNL from time to time and that the status of captive generation shall be ascertained by the Power Utilities (which includes HPPC).

- (d) The aforesaid position can be better summarised as follows:
- i. That the entry point for setting up of a captive solar project under the Solar Policy is the first application made by the generator i.e. the LTOA application for connectivity through which the generator makes it in the queue for grant of connectivity.
 - ii. The exit point or the final destination is execution of the connection agreement subject to compliance of all conditions of the Solar Policy.
- (e) Thus, it is necessary to ensure that the Solar Project Developers who are granted HAREDA Registration and subsequent Connectivity satisfy the criteria of being captive at the time of making the LTOA application and there is no change in their shareholding as restricted by Para 4.16 of the Solar Policy. This becomes important in light of the fact that since connectivity is to be granted on first-come-first-serve basis, it will be a loss of opportunity to those bona fide generators who couldn't be granted connectivity due to late submission of their applications, but who otherwise satisfy the criteria of being captive.
- (f) The guidelines mentioned in unnumbered para 3 of the guidelines dated 08.03.2019 does not anywhere provide for such restrictive reading of the same. The Appellant has sought to reply on the opening paragraph of the guidelines, which read as under:-

“It is for the information to all the Solar Project Developers who have submitted solar projects proposals for approval before 13.02.2019 to Haryana Renewable Energy Development Agency (HAREDA) for registration of projects for proving the exemptions as per Haryana Solar Policy 2016.”

Basis the above the Appellant is contending these guidelines do not apply to it. This is a complete misreading of the guidelines since the above paragraph only states for information of those developers who have submitted their application before 13.02.2019 that they alone shall be exempted from wheeling and transmission charges for ten years from the date of their commissioning. This position is clear from the second unnumbered paragraph of the guidelines, which reads as under:-

“Now it has been decided by the Council of Ministers, Haryana in its meetings held on 13.02.2019 & 08.03.2019 that Wheeling and Transmission Charges will be exempted for ten years from the time of commissioning for all Captive Solar Power Projects which have submitted applications to HAREDA for registration of project, purchased land or have taken land on lease for thirty years and have bought equipment & machinery or invested at least Rs. One Crore per MW for purchase of equipment & machinery for setting up of such Captive Solar Power Projects till 13th February, 2019.”

(g) These guidelines nowhere provide that the same shall be applicable only on those projects that have submitted their application before 03.02.2019. In fact, the third para reads otherwise and provides that the solar power projects will be approved by HAREDA for availing exemptions provided under the Solar Policy, 2016 satisfying the criteria provided therein. It is noteworthy that if the above guidelines were to apply restrictively as sought to be interpreted by the Appellant, then the said third para would have provided that the solar power projects which have submitted their application before 13.02.2019 for the purposes of availing exemption of wheeling and transmission charges along with other benefits shall satisfy the criteria provided therein. However, this is not the case.

(h) HAREDA's in its clarification dated 18.04.2019 issued to HVPNL in response to HVPNL's query – what is *“the criterion in respect of the minimum lock in period required for implementing transfer of ownership of solar power plant to other developers/promoters”* specifically clarified that:-

“in the matter of guidelines issued on 08.03.2019 by HAREDA may be referred wherein it is mentioned that no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till execution of the Project without approval of the Govt.”

and that,

“The above referred guidelines are applicable on the projects approved by HAREDA for providing waivers as per amended Haryana Solar Power Policy-2016 and not applicable on other solar projects even set up in the approved solar parks (copy of the above guidelines is attached for reference).”

- (i) In regard to the aforesaid, it is submitted that para xii of the in principle feasibility issued to the Appellant dated 06.05.2019 specifically stated that *“the clarification given by HAREDA vide letter dated 18.04.2019 which was email to you on dated 23.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility/connectivity to solar power projects and shall be adhered by you.”* If the aforesaid guidelines dated 08.03.2019 were not applicable to the Appellant, there was no occasion or reason to make the aforesaid provision in the said in-principle feasibility.
- (j) Assuming without admitting that the Appellant’s contention is correct, then also the aforesaid guidelines shall still apply on to the Appellant since the Appellant submitted its application for setting up of the solar project on 21.08.2018.
- (k) The reliance placed by the Appellant to HAREDA’s Communication dated 11.12.2020 is misconceived as firstly, the said communication was issued in respect of a different generator i.e. LR Energy whose facts and circumstances are different from the Appellant. Secondly, it is noteworthy that HAREDA never issued any such communication in respect of

the Appellant despite the fact that HAREDA was present during the hearing before the Commission in respect of the Appellant. Even otherwise if the communication of HAREDA is to be considered in the instant matter, the Appellant is still in breach of other terms of Policy/Guidelines (like change in shareholding more than 26 %) besides misrepresentation to secure connectivity.

184. Without prejudice to the fact that Para 4.16 of the Solar Policy read along with the guidelines dated 08.03.2019 is applicable to the Appellant and the Appellant is non-complaint with the same, it is important to clarify that the Connectivity has been denied to the Appellant for several other reasons as well which are discussed in subsequent paragraphs of these submission including but not limited to non -compliance with HAREDA's registration and the in-principal and final approval.

B. Appellant is not entitled to Connectivity, therefore the Connection Agreement cannot be executed with them

Re: Conduct of the Appellant reeks of concealment of material facts and misrepresentation

185. The Appellant itself has been challenging the very provisions of the Connection Agreement that the Appellant seeks to execute, pursuant to which it seeks to get physical connectivity.

186. Consistent failure of Appellant to produce complete information/ documents to ascertain compliance of various terms and conditions of approvals and the Solar Policy. Despite specific directions by the State Commission to share its shareholding since the Appellant's application for connectivity dated 05.06.2018, the Appellant only furnished shareholding pattern as existed on 20.08.2019 and 29.11.2019 by its written submissions dated 10.09.2020 filed before Commission. (Requisition for documents made vide letters dated 08.06.2020, 11.07.2020, 24.07.2020 and 29.07.2020 and even by Commission in its interim orders).
187. Appellant has committed fraud by concealing that it does not have sufficient land to erect its Project to its 20MW capacity. The same is also reflected upon a simple comparison of the land arranged by similarly placed developers vis-a vis project capacity (*Refer para 13 -14 of Impugned order and para 13 (b)(ii) to (v) and para 13 (e) of reply*).
188. The Appellant is in gross violation of condition no.5 of HAREDA's registration dated 22.08.2020 which mandated that the Appellant shall not split (i.e. part commission) the project, which in the instant case, the Appellant has done by consuming 90% of the land for setting 10.72 MW solar plant.
189. The Appellant has now admitted in the Written Submission filed before this Tribunal that additional land of 21 acres have been arranged which inter alia may be required in case of change in configuration. The Appellant has indeed changed the project configuration and installed panels of 330 W to 340 W capacity

against the proposed high efficiency module of 400 W panels (as was undertaken by the Appellant for obtaining final connectivity vide letter dated 14.06.2019 in order to enable Commissioning of 20 MW project on the initial parcel of about 52 acres of land. The project layout prepared and submitted by the Appellant to CEI, Haryana, which was subsequently approved by CEI, Haryana clearly indicates that the Appellant envisaged a plant with DC:AC ratio of 1.4:1. Needless to say that the AC capacity is linked with inverters and DC with solar panels. The Appellant is trying to mislead this Tribunal in a feeble attempt to justify that the 52 acres of land is suitable for its 20 MW project by using panels ranging from 330 W to 340 W instead of 400 W. It is submitted that with DC:AC ratio of 1.4:1, it is not physically possible to install the project on 52 acres of land.

190. HVPNL Guidelines required the Appellant to demonstrate ownership or long-term lease rights of 100% of the land required for installation for the capacity applied. This was required to be demonstrated within 90 days from the date of in-principle feasibility issued by HVPNL. Since, the Appellant was not able to demonstrate the aforesaid requirement; it chose to make a false undertaking dated 14.06.2019. This led to issuance of final connectivity to the Appellant, which for deficiency in land could not have been issued.

191. Appellant deliberately concealed from the Commission that it had applied to HAREDA not once, but twice i.e. on 21.08.2018 and the contention of Appellant that its earlier Application for registration was returned by HAREDA is factually incorrect and amounts to

another misrepresentation as HAREDA by the letter dated 14.12.2018 had only returned the bank guarantee (BG) submitted by the Appellant (and not the application). This factum is fortified by HAREDA's letter dated 15.02.2019 that also referred to Appellant's earlier application.

Re: Business model adopted by the Appellant

192. As per Regulation 6(3) of the Connectivity Regulations (*reiterated at Para 15(a) of the reply*), the Appellant was required to disclose the nature of solar power plant it intended to set up as well as the details of injection and the drawl points and of the captive users. However, all such details were conspicuously missing from Appellant's application for connectivity dated 05.06.2018. It is apparent that the said application was so filed by the Appellant with incomplete details merely to secure seniority in the list of applicants for priority in grant of connectivity considering that connectivity is granted on first come first serve basis in accordance with Para II E. of HVPNL Guidelines.

193. These missing details including that of the captive user were later on provided by the Appellant only on 14.01.2020 in another application for connectivity, which was surreptitiously filed basis the connectivity application dated 05.06.2018 (maintaining seniority). This demonstrates that it was only after after securing all approvals and benefits, that the Appellant lured investors as well as captive user for the Project leveraging the approvals.

194. Pertinently, it was on the basis of the application dated 05.06.2018 that final connectivity dated 12.09.2019 was issued by HVPNL to the Appellant. Likewise, HAREDA's registration dated 22.08.2019 was also issued basis the aforesaid connectivity application dated 05.06.2018.

195. The above-stated conduct of the Appellant reveals its business model. Since the connectivity is issued on First Cum-first serve basis as per HVPNL' Guidelines, the entire model of the Appellant is to secure seniority in the queue amongst various applicants/developers intending to set up their power plant. This is evident from the fact that when the LTOA application was made on 05.06.2018, the Appellant secured its position in queue and presented itself as a group company of Sunsure Energy Pvt. Ltd. However, after securing in-principle approval, it sold its approvals to Cleantech Solar Group.

196. Similar model adopted by Appellant through various other shell companies:

- (a) M/s Greenyana Power Pvt. Ltd another company with same promoters and a group company of Sunsure Energy Pvt. Ltd. secured in-principle approval for connectivity for another 20 MW solar power project in District Bhiwani by virtue of its application considered on first come first serve basis and later sold out all its shareholding to Cleantech Solar Group for commercial gains.

(b) M/s Greenyana Sunstream Pvt. Ltd, a third company with the same promoters and a group company of Sunsure Energy Pvt. Ltd. secured in-principle approval for connectivity for another 10 MW solar power project in District Sirsa by virtue of its application considered on first come first serve basis and later sold all its shareholding to ReNew Solar Energy Pvt. Ltd for undue commercial gains.

197. The Appellant's above conduct and business model is nothing but gaming with respect to the benefits available under the Solar Policy, which for the reasons mentioned above is impermissible.

Re: Shareholding changes of the Appellant in breach of solar policy:

198. As appreciated by the Commission in the Impugned Order, the shareholding of the Appellant had undergone several changes in breach of the solar policy.

- i. The Appellant was incorporated on 26.04.2018 by Sh. Manish Mehta and Sh. Shantanu Faugaat with each having equity share holding of 50 %.
- ii. The shareholding information as on 05.06.2018 i.e. the date of LTOA application has not been shared by the Appellant despite been requested on several occasions as discussed above.

Hence, we have to presume that the shareholding was held 50% each by Sh. Manish Mehta and Sh. Shantanu Faugaat.

- iii. The shareholding information as on 21.08.2018 i.e. the date of earlier application made to HAREDA by the Appellant for setting up the solar plant has not been shared by the Appellant.
- iv. On 20.08.2019 i.e. the the date of application to HAREDA for registration, the shareholding of the Appellant changed to M/s Cleantech Solar Energy (India) Pvt. Ltd holding 73.528%, Exide industries holding 26.471% and Shri Prashant Dhanraj Kothari holding 0.001%.

199. Thus, it is apparent that from the date of first Connectivity Application dated 05.06.2018 to till date when the project is admittedly not completed yet, the shareholding of the Appellant's project has undergone several changes qua the requirement of 51% to be held by leading shareholder and the restriction on change in lead shareholder. Even if Appellant's arguments are accepted and 21.08.2019 is taken as the cut off date then also Appellant is in non-compliance of the above conditions prescribed in the Solar Policy and HAREDA's Guidelines.

200. Accordingly, the application deserves to be rejected as the Appellant is clearly in breach of the Solar policy read with HAREDA's Guidelines, in-principle feasibility dated 06.05.2019 and final connectivity dated 12.09.2019.

C. Purchase of power by Respondents from Amplus Sun Solution

201. It is submitted that the Purchase of power by Respondents from Amplus Sun Solution is being made for meeting its Renewable purchase obligations wherein the source is being approved by the Commission and tariff will also be determined by the Commission under Section 86. Thus, there is transparency and independence in the process. Similar offer was made to all similarly placed generators including the Appellant. However, the Appellant falsely contends that the Respondent coerced the Appellant to sell electricity to Respondent. Rather the Respondents have been always insisting on compliance with conditions of policy and guidelines. Reference is made to email dated 04.09.2020 issued by the answering Respondents to the Appellant recording the discussions that were made on 03.09.2020.

D. Issue of connectivity is intrinsically related to solar policy and HAREDA guidelines and the Appellant is bound to comply with the same

202. The Appellant is wrongly contending that the issue of connectivity is unrelated to solar policy and HAREDA guidelines. It is submitted that connectivity is an integral part of the package of benefits and conditions prescribed under the Solar Policy and connectivity has to be examined in conjunction with the Solar Policy and HAREDA Guidelines. In the aforesaid context, it would be useful to understand that the benefits given under the Solar Policy are a single package, having various components. It is necessary for

availing these benefits that conditions prescribed therein are scrupulously complied with. One of the most important facet of setting up of a power plant is connectivity and execution of connection agreement, without which a power plant cannot be operationalized. If a power plant is being set up under the Solar Policy and if it is required to demonstrate compliance of the conditions prescribed therein and if notwithstanding a developer's failure to demonstrate such compliance, connectivity is granted and connection agreement is executed, no useful purpose would be served in imposing the above conditions.

203. The Appellant had an option to either set up its power plant pursuant to and under the provisions of the Solar Policy or outside the Solar Policy. Appellant opted the later route, availed all benefits and thus is bound to follow this route till the point all conditions and/or restrictions imposed under the Solar Policy read with HAREDA and HVPNL guidelines are complied with.

204. These conditions and their compliances would also ensure that captive solar power plants are in fact set-up for self-use as against commercial generation of electricity and no trading in benefits of the Solar Policy and permissions/sanctions issued are sold out within the lock in period prescribed in par 4.16 of the Solar Policy and HAREDA's guidelines dated 08.03.2019 for undue commercial gains.

205. It is a settled principle of law that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of

that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it. [Refer –Beepathumma & Ors. vs. V.S. Kadambolithaya & Ors., 1964 (5) SCR 836 (*para 17*), Bihar Biri Leaves Co. v. State of Bihar, 1981 (1) SCC 537 (*para 48*), Bharti Cellular Ltd. v. Union of India, 2010 (10) SCC 174 (*para 8*).

206. Further, when a policy/notification provides certain exemptions, it is necessary that qualifications prescribed therein are satisfied, without which no exemptions of such policy/notification can be availed.(Refer:*BhaiJaspal Singh v. CCT, (2011) 1 SCC 39 -para 26, CCE v. Mahaan Dairies [CCE v. Mahaan Dairies, (2004) 11 SCC 798 – para 8, Essar Steel India Ltd. v. State of Gujarat, (2017) 8 SCC 357- para 20*)

207. Time and again the Courts have held that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

E. Dichotomy between Conditions prescribed in the Solar Policy read with HAREDA guidelines/clarification, in principle feasibility and final connectivity and Determination of Captive Status Rule 3 of the Electricity Rules

208. It is admitted that adjudging captive status of the Appellant's power plant for the purposes of availing exemptions from CSS/AS shall have to be done in the manner prescribed under Rule 3 of the

Electricity Rules, 2005. However, the answering Respondents are well within their rights to assess the lock in status of 26% shareholding of proposed captive user(s) and shareholding of lead shareholder for the purposes of ascertaining compliance with inter alia the Solar Policy and Guidelines dated 08.03.2019. These standard conditions have been incorporated in the in-principal approval (Clause xi and Xiii) as well as in the Tripartite Connection agreements already executed/to be executed by HVPNL and answering Respondents with developers of Solar Power Projects (Clause 3 read with clause 1.3).

209. It is submitted that the benefits given under the Solar Policy are in addition to the statutory benefits given to captive generators under the Electricity Act, 2003. There is no conflict between the Solar Policy and the Electricity Act, 2003. Thus, the Solar Policy read with HAREDA guidelines/clarifications are well within the limits of law to prescribe additional qualifications/conditions and procedure for processing applications like that of the Appellant. It is submitted that in order to avail benefit of any exemption, an applicant must satisfy the conditions precedent and qualifications to grant of such exemptions.

210. The conduct of the Appellant to secure approvals by misrepresentation has deprived the other genuine users/generators from securing the approvals for their projects..

F. Allegations of Institutional Bias

211. All allegations of bias as contended by the Appellant are baseless and un-corroborated. A bare perusal of the Impugned Order would reveal that the Commission has correctly applied itself to the relevant facts and extant provisions of the Solar Policy, HAREDA's Guidelines and Law to reach the finding mentioned therein. The same is evident from a brief of the findings of the Commission as submitted in the preceding paragraphs.

G. Condition incorporated in the In-Principle Feasibility granted to the Appellant restricting the quantum of power to be drawn at the consumer end to be limited to its contract demand during any time of the day and the restriction placed in the final connectivity on capacity for which agreement can be entered into by open access consumers with the generators to be limited to their respective contract demands

212. It is submitted that these conditions are in line with the Regulation 24, 42, 43 and 45 of OA regulations which provide a penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc. The Commission has allowed for a stringent levy of demand surcharge of 25% in cases where the consumer exceeds his contract demand by 5%.

213. Reliance placed by Appellant on Regulation 8 of the OA regulation or its proviso is misconceived and not applicable herein. The Clause (1) of Regulation 8 deals with "*Entitlement and other conditions to open access*" and lays down that any licensee, Generating plant or a person other than consumer of the

distribution licensee, connected at 11 KV or above and who has a capacity/maximum demand of 1 MW and above, shall be entitled for availing open access. The proviso to Regulation 8 Clause (1) merely stipulates that the entitlement criteria as prescribed in clause (1) (i.e. pertaining to having a capacity/ Maximum demand of 1MW) shall not be applicable to non-conventional / renewable energy sources for availing open access. This proviso does not mean that there can be no restriction on quantum of open access or that drawl by an embedded open access consumer can be allowed to exceed its contract demand. Also, clause (1) of Regulation 8 has been made subject to other provisions of the OA Regulations.

H. Restrictions in tripartite banking agreement regarding restriction on injection of power to contracted capacity

214. In order to avail the banking facility, the Appellant has to necessarily enter into the banking agreement with the DISCOMs specifying the terms as approved by this Commission being, inter alia, that any over-injection of power beyond the contract demand will be treated as dumped energy. Reliance in this regard is placed on judgment dated 13.05.2019 passed by this Commission in PRO 22 of 2019 where the Commission laid down the procedure/guidelines for banking of energy from RE Projects which clearly mandates in Clause D (xiv) that *“Any solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.”*

215. The said restriction on drawl of power upto the contract demand is imperative to ensure that the electricity is not dumped and the RE power is optimally utilized.

I. Loss of Generation alleged to be suffered by the Appellant

216. It is submitted that the answering Respondents are not liable for any alleged losses occurred to the Appellant on account of non-signing of the Connection Agreement. Delay, if any, for the same is caused due to Appellant's non-compliance of the requirements under the Solar Policy and his reluctance in sharing the documents with the answering Respondents. In this regard reference is drawn to the minutes of the coordination committee, letter written to the Appellant by the Appellant and Appellant response that it has already supplied all documents and has nothing more to give. Similar conduct was displayed by the Appellant in the present proceedings. In fact, even the shareholding pattern that is now available from 20.08.2020 and changes was placed on record of the Commission only towards the conclusion of the proceedings after repeated submissions made by the answering Respondents and directions of the Commission.

217. Additionally, it is noteworthy that the Appellant itself has been challenging the very provisions of the Connection Agreement that seeks to execute. Thus, it is difficult to fathom how is that the Appellant is blaming the answering Respondents for non-execution of the connection agreements or for the alleged loss of generation in this background.

218. Further, it is also relevant to note that admittedly, the Appellant's project is not fully complete yet. The Appellant never bothered to follow the agreed process and sought relief even without full commissioning the project. The Appellant has failed to demonstrate compliance of requirement under the Policy/Guidelines/approvals. Thus, there is no question of any loss to the Appellant as erroneously alleged. The Appellant cannot be allowed to approbate and reprobate on issues as per their own convenience.

219. In any case, it is submitted that award of compensation/damages for the alleged loss require leading of evidence to prove actual loss. This is not possible in the present appeal. The position of law is very clear, that the party claiming compensation or damages is liable to plead and prove the actual loss or damages suffered on account of breach by the other party. In the present case, Appellant has failed to do so. Thus in any case, the relief of compensation so claimed by the Appellant is devoid of any merit.

220. In light of the above-mentioned submission, it is respectfully submitted that this Tribunal may be pleased to dismiss the present Appeal for being devoid of any merit.

Finding and Analysis

221. Having heard the Appellant, Respondents, having gone through the written submissions filed by counsel on both sides, the material/ documents and the impugned order dated 24.09.2020 passed by the State Commission in Case No. HERC/PRO-23 of

2020, our observations on the issues raised in the appeal are given in subsequent paragraphs.

222. On 14.03.2016, the Renewable Energy Department of the State Government released Haryana Solar Power Policy, 2016 (*Solar Policy*). This Solar Policy enumerated certain promotional benefits to be given to the solar projects. The Renewable Energy Department of the State Government thereafter released two addendums to the said Solar Policy on 19.05.2016 and 23.06.2017. In terms of Clause 6.3 of the Solar Policy, HAREDA is the nodal agency for implementation of the Solar Policy.

223. The Clause 4.16 of the Solar Policy, *inter-alia*, read as under:

“4.16 Minimum Equity to be held by the Promoter

The project developer may be individual/company/firm/group of companies or a Joint venture/Consortium of maximum 4 partners having minimum 51% shareholding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. This shall not be applicable to the Solar Power Projects developed by the public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. ...”

224. On 24.07.2018, the State Commission formulated the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (*RE Regulations*) and defined a control period from FY 2017-18 to FY 2020-21 for implementation of the said Regulations.
225. The RE Regulations provided for the terms and conditions in relation to supply of power by solar projects to the Distribution Licensees, and also where the solar projects were to supply power through open access. The RE Regulations provided for **HVPN**, being the State Transmission Utility, to be the nodal agency, and further provided for registration of projects with **HAREDA**, and that connectivity would only be granted to those projects which are **registered with HAREDA**.
226. On 05.06.2018, the Appellant applied for connectivity to HVPN for its solar plant and 132 kV substation at Kurangawali at 33 kV voltage level for the purpose of captive supply of electricity from its 20 MW solar project. This application for connectivity was made by the Appellant under Regulation 2 read with Regulation 6 of the Connectivity Regulations.
227. On 21.08.2018, the Appellant applied for registration of the project with HAREDA which was not considered and no registration was granted.
228. On 15.10.2018, the Appellant again applied for registration with HAREDA and had sent certain documents, including a bank

guarantee. However, even this application of the Appellant, along with the documents, including the bank guarantee was returned by HAREDA on 14.12.2018 for the reason that the guidelines are yet to be finalised.

229. On 20.08.2019, the Appellant again applied for registration with HAREDA and the same was approved by HAREDA on 22.08.2019.

230. In March, 2019 HVPN issued 'Final Guidelines regarding connectivity to solar power projects' under the RE Regulations, under which the generators were asked to submit an undertaking clearly specifying the nature of the project. The Appellant on 15.03.2019 submitted an undertaking in terms of the final guidelines mentioning the status of its power plant as '*Captive*'.

231. The Final Guidelines further provided that the applications for connectivity shall be processed in two stages viz. In-Principle Feasibility and the Final Connectivity, and had also enumerated the procedure for each stage thereof. The Final Guidelines also provided for submission of the following documents by the generator as a condition precedent for grant of Final Connectivity. The relevant extract from the Final Guidelines, *inter-alia*, reads as under:

"II. Out of the applications available with HVPNL, HVPN will grant connectivity to the generators as per procedure as under:

A. Applications for Connectivity shall be processed in two stages i.e.

- (i) In-Principle Feasibility and*
- (ii) Final Connectivity by HVPNL.*

.....
C. Final Connectivity:

The applicant shall have to broadly submit the following documents within 90 days of the letter of issue of in-principle feasibility for assessing the technical and financial eligibility of the applicant.

i) Proof of ownership or Long Term lease rights or land use rights for 100% of the land required for the capacity applied

ii) Achievement of financial closure (with copy of sanction letter and CA certification). Sanction letter from financial institution to be submitted as proof of financial closure

iii) Submission of the Bank Guarantee from a scheduled bank in favour of HVPNL...

On receiving and scrutiny of the above said documents, if found eligible, letter of final connectivity will be issued to the applicants.

The applicant who has been given In-Principle Feasibility, if fails to submit the required documents for final connectivity within 90 days from letter of issue of In-Principle Feasibility along with the above documents complete in all respects, the in-principle feasibility shall stand cancelled along with other legal penal actions like blacklisting and next applicant will be considered for grant of connectivity.

D. After Final Connectivity, the applicant shall sign the Connection Agreement and the LTOA within 30 days of issue of final connectivity. No extension of time shall be granted

and in case of failure to sign the Agreement, this Final Connectivity shall be cancelled and the BG shall be forfeited.

.....
.....”

232. On 06.05.2019, HVPN granted In-Principle Connectivity Approval for the Solar Power Plant of the Appellant on the basis of the above guidelines.

233. On 12.09.2019, HVPN granted Final Connectivity Approval for the Solar Power Plant of the Appellant on the basis of the above guidelines.

234. In view of the chronology of events as given in the presiding paragraphs starting from the first application filed by the Appellant on 05.06.2018 for seeking connectivity for its 20 MW Solar Power Plant, registration with HAREDA under the Solar Policy 2016 and subsequent grant of In-Principle/ Final Connectivity Approvals, it is apparent that the Appellant applied for permission/approvals for setting up of the Captive Solar Plant and registered itself with HAREDA under Haryana Solar Policy 2016 read with HAREDA Guidelines/Clarifications. It is also apparent that the provisions of the said policy, HAREDA's guidelines/clarifications and HVPNL's guidelines were within the Appellant's knowledge.

235. It is a matter of record that Haryana Solar Policy, 2016 (“Solar Policy”) granted certain benefits to developers of Ground mounted and Roof Top Solar Power Projects including price preference, exemption of electricity duty, electricity taxes & cess, all incentives

available to an industry under Industrial Policy, banking of electricity, exemption from land use approval, EDC, scrutiny fee, exemption from environment clearance, exemption from environment clearance and clearance from forest, exemption from stamp duty for lease/purchase of lands and commercial utilization of unutilized space of the project etc.

236. It is emanating from the Appellant's LTOA application for connectivity dated 05.06.2018, that it initially applied for setting up of a solar power plant without specifying whether the plant shall be an IPP or a captive power plant category. It is not in dispute that the Appellant intended to avail benefits of the Solar Policy and did in fact avail these benefits. Accordingly, the Appellant's application is required to be tested against and processed according to the said solar policy and guidelines/clarifications issued in this regard. The Appellant's case to the effect that its captive status shall have to be judged at the end of each financial year after commencement of operations begets a question – whether such status is being judged for the purposes of availing exemptions of CSS/AS under the Electricity Act, 2003 or at present only lock in status of 26% shareholding of proposed captive user(s) is being checked for the purposes of availing benefits/exemptions under the Solar Policy.

237. The State Commission has opined that adjudging captive status of the Appellant's power plant for the purposes of availing exemptions from CSS/AS shall have to be done in the manner prescribed under Rule 3 of the Electricity Rules, 2005. However,

the Respondents are well within their rights to assess the lock in status of 26% shareholding of proposed captive user(s) for the purpose of ascertaining compliance with inter alia the Solar Policy and Guidelines dated 08.03.2019.

238. The Counsel for Discoms, based on the provisions of Solar Policy and HAREDA's guidelines/clarification etc., has contended that standard conditions for approval of in-principle feasibility granted by HVPNL to developers of Solar Power Projects like the Appellant prescribe the following conditions:-

- (i) Clause xi: The clarifications given by HAREDA vide letter dated 18.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility/connectivity to solar power projects and shall be adhered.

- (ii) Clause xiii: The developer shall fulfil all terms and conditions of the Electricity Rules, 2005 as required for Captive Generation plants and its amendments from time to time and Electricity Act, 2003.

Discoms have pointed out that all of the aforesaid provisions were incorporated by reference, in all tripartite Connection Agreements executed by HVPNL and Discoms with developers of Solar Power Project. In fact, Clause 3 read with clause 1.3 of the Connection agreement specifically requires such developers including the Appellant to comply with all obligations set-out in the letter of in-principle approval.

239. In view of the above, it is necessary to analyse the Solar policy and guidelines issued by HAREDA and discern the conditions governing registration by HAREDA, guidelines and grant of approvals for in-principle feasibility and final connectivity and execution of connection agreement by HVPNL. These conditions are to be seen in the context of the solar developers being eligible to avail benefits of the Solar Policy as against statutory benefits granted under the Electricity Act, 2003 read with the Electricity Rules. If a developer would satisfy these conditions, only then it will be eligible for the benefits and complete the process commenced for the purpose which culminate at the grant of final connectivity and execution of connection agreement.

240. Solar Policy and HAREDA's guidelines/clarifications reveal that para 4.16 of the Solar Policy stipulates the following conditions to be adhered to by the Project Developer for deriving benefits thereunder:

- (a) There should be Maximum 4 partners
- (b) Minimum 51% Shareholding be held by leading partner
- (c) No change in the leading shareholder, developing the Solar power Project from the date of application till one year of execution of the project.
- (d) Thereafter any change in the leading shareholder may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be.

241. HAREDA in its guidelines dated 08.03.2019 and clarification on procedure/guidelines for approval of MW scale solar power projects and final guidelines for providing connectivity to solar power plant dated 18.04.2019 provided that no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till the execution of the Project without approval of the Govt.

242. The State Commission has observed that the object of the aforesaid seems to be very clear that the developers should not set up a project merely for profiteering by way of availing benefits granted under the Solar Policy and exit the project before or after taking all permissions including execution of connection agreement. These provisions require a developer to be invested in the project and are aimed at discouraging non-serious/dummy/shell companies/investors from applying to HAREDA/HVPSNL for connectivity. The counsel for the Discoms has correctly argued that this provision has been made to prevent trading of permissions/sanctions and benefits that an applicant may obtain under the Solar Policy.

243. We note that the above shall have to be seen in the context that benefits given under the Solar Policy are in addition to the statutory benefits given to captive generators under the Electricity Act, 2003. The counsel for Discoms has rightly argued that in order to avail benefit of any exemption, an applicant must satisfy the conditions precedent and qualifications to grant of such exemptions.

244. We note the finding of the State Commission that it is an admitted position that the Appellant has made an application to HAREDA to set up a captive solar power plant and avail the benefits as provided under the solar policy. In view thereof, the Appellant cannot now escape from the rigors of the Solar Policy as well as HAREDA/HVPNL's guidelines/clarification by contending that it is not required to demonstrate its captive status at this stage, as prescribed therein.

245. **We agree** that once, the Appellant has applied to HAREDA expressing its intention to set up a captive solar power plant and to claim exceptions under the Policy, the Appellant is bound to comply by such terms and conditions of the guidelines and various approvals granted to it and its application shall have to be processed strictly in terms of the guidelines issued by HAREDA.

246. We note that the State Commission at para No. 34 & 35 of order has recorded as under:

“34. At this stage, the dichotomy between benefits/exemptions under the Solar Policy read with the above guidelines/clarifications and benefits/exemptions provisions of the Electricity Act, 2003 is to be remembered and applied to the facts of this case. The Petitioner seems to have clearly confused the distinction and seeks to apply the same test for availing benefits/exemptions under the Solar Policy as

well as Electricity Act, 2003. This Commission cannot permit the Petitioner to do so as there is no conflict between the Solar Policy and the Electricity Act, 2003. The Solar Policy extends different/distinct rather additional benefits to captive solar power generators, which the State Government is legally competent to do, and the Electricity Act, 2003 has extended entirely different set of benefits in the form of waiver of Cross Subsidy Surcharge and Additional Surcharge for captive solar plants, including the Petitioner. Therefore, the Solar Policy read with HAREDA guidelines/clarifications are well within the limits of law to prescribe additional qualifications/conditions and procedure for processing applications like that of the Petitioner.

35. The Petitioner cannot contend that it wants to set up a solar power plant availing benefits of the Solar Policy, but would not satisfy the eligibility/qualification conditions or procedural conditions mentioned therein.”

247. We note the insistence of the DISCOMS to satisfy the requirements of demonstrating lock-in on shareholding of lead shareholder as prescribed in para 4.16 of the solar policy and lock in of 26% shareholding of captive users prescribed in Guidelines dated 08.03.2019 and other such conditions before signing the connection agreement for becoming eligible for the special exemptions is correctly borne out of the aforesaid

provisions of the Haryana Solar Policy and the guidelines issued by HAREDA/HVPNL and is correct in law. The Appellant cannot be allowed to ignore these provisions.

248. **We agree** with the State Commission that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible. Therefore, the Appellant is bound to comply with mandate of the Solar Policy read with the aforesaid guidelines of HAREDA, HVPNL, in principle feasibility and final connectivity granted by HVPNL.

249. The Appellant had an option to either set up its power plant pursuant to and under the provisions of the Solar Policy or outside the Solar Policy. The Appellant after having once 'elected' the Solar Policy route, shall have to follow the said route till the very end of the road i.e. till the point all conditions and/or restrictions imposed under the Solar Policy read with HAREDA's and HVPNL guidelines are complied with and exhausted. All consequences of making said choice including benefits and burdens thereof shall have to be borne by the Appellant. Therefore, the Appellant's contention that the issue of connectivity and the captive conditions to be fulfilled have no correlation as per the provisions of the Solar Policy, cannot be accepted. The Appellant cannot be allowed to avail all the benefits of the policy and escape from the obligations arising thereunder.

250. Considering the law laid down in the above judgments, we are of the opinion that the Appellant is required to satisfy all of the conditions including restrictions on transfer of its shareholding and

demonstration of captive status. Thus, it is necessary for the Appellant to satisfy prescribed qualification requirements of being captive – to the extent of its shareholding pattern and identification of captive users before signing of the connection agreement. Discoms have correctly argued that such qualification requirements were made to ensure that artificial structures merely for availing benefits of the solar policy are not created. This would also ensure captive solar power plants are in fact set-up for self-use as against commercial generation of electricity and no trading in benefits of the solar policy and permissions/sanctions issued are commercially traded within the lock in period prescribed in par 4.16 of the Solar Policy and HAREDA's guidelines dated 08.03.2019.

251. The Respondent DISCOM has relied on the judgment in the case of Premium Granites and Ors. v State of Tamil Nadu and Ors. AIR 1994 SC 2233 relied on by the Respondent DISCOMs, the Hon'ble Supreme Court held that Courts/ quasi -judicial bodies should refrain from interfering in policy matters, which fall into the realm of the State/Executive. In the present case, if the reliefs sought by the Appellant on the issue under consideration is granted, the same would tantamount to interfering with the terms and conditions of the Solar policy read with HAREDA guidelines/clarification, which as mentioned above fall within the domain of the State. Thus, for this reason also, no interference in the conditions required to be complied with is called for.

252. The Appellant after having applied for setting up the project under the Solar Policy and after having registered with HAREDA for the same purpose and after obtaining in-principle feasibility and final

approval, the Appellant is estopped from contending that it is not required to satisfy the conditions mentioned in the Solar Policy read with HAREDA guidelines/clarification and the aforesaid approvals.

253. The Solar Policy has prescribed a lock in period of one year post completion of the project on shareholding pattern of a developer Company. Thus, if a developer, who has applied for permissions to set up a plant under captive category does not identify captive users and accordingly does not structure its shareholding pattern at the outset, such project would not qualify for a captive status even under the method prescribed in Rule 3 of the Electricity Rules, 2005 at the end of the first financial year of operation. If such a situation arises later, the entire exercise of granting permissions and connectivity with benefits under the Solar Policy would be rendered otiose. Thus, the Appellant from this perspective also is required to demonstrate its shareholding pattern specifically its shareholding of proposed captive users. This is a pre-requisite for the aforementioned reasons.

254. It is the case of the Appellant that clause 4.16 of the Solar Policy, 2016 is not applicable in his case and the Appellant as such is not in violation of the same. The Appellant has submitted that the Solar Policy mandates a bidding process for procurement of power by Distribution Licensees from these solar projects. One of the conditions to be followed by the bidders is in relation to disclosure of information about the promoters and their shareholding in the generator during the bidding process and a subsequent condition on the said promoters to not cede their majority shareholding of the said generator who would supply electricity to the Distribution

Licensee. The Appellant has submitted that he has set up the project for captive consumption, in which case there is no obligation on the Appellant to disclose details of its promoters and their shareholding in the Appellant since there is no bidding whatsoever in such cases. Consequently, there is no obligation whatsoever on the Appellant regarding change of its shareholding under the solar Policy. Therefore, Clause 4.16, on its plain and simple terms, has no application to the case of the Appellant as there is no bidding process.

The State Commission has examined this submission of the Appellant and has opined that the argument of the Appellant does not hold any merit because the later part of the para 4.16 clearly refers to an application which is submitted by the developer in developing the solar power project. This would include all project developers taking benefit by getting register under the Solar Policy.

255. The Appellant's reference to the term 'bid document' used in para 4.16 of the Solar Policy to contend that the same governs operation of para 4.16 is incorrect and this submission is made overlooking the part of the said para 4.6 which mandates that 'no change in leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of their project.'

256. Another dispute has been raised by the parties that the term "application" as used in para 4.16 of the solar policy refers to which application. The Appellant contends that it is the date of application

made to HAREDA for registration of project. The Respondents contend that it refers to the first application/proposal which a project developer makes to the concerned utility for setting up of the Project i.e. the LTOA application for connectivity made to HVPNL by the Appellant. The Commission finds force in the argument of the Respondent that for the purpose of grant of “Connectivity” / execution of connection agreement by ensuring compliance of the conditions of the Solar Policy, it is necessary that the first application made by Generator which in the present case is application for LTOA for Connectivity must be seen for the purposes of reckoning compliance of Para 4.16 of the Solar Policy. The Commission notes that as per the HVPNL Guidelines dated 19.03.2019, there is a queue formed for issuance of in-principle feasibility for grant of connectivity to the Generators on “first come first serve basis”. In this background, it is necessary to ensure that the Solar Project Developers who are granted HAREDA Registration and subsequent Connectivity satisfy the conditions mentioned in para 4.16 - no change in their shareholding and shareholding pattern as well as identification of captive users criteria for being captive at the time of making the LTOA application.

257. On perusal of the Appellant’s LTOA application dated 05.06.2018, it appears that the Appellant had not decided on whether it would be a captive plant or an IPP solar generator. The information about the captive user was provided for the first time by way of the LTOA application of the Appellant dated 14.01.2020 submitted with HVPNL. Therefore, it can be concluded that the Appellant took benefit of Solar Policy and secured seniority in the list of applicants for a priority for grant of LTOA as well without there being any actual

captive users until 14.01.2020. The Respondents rightly pointed that if connectivity to the Appellant is to be processed based on the aforesaid LTOA application dated 14.01.2020, the Appellant would have lost its seniority and the project would not even be entitled for grant of in principle feasibility, to start with. As already noted in preceding paras, because of the seniority accorded to the Appellant basis its LTOA application for connectivity dated 05.06.2018, another solar project developer i.e. AMP Solar Park Private Limited could only get in principle feasibility for 30 MW against an application for 50MW. Thus, the conduct of the Appellant also amounts to squatting on the scarce capacity available at the sub-station concerned.

258. In the given facts and circumstances, it emerges that for the purpose of reckoning compliance of para 4.16 of the Solar policy and the subsequent guidelines, the LTOA application of the Appellant for connectivity dated 05.06.2018 would have to be considered.

259. A similar objection has been raised by the Appellant regarding applicability of HAREDA's Guidelines dated 08.03.2019 read with clarification thereof dated 18.04.2019. The Appellant has argued that HAREDA's guidelines dated 08.03.2019 are not applicable to them since the same only apply to those developers who have submitted their application before 13.02.2018 to HAREDA and the Appellant had submitted its application only thereafter i.e. on 20.08.2019. The Guidelines dated 08.03.2019 read as follows:-

“Guidelines for

**Approval of Solar Power Projects by
Haryana Renewable Energy Development Agency (HAREDA)
(New & Renewable Energy Department Haryana)**

It is for the information to all the Solar Project Developers who have submitted solar projects proposals for approval before 13.02.2019 to Haryana Renewable Energy Development Agency (HAREDA) for registration of projects for proving the exemptions as per Haryana Solar Policy 2016.

Now it has been decided by the Council of Ministers, Haryana in its meetings held on 13.02.2019 & 08.03.2019 that Wheeling and Transmission Charges will be exempted for ten years from the time of commissioning for all Captive Solar Power Projects which have submitted applications to HAREDA /or registration of project, purchased land or have taken land on lease for thirty years and have bought equipment & machinery or invested at least Rs. One Crore per MW, for purchase of equipment & machinery, for setting up of such Captive Solar Power Projects, till 13thFebruary, 2019. In view of the decision of the Council of Ministers, Haryana, the solar power projects with following criteria will be approved by the Haryana Renewable Energy Development Agency (HAREDA) for availing exemptions provided under Haryana Solar Policy 2016:

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260. Bare reading of the above-mentioned Guidelines dt. 8.03.2019 make it abundantly clear that the same are applicable to Solar Power developers in general and not restricted to the 13 applicants

as claimed by the Appellant. It is only that one of the paras conveys extra benefits/concession in the form of exemption from payment of wheeling and transmission charges for ten years from the date of their commissioning to those developers who had submitted their application before 13.02.2019 and met certain additional criteria laid therein. The third para of the said Guidelines further substantiates there is no such restriction on applicability. If the intention had been to restrict the operation of these Guidelines only to those developers who had applied before 13.02.2019, then the third para of the said Guidelines would have specifically so stated. The Guidelines mentioned in third para nowhere restrict operation thereof. Moreover, the Appellant was one of the applicants who had submitted its application before the cut-off date of 13.02.2019; therefore, the Guidelines dt. 8.03.19 are applicable to it on that ground alone.

261. The Appellant has further contended that HAREDA itself in its clarification dated 18.04.2019, has clarified that the said HAREDA Guidelines are only applicable to the 13 nos. of projects approved and registered by HAREDA on 08.03.2019. The Appellant is not one among those 13 projects. The Appellant placed reliance on the following part of the said clarification:

“In this regard it is clarified that 13 nos. of projects approved & registered by HAREDA on 08.03.2019 under amended Haryana Solar Power Policy 2016 are to be dealt as per the guidelines dated 8.3.2019. Rest of the projects are to be dealt as per the provisions as laid down in the Solar Policy. Further, the projects set up in the Solar Parks are to be dealt as per the conditions

mentioned in the NOC issued by HAREDA for setting up of private solar parks from time to time.”

262. Once the above clarification is read with the actual provisions of the Guidelines as mentioned above and also, reply to the query at S. No. 2 of the very same clarification, it is crystal clear that the Guidelines uniformly apply to all project developers. Relevant portion of the said clarification relating specifically to the lock-in period reads as under:-

“in the matter of guidelines issued on 08.03.2019 by HAREDA may be referred wherein it is mentioned that no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till execution of the Project without approval of the Govt. **The above referred guidelines are applicable on the projects approved by HAREDA for providing waivers as per amended Haryana Solar Power Policy-2016 and not applicable on other solar projects even set up in the approved solar parks.**”

263. **We agree** with the opinion of State Commission that the Appellant’s contention that the said Guidelines are not applicable to it is incorrect and therefore rejected.

264. This issue can be looked at from another perspective. Para (xii) of the in-principle feasibility issued to the Appellant dated 06.05.2019 specifically states that “the clarification given by HAREDA vide letter dated 18.04.2019 which was emailed to you on dated

23.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility/connectivity to solar power projects and shall be adhered by you.” The Appellant did not challenge this particular condition either in this petition or otherwise. Now, effectively the above contention of the Appellant would mean that the above condition is rendered in-operable. The Appellant was well aware and very well conversant with the Solar Policy, HAREDA’s Guidelines dated 08.03.2019 and clarification dated 18.04.2019. In fact, the above para (xii) specifically brought these clarification and Guidelines into the attention of the Appellant. However, the Appellant proceeded ahead and obtained final connectivity. But, now after obtaining the final connectivity, the Appellant is contending that the said Guidelines and the clarification did not apply to him. Considering the well settled legal position in regard to such approbation and reprobation arising out of the maxim qui approbat non reprobat as discussed in the preceding paragraphs, it is not open for the Appellant to make such contentions.

265. Accordingly, the State Commission did not find any merit in the contention that para 4.16 of the Solar Policy or the Guidelines dated 08.03.2019 and clarification dated 18.04.2019 are not applicable on the Appellant.

266. Therefore, the Discoms, pursuant to the order dated 22.06.2020 of the Co-ordination Committee , have correctly sent requisition list to the Appellant on 11.07.2020 as well as 24.04.2020 to ascertain compliance of the conditions prescribed in the Solar Policy and HAREDA’S Guidelines. Non-provision of requisite

information has impaired the entire process and assessment of Appellant's compliance with these conditions. The Commission vide interim orders dated 30.07.2020 and 18.08.2020, had also asked the Appellant to provide the documents as requested for by the Respondents relating to share holding pattern at the time of application for LTOA till date. However, the Appellant did not provide the complete details.

267. The shareholding details provided by the Appellant to the Commission vide email dated 27.08.2020 and also included in their written submission as Appendix I only includes shareholding pattern as on 20.08.2020 i.e. date of application to HAREDA for registration and as on 29.11.2019. The shareholding details as on the date of LTOA application of the Appellant dated 05.08.2018 has not been provided by the Appellant.

268. A perusal of the shareholding details of the Appellant as placed on record by the Appellant as well as the Respondents reflects that there has been a substantial change in the shareholding of the Appellant over the period which is in contraventions of the Solar Policy and subsequent amendments/ guidelines. The shareholding changes have been noted as below:-

- i. The Appellant was incorporated on 26.04.2018 by Sh. Manish Mehta and Sh. Shantnu Faugaat with each having equity share holding of 50 %.
- ii. The shareholding information as on 05.06.2018 i.e. the date of LTOA application has not been shared by the

Appellant despite been requested on several occasions as discussed above. Hence, we have to presume that the shareholding was held 50% each by Sh. Manish Mehta and Sh. ShantnuFaugaat as brought out by the Respondents.

iii. The shareholding information as on 21.08.2018 i.e. the date of earlier application made to HAREDA by the Appellant for setting up the solar plant has not been shared by the Appellant.

iv. On 20.08.2019 i.e. the date of application to HAREDA for registration, the shareholding of the Appellant changed to M/s Cleantech Solar Energy (India) Pvt. Ltd holding 73.528%, Exide industries holding 26.471% and ShriPrashantDhanraj Kothari holding 0.001%.

269. Subsequently there was minor change in shareholding of M/s Cleantech Solar Energy (India) Pvt. and Exide Industries.

270. Thus, it is apparent that from the date of first LTOA application dated 05.06.2018 till date when the project has admittedly not yet been completed, the shareholding of the Appellant's project has undergone several changes qua the requirement of 51% to be held by leading shareholder and the restriction on change in the lead shareholder. This evidently is a breach of the terms and conditions of the Solar policy read with the HAREDA registration/guidelines and the approvals by HVPNL as discussed in the preceding paragraphs.

271. Even if the contention of the Appellant is assumed to be correct that the relevant date for reckoning lock in of shareholding of the lead shareholder (as provided in para 4.16) and 26% shareholding of captive users (as provided in the HAREDA's Guidelines dated 08.03.2019) should be the date of application to HAREDA, then also the same is also of no help to the Appellant. The Respondents have placed on record that the Appellant had in fact applied to HAREDA earlier in August, 2018. Thus, the relevant date even if Appellant's arguments are accepted, would be the said date of application in August, 2018. From this perspective also, the Appellant is in non-compliance of the above conditions prescribed in the Solar Policy and HAREDA's Guidelines.

272. In addition to the above, it is relevant that the Execution of the Connection Agreement would be a result of compliance of all the conditions mentioned in the provisions of the Solar Policy with its aforesaid amendments, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity granted to the Appellant. We are of the opinion that once the Appellant elected for setting up the aforesaid power plant under the provisions of the solar policy, its life cycle – shareholding (both in context of lead shareholder and captive users) until expiry of one year after its completion of the power plant is subject to the conditions mentioned in the above documents. The issuance of the physical connectivity and execution of the connection agreement, as emanating from the in-principle feasibility and final connectivity is subject to compliance of all such conditions. We are of the opinion that the issue of execution of connection

agreement is to be read in conjunction with the Solar Policy, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity granted to the Appellant. They can't be read and understood in isolation with each other in the facts and circumstances of the present case. Thus, grant of physical connectivity and execution of connection agreement is nothing but an intrinsic part of the regime triggered by the Appellant by electing to set-up its power plant under the Solar Policy. It can be seen from another perspective i.e. if the connection agreement is directed to be executed without insisting on conditions imposed in the Solar Policy, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity then the very purpose of framing of the Solar Policy would get frustrated. This becomes all the more relevant in the present context, when HPPC – a joint forum of the Discoms – is tasked with the responsibility to see compliance of para 4.16 and captive status i.e. lock in of 26% shareholding of captive users and identification of captive user emanating from HAREDA's Guidelines dated 08.03.2019.

273. In the aforesaid context, it would be useful to understand that the benefits given under the Solar Policy is a single package, having various components, which are particulars of the benefits and conditions required to be complied with for availing this benefit. One of the most important facet of setting up of a power plant is connectivity and execution of connection agreement, without which a power plant cannot be operationalized. If a power plant is being set up under the solar policy and if it is required to be demonstrate compliance of the conditions prescribed therein and

if notwithstanding a developer's failure to demonstrate such compliance, connectivity is granted and connection agreement is executed, no useful purpose would be served in imposing the above conditions. The issue of connectivity cannot be separated from the Solar Policy and Guideline dated 08.03.2019 of HAREDA. It is an integral part of package of benefits and conditions prescribed under the Solar Policy and has to be examined in conjunction with the Solar Policy and Guideline dated 08.03.2019 of HAREDA

274. We agree with the view of the State Commission that the Appellant has to comply with the terms and conditions of various approvals/Policy/Guidelines and satisfy the DISCOMs on the issue of captive status of the project in line with the terms and conditions of various provisions of approvals/Policy/Guidelines. The terms and conditions of the approvals/Policy/Guidelines are sacrosanct and are to be adhered to by the Appellant before signing of connection agreement and has to demonstrate that all such conditions are followed. The Solar Policy, guidelines issued by HAREDA as well as HVPNL, the LTOA application made by generator, In-Principle Feasibility and Final Connectivity granted by HVPNL, as well as the registration of the Project by HAREDA cannot be read disjunctively. They are to be read conjunctively the effect of which is that for captive solar developers entry point into the Solar Policy is the LTOA application and the final point is grant of the physical connectivity and execution of the connection agreement

275. **We agree with the finding of the State Commission that** the Appellant is in breach of the terms and conditions of the Solar policy read with the HAREDA registration/guidelines and the approvals by HVPNL as discussed in the preceding paragraphs. Thus, no directions for execution of connection agreement can be passed. The prayers made by the Appellant in this regard are accordingly rejected.

276. The relevant clause of HERC Open Access Regulations, as amended from time to time read as under:

“5. Eligibility for connectivity. –

(1) A consumer or a person seeking connectivity for a load of 10 MW and above or a generating station or a captive generating plant having installed capacity of 10 MW and above shall be eligible to obtain connectivity at 33 kV or above. A consumer or a person seeking connectivity for a load of less than 10 MW or a generating station or a captive generating plant having installed capacity of less than 10 MW shall be eligible to obtain connectivity at 33 kV or below

Provided that in case where connectivity cannot be given at the voltage level specified in this regulation due to non-availability of requisite system or on account of some system / technical constraints then connectivity shall be given at an appropriate voltage level irrespective of the load of the consumer or the installed capacity of a generating station seeking the connectivity.

Provided further that in case of the consumer or a generating station already connected either to transmission system or the distribution system at voltage level other than that specified in this regulation then such consumer or the generating station shall continue to remain connected at the same voltage level.

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8. Entitlement and other conditions for open access. –

(1) Subject to the provisions of these regulations, any licensee, generating company, captive generating plant or a person other than consumer of the distribution licensee, connected at 11 KV or above and who has a capacity/maximum demand of 1 MW and above, shall be entitled for availing open access to the intra-State transmission system of STU and/or of any transmission licensee other than STU and/or distribution system of the distribution licensee on payment of various charges as per chapter VI of these regulations.

Provided that in case of generating plants based on non-conventional / renewable energy sources there will be no capacity restriction for availing open access for wheeling of power.

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24. Imbalance Charges. –

.....

(2) Imbalance charges applicable for all open access transactions for the overdrawl /underdrawl by an open access consumer or for the under injection / over injection by a generator or trader shall be as given below.

(A) Due to reasons attributable to the open access consumers/generator/trader

I. Over drawl by open access consumer / under injection by a generator or a trader:

(i) An open access consumer who is not a consumer of the distribution licensee: UI charges as notified by CERC for intra-state entities or highest tariff (other than temporary metered supply), including FSA and PLEC (in case over drawl happens to be during peak load hours), as determined by the Commission for the relevant financial year for any consumer category, whichever is higher, shall be paid by the open access consumer to the distribution licensee for the overdrawl.

However the overdrawl will be loaded with intra-state transmission losses, as determined by the Commission in the tariff order for transmission business for that year, and distribution losses, as used for calculation of wheeling

charges in the tariff order for distribution business for that year, before calculating the payable amount.

XXXXXXXXXXXX

42. Eligibility criteria, procedure and conditions to be satisfied for grant of long term open access, medium term open access and short term open access to embedded consumers shall be same as applicable to other short-term open access consumers. However, the day-ahead transactions, bilateral as well as collective through power exchange or through NRLDC, by embedded open access consumers under short term open access shall be subject to the following additional terms and conditions:

(1).....

In case recorded drawl of the consumer in any time slot exceeds his total admissible drawl but is within 105 % of his contract demand, he will be liable to pay charges for the excess drawl (beyond admissible drawl) at twice the applicable tariff including FSA. In case the recorded drawl exceeds the sanctioned contract demand by more than 5% at any time during the month as per his energy meter, demand surcharge as per relevant schedule of tariff approved by the Commission shall also be leviable.

43. Settlement of Energy at drawl point in respect of embedded consumers.-

The mechanism for settlement of energy at drawl point in respect of embedded open access customers shall be as under:

(i) Out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.

(ii) The recorded drawl will be accounted for / charged as per regulation 24(2)(A) (a)(ii) of these regulations or regulation 42 as may be applicable.

XXXXXXXXXXXX

45. Requirement of Scheduling for Embedded open access consumers. –

.....

(3) During peak load hour restrictions, the embedded open access consumer shall be entitled to bring open access power upto his contract demand without the requirement of any approval of special dispensation from the licensee provided his total drawl i.e. drawl through open access plus the drawl from the licensee does not exceed his contract demand. Further he shall restrict his drawl from the distribution licensee to peak load exemption limit/special dispensation allowed by the licensee. In case the total drawl

of the consumer exceeds the contract demand by more than 5% at any time during the month as per his energy meter, the demand surcharge as per relevant schedule of tariff approved by the Commission from time to time shall be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs.”

277. A reference has been made to Regulation 5 and 8 extracted above by the Appellant to contend that there is no restriction provided under these regulations on contracted capacity that can be availed under open access. Thus, it was argued by the Appellant that the clause(s) of the in-principle approval and final approval restricting the drawl of power by the consumer up to its contract demand and restriction on the agreement that can be entered into between the captive user and the generator upto their respective contract demands is bad in law.

278. The Commission has recorded that Regulation 5 provides for the eligibility of a consumer/person seeking connectivity for open access from the DISCOM in as much as it prescribes the voltage level at which open access is to be granted in general. Regulation 8(1) lays down the qualification criterion for entitlement of open access which in general cases can be availed by consumers having a minimum capacity/demand of 1 MW. It further specifies

that this restriction of minimum capacity is not applicable in case of generators based on renewable energy. Clearly, the above provision lays down the minimum threshold limit prescribed for grant of open access and in no way relates to the limit on drawl beyond contracted capacity. The system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit. The Commission has deliberately put penalty for drawl beyond open access in lieu of system security. In this regard reference is made to S. No. 2.5 of statement of reasons given in OA regulations first amendment.

“2.5. Levy of demand surcharge for total drawl (MW) exceeding the contract demand (for open access consumers) In the Schedule of Tariff approved by the Commission the provision for levy of demand surcharge in case maximum demand of a consumer exceeds his contract demand has been made as under:

“In case the maximum demand of the consumer exceeds his contract demand in any month by more than 5%, a surcharge of 25% will be levied on the SOP amount for that month.” The main reason for providing such a heavy / deterrent penalty for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system. The Commission observes that if an embedded open access

consumer, who is drawing power partly or whole of it through open access, exceeds his contract demand by more than 5% as per his energy meter, he is subjecting the system of the licensee to the same risk as is being done by another consumer, who is not drawing any power through open access, when he exceeds his contract demand. So the penalty in the two cases has to be same. It has been accordingly provided that in case total drawl (i.e. drawl from the licensee plus drawl through open access) of an embedded open access consumer exceeds his contract demand by more than 5% at any time during the month as per his energy meter, he will be levied demand surcharge as per schedule of tariff approved by the Commission from time to time and for the purpose of levying demand surcharge, the total energy drawn during the month including drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of SOP, will be worked out at the applicable tariff for the category to which the consumer belongs. The amendment in the regulations has been made accordingly.”

277. The State Commission has further opined that the proviso to Regulation 8 (1) cannot in any manner be read to understand that there cannot be any restriction on drawl of power by a captive consumer of a Solar based Captive generating plant, as has been argued by the Appellant. The Appellant's above argument is arising out of misreading of the above Regulations. Regulation 8 clearly provides that the provisions thereof are subject to the other

regulations contained in Open Access Regulations. Thus, Regulation 8 shall have to be read along with other applicable regulations of Open Access Regulations., i.e. Regulations 24, 42, 43 and 45.

279. A conjoint reading of the said Regulations 24, 42, 43 and 45 prescribe certain consequences and penalties for over drawl of electricity by an open access consumer beyond their contract demand. These regulations in essence place restrictions on open access consumers to limit their drawl up to its contracted capacity. Regulation 42 read with regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc.

280. The State Commission has opined that in case open access power drawl of any consumer of the Appellant exceeds his contract demand, then in terms of the above provisions he shall be liable for penalties prescribed. The incorporation of the condition that open access granted to the Appellant shall be restricted to the contract demand of its open access consumer is thus, in line with the provisions above mentioned. There is no illegality in making explicit what the above provisions prescribe. Further, such restrictions are necessary to be placed in the approvals for connectivity granted to the solar power developers to prevent/reduce unutilized surplus solar power.

281. The State Commission has recorded that the condition no. (viii) of the in-principle connectivity which reads as:-

“viii. The power drawn by the consumer/applicant shall not be more than its contract demand during any time slot of the day”,

and the condition no. (viii) of the final connectivity, which reads as:

“Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation”

are legal and in consonance with the Open Access Regulations.

282. We agree with the view of the State Commission that the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands, respectively, are legally valid.

283. The State Commission has considered its order dated 13.05.2019 passed in PRO 22 of 2019 filed by HAREDA seeking amendments in the RE Regulations. One of the prayers made in the said petition for seeking amendment in Clause no. 60 (1) & (2) of the RE Regulation, 2017 in-line with Clause no. 4.3 of Haryana Solar Power Policy 2016 amended and notified vide notification

no. 19/7/2019-5P dated 08.03.2019. The State Commission after considering the rival contentions and views of all stakeholders and after conducting a public hearing, inter alia, held as under:

“7. The issues raised by the stakeholders including HAREDA and the Commission’s decision thereto are as under:-

i) Wheeling and banking agreement has not been finalized by HVPNL/SLDC.

Commission’s view:-

Procedure/guidelines for banking of energy from RE power projects submitted by HVPNL vide memo no. Ch-104/15B-521 dated 06.03.2019 as prepared in consultation with stakeholders, is approved and enclosed with these Regulations as Annexure-A-1.

XXXXXXXXXXXXX

ANNEXURE A-1
PROCEDURE / GUIDELINES FOR BANKING OF RENEWABLE
ENERGY (RE) POWER:

This procedure has been prepared in compliance to the “Haryana Electricity Regulatory Commission RE Regulations, 2017(notification dated 24th July 2018). This Procedure shall be read in conjunction with the said Regulations.

The procedure covers guidelines, terms and conditions, various applicable charges, application format for applying for Banking/use of Transmission and/or Distribution system of the licensee(s) i.e. Haryana VidyutPrasaran Nigam limited (HVPNL) and/or Uttar Haryana BijliVitrان Nigam Limited (UHBVNL) and Dakshin Haryana BijliVitrان Nigam Limited (DHBVNL) and disposal of applications made with HPPC for Banking of power by from Solar Power developers. This procedure shall be reviewed or revised by the nodal office i.e. HPPC, as and when required to address any teething/ implementation problems that may arise, with prior approval of HERC. This procedure shall come into force after approval of the HERC.

XXXXXXXXXXXX

D. Terms and conditions for Banking:

XXXXXXXXXXXX

xiv. Any solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.”

284. A perusal of the order passed by this Commission clears the position that as per Annexure A-1, clause D of the guidelines for banking as approved by the Commission, one of the condition for availing banking facility by a RE Generator is that the solar power

injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.

285. Thus, condition incorporated in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy is in line with the aforesaid order dated 13.05.2019 and the guidelines issued by this Commission in PRO 22 of 2019. Accordingly, it is held that the same is valid and is correctly incorporated in the Tri-Partite Agreement.

286. Further, from this perspective also it is important that restriction of drawl of electricity only up to contract demand by captive users of the Appellant is necessary and has been rightly so incorporated in the in-principle approval and final approval.

287. **We agree with the view of the State Commission that the provisions of the Tripartite Banking Agreement are in consonance with the order passed by this Commission as well as the RE Regulations and thus, legally valid.**

288. We agree with the view of the State Commission that the delay occurred in signing the connection agreement is not attributable to the Respondents and Appellant is not entitled to any compensation for the alleged losses suffered by it on account of non-signing of the Connection Agreement. The project is still not complete. Besides, the right of the Appellant for grant of compensation or recovery of projected loss is foreclosed by its own conduct in not complying with the conditions of the policy, guidelines and terms of approval as incorporated in the In

Principle feasibility. Such compliance was necessary and indispensable before any connectivity grant could be made in favor of the Appellant.

289. The Appellant has submitted that the actions of the State Commission reek of institutional bias of favouring the distribution licensees. The Appellant has submitted that appointing of two officers of the contesting respondent/ Discom as 'local Commissioner' to provide a report after site visit to the Appellant's plant is against the very basic principle of law that one cannot be a judge in its own case. The Appellant has submitted that this is a procedure unknown to law, reeks of institutional bias, where the Distribution licensees are favoured, when they are contesting parties to the petition of the Appellant and is also in gross violation of the principles of natural justice.

290. The Appellant has further submitted that local Commissioners were appointed after the hearing was over in the matter and the copy of the report, submitted by the local Commissioners, was not given to the Appellant. The State Commission has passed the impugned order relying on the report submitted by the local Commissioners without providing an opportunity to the Appellant to contest the report. The Appellant has further submitted that the individual officers of the Respondent Discom who was blocking the connectivity of the Appellant for one year will try and state something to deny connectivity.

291. ***Per contra***, the Respondent Commission has submitted that the issue relating to project being incomplete and thus being in

violation of HAREDA's registration came to light during the arguments. Accordingly, the State Commission deemed it appropriate to delve into this issue to ascertain the factual position on existent ground for proper and complete adjudication of the matter before passing the impugned order.

292. In the impugned order, the State Commission has recorded that the Appellant had already utilized 90% of the land parcel and installed 340 Watt panels, thus the proposed Solar Plant project of 20 MW capacity cannot be set up in the land capital shown to be available by the Appellant before the grant of final connectivity.

293. It is imperative to note that the Appellant in the present Appeal before the Tribunal has failed to demonstrate any fallacy in the factual situation that has emerged in the Report. In fact, the Appellant itself has admitted that additional land has been procured due to change in configuration. Such admissions on the part of the Appellant reflect the correctness of the Report. Thus, it is apparent that the land capital of 52 acres shown to be available by the Appellant within 90 days of the issuance of the 'In Principle' Connectivity (for ensuring compliance of the HVPNL guidelines dated 08.03.2019 and for grant of final connectivity) was insufficient.

294. The State Commission has submitted that no actual prejudice or grievance has been suffered by the Appellant due to non-observance of the principles of natural justice. The fact that the Appellant has misrepresented is undeniable and is supported by its own admissions as stated in the preceding paragraphs. The State Commission has further submitted that it is a settled

principle in law that in cases where the result will not be different even if natural justice is followed, relief to such a party complaining non-observance of the principles of natural justice can be refused. The State Commission has submitted that the commissioner's assistance was sought merely to meet the ends of justice in the compelling circumstances narrated above

295. The State Commission has further submitted that the plea of institutional bias is unfounded and baseless considering that the other two similarly placed generators i.e. Amplus Sun Solutions Private Limited and Ananth Solar Power Maharashtra Private Limited have themselves negotiated with the Respondents and withdrawn their petitions after amicably resolving their issues for grant of connectivity. Reliance in this regard is placed on Commission's order dated 30.09.2020 passed in PRO 25 and 26 of 2020 respectively. While the Appellant chose not to negotiate with the Respondents and therefore the Commission had proceeded to hear the matter and adjudicate it basis the available facts and documents.

In case of *Vidarbha Industries Power Limited Vs. Maharashtra Electricity Regulatory Commission* {2020 SCC OnLine APTEL 73} this Tribunal, while negating the allegation of 'Institutional Bias' has clearly held that the "Electricity Act has enjoined the Commission with multifarious responsibilities and the adjudicatory function being only one of them. It discharges, inter alia, legislative function by framing regulations that have the force of law and also oversees, as the regulator, the conduct of players in power sector engaged in the work of generation, transmission, trading, distribution et al granting

approvals and securing compliances.” Therefore, no exception can be taken if the Commission has chosen to carry out close scrutiny of conduct of Appellant which is merely a player in the power sector.

296. The State Commission has also submitted that the plea of ‘Institutional Bias’ also flies in the face of own submission of the Appellant to the effect that the HAREDA had moved an application for review which was not entertained by the Commission. In substance, the plea of the Appellant seems that the Commission has shown ‘Institutional Bias’ in favour of DISCOMS owned by the Government. Hypothetically saying, had the commission possessed of any bias, it was supposed to entertain the application for review and allow the same.

297. The State Commission has therefore submitted that in the given facts and circumstances, all allegations made by the Appellant against the Commission are without any merit. The Impugned Order has been passed by the Commission, after considering all facts and submissions placed before it, to the best of their knowledge and wisdom.

298. We note the submission made by the Respondent Commission that the Appellant, in the present appeal before this Tribunal, has failed to demonstrate any fallacy in the factual situation that has emerged in the report and also the fact that Appellant itself has admitted that additional land has been procured due to change in configuration. The State Commission has also submitted that no actual prejudice or grievance has been suffered by the Appellant due to non-observance of the principle of natural justice.

299. However, the fact remains is that in the interest of equity and justice the State Commission should have formed a team comprising of officers drawn both from the Appellant and the Respondent Discom. Secondly, copy of the report should also have been provided to the Appellant, to give them an opportunity to go through the report and make submissions, if any, on the report, to the State Commission. The State Commission being the regulator is required to be transparent, neutral and unbiased in all its actions. We observe that there has been a serious lapse on this account by State Commission while appointing the local Commissioners and not providing an opportunity to the Appellant to make submissions, on the report, to the State Commission. We expect the State Commission to be more careful in future in such matters and act in strict compliance as per law. However, it is clarified that it is only a procedural lapse on the part of the State Commission and does not prove institutional bias on the part of the State Commission. Also, this procedural error cannot have the effect of vitiating the impugned decision since the facts found in the commissioner's report stand independently confirmed before us.

300. In view of the given facts and circumstances, we are of the considered opinion that the allegation of "Institutional Bias" made by the Appellant against the Commission are without any merit.

301. We note the fact that the Appellant has set up 10.72 MW and this capacity is stranded for want of connectivity thus causing financial hardship to the Appellant. We give liberty to the Appellant to approach the State Commission to seek connectivity for its plant

outside the Solar Scheme, 2016 and expect the State Commission to consider such request, if submitted, and take appropriate action thereupon, promptly and in accordance with law.

302. Accordingly, we uphold the impugned order passed by the State Commission and dismiss the appeal as without merit. No order as to costs.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 20th DAY OF SEPTEMBER, 2021.**

**(Justice R.K. Gauba)
Judicial Member**

**(Ravindra Kumar Verma)
Officiating Chairperson**

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REPORTABLE/NON-REPORTABLE
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