

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 29 of 2019

**Implementation of Hon'ble ATE Judgment dated 30 June 2021 in Appeal No. 257 of 2019
in the matter of Petition of Aurangabad Industrial Township Limited (AITL) seeking
exemption of Distribution Licence for Aurangabad Industrial City in pursuance of
recommendation of the Government of Maharashtra under Section 13 of Electricity Act,
2003**

Aurangabad Industrial Township Ltd.Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd.Respondent

Appearance:

For Aurangabad Industrial Township Ltd. Smt. Deepa Chavan (Adv.)

For Maharashtra State Electricity Distribution Co. Ltd. Shri Ravi Prakash (Adv.)

Coram

Sanjay Kumar, Chairperson

I. M. Bohari, Member

Mukesh Khullar, Member

ORDER

Date: 3 September 2021

1. Aurangabad Industrial Township Limited (AITL) had filed a Petition in Case No. 29 of 2019 on 1 February, 2019 seeking exemption of Distribution Licence for Shendra-Bidkin Industrial Area (Aurangabad Industrial City (AURIC)) in pursuance of recommendation of the Government of Maharashtra (GoM) under Section 13 of Electricity Act, 2003 (EA).
2. Following prayers were made in the Petition:

“

a) Admit this Application.

b) Take on record the recommendation of Government of Maharashtra, vide letter dated 15 January, 2019 for exempting Aurangabad Industrial Township Limited under Section 13 of the Electricity Act, 2003 from availing a Distribution Licence under Section 12 of the Electricity Act, 2003.

c) Recognise Aurangabad Industrial Township Limited as Local Authority for the Notified Area, as defined under Section 2 (41) of the Electricity Act, 2003.

d) Grant an exemption to Aurangabad Industrial Township Limited, being a Local Authority, under Section 13 of the Electricity Act, 2003 from availing a Distribution Licence under Section 12 of the Electricity Act, 2003 for a period of 25 years from the date of Special Conditions of Distribution Licence to be issued by the Hon'ble Commission.

e) To issue Specific Conditions of Distribution License applicable to the Petitioner, M/s Aurangabad Industrial Township Limited for the period of 25 years to undertake Distribution Business in its Notified Area of Aurangabad Industrial Township.

f) To allow Petitioner for continuing with its existing power supply arrangement with MSEDCL for its Site Offices in its Industrial Area, till the time Petitioner approaches the Hon'ble Commission for filling its MYT Petition in accordance with the relevant provisions of the MERC (Multi Year Tariff) Regulations, 2015 or amendments thereof;”

3. The Commission, vide its Order dated 8 May 2019, declined to grant exemption as sought by AITL. The relevant extract of the Order reads as under:

“ Instead of a separate licence to operate independently in the area developed by the Aurangabad Industrial Township Limited, it could operate as a franchisee of Maharashtra State Electricity Distribution Co. Ltd. by Memorandum of Understanding route as per the terms and conditions for franchisee for a period of 5 years to start with, which could be further extended as per the mutual agreement between Maharashtra State Electricity Distribution Co. Ltd and Aurangabad Industrial Township Limited. ”

4. The aforesaid Order was challenged by AITL before the Hon'ble ATE. Vide its Judgment dated 30 June 2021 (made available on website of Hon'ble ATE on 12 July 2021) in Appeal No. 257 of 2019, the Hon'ble ATE allowed the Appeal directing the Commission to grant of exemption from grant of Distribution Licence to AITL within two months from the date of the Judgement. The excerpts of the related Para are as follows:

“61.

..... Therefore, we are of the opinion that the State Commission ought to have given full effect to the recommendation of Government of Maharashtra without taking into account extraneous and irrelevant circumstances like alleged outflow of consumers. We are of the opinion that the State Commission is duty bound to consider the true intent and purpose of the recommendation of Government of Maharashtra.

62. *In view of the above discussion and reasoning, we are of the opinion that the impugned order deserves to be interfered with so far as rejection of exemption sought by the Appellant. Therefore, we allow the appeal and direct the Respondent-State Commission to grant the exemption from grant of distribution licence as provided under Section 13 of the Act to the Appellant within two months from the date of the order.*”

5. Subsequently, AITL submitted a letter dated 20 July 2021 to the Commission requesting to grant the exemption under Section 13 of the EA in accordance with the directives passed in the said Judgment.

6. In order to implement the directions of the Hon’ble ATE regarding granting the exemption to AITL under Section 13 of the EA from availing the Distribution Licence, the Office of the Commission sought certain details/clarifications from AITL. On 12 August 2021, AITL provided the details which are summarized below:

6.1 ***AITL may suggest conditions and restrictions and also the period of exemption along with the justification for such conditions/restrictions and the period of exemption:***

i. The Government of Maharashtra vide its Cabinet decision dated 29 January 2014, has envisaged industrial growth by implementation of the AURIC project in Shendra and Bidkin area. The GoM has also envisaged that, industrial growth would be possible only with long term certainty of the policies and planning. Accordingly, the GoM vide its letter dated 15 January 2019, had recommended to the Commission to recognize AITL as a ‘Local Authority’ as per the provisions of Section 2(41) of the EA for the purpose of electricity supply and distribution within the notified area of AURIC. The relevant extract of the recommendation of GoM dated 15 January, 2019 is as under:

“In pursuance of Section 13 of EA 2003, Government of Maharashtra hereby recommends that Aurangabad Industrial Township Limited (AITL), a joint venture company of Maharashtra Industrial Development Corporation (MIDC) and Delhi-Mumbai Industrial Corridor Development Corporation (DMICDC) be reckoned as a Local Authority responsible for planning, development, control and management of the specified industrial township area[Auric City]including management and distribution of electricity in the said Notified Area for a period of Twenty Five years from the date of Notification by the Maharashtra Electricity Regulatory Commission (MERC). Further, GoM recommends that AITL may be granted exemption from availing licence u/s 12 of EA 2003 but its electricity distribution activities shall be governed by conditions as may stipulated by MERC.”

ii. With the above recommendation, the GoM has already clarified its intention and long-term vision for industrial development in AURIC area which would be possible only by granting exemption to AITL from availing the distribution licence under Section 12 of EA for a period of 25 years from the date of notification by the Commission.

6.2 ***AITL is required to explain how it is prepared to meet various obligations as mentioned in the Act and the Regulations made thereunder while undertaking the distribution business in the specified area.***

6.3 ***AITL to provide a plan and timeframe to develop its own technical competence and expertise to carry out its duties and obligations such as Network planning and***

development, O&M activities, grid connectivity to InSTS, power procurement, scheduling, energy auditing, energy balancing and settlement/ DSM Regulations, metering, billing, collection, new connections, CGRF, supply restoration activities, ARR filing, compliance of SOP, State grid code, supply code, safety rules.

6.4 *AITL to provide timelines for further activities such as PPA filing, ARR filing, CGRF establishment etc. after issuance of exemption of Licence. AITL may provide its views on need for the provisional Tariff for commencement of distribution activities till approval of ARR/Tariff for AITL.*

- i. AITL, while planning the AURIC City, has planned to undertake distribution activities in AURIC area. Accordingly, the distribution network upto the last mile connectivity (upto each plot of AURIC city) has already been established. AITL has already appointed infrastructure development entities for development of AURIC city and the responsibility of operation and maintenance of AURIC city including operation and maintenance of electricity distribution network has been entrusted to them for a period of 4 years from the commissioning of project.
- ii. AITL understands that for O&M of distribution business, some of the additional activities such as consumer complaint centers, online monitoring and tracking of consumer complaints etc., Meter reading, Billing arrangement, and Bill collection mechanism would also be required to be established. AITL would comply with the requirements of O&M in line with provisions of MERC (Electricity Supply Code and Standards of Performance for Distribution Licensees, including Power Quality) Regulations, 2021.
- iii. Further, AITL's top management has already developed in-house senior management team which includes technical, engineering, planning, projects, finance, legal departments. In addition, AITL has also included in AITL team, Mr. D.R. Saboo, who is retired Director (Operations), MSEDCL having more than 35 years of experience in all the areas of distributions business. The details of the AITL's existing Board of Directors and senior management team are enclosed with the submission.
- iv. AITL is aware that upon receipt of the exemption under Section 13 from the Commission, it shall be responsible for compliance of the provisions of the Regulations framed by the Commission, in respect of distribution and supply of electricity in the area of exemption. Upon receipt of the exemption from the Commission, it will make detailed submission on its plan for undertaking power procurement, filing of Annual Revenue Requirement (**ARR**) and Tariff Petition, establishment of Consumer Grievance Redressal Forum (**CGRF**) etc. within the period as directed by the Commission.

6.5 *AITL to provide Map of operational jurisdiction wherein it intends to undertake distribution of electricity. The map should be duly certified by the competent authority.*

- v. As per the recommendation of GoM dated 15 January 2019, AITL is seeking grant of Distribution Licence for the notified area of AURIC city. The said area has been notified by the GoM vide its notification dated 23 September 2016. The total area of

Shendra Bidkin Industrial area (**SBIA**) is 4143.89 Ha. The details of the notified area are enclosed with the submission.

6.6 *AITL to provide the present status of development, present demand. AITL to provide the demand estimation and annual sales for next five years.*

6.7 *AITL to provide expected number of consumers and category-wise break up for next five years.*

- i. AURIC project is being developed as Shendra Bidkin Industrial Area (SBIA). Some of the Industries in SBIA have started their operations. In addition to industries in SBIA, AITL has its own establishments like AURIC hall building, Water treatment plant and pumping stations which are also operating to provide the services within AURIC area. Following table provides the summary of the existing demand and future demand projections for next 5 years in SBIA:

Sr. No.	Particulars	Existing (for 6 month)	Projection For Next Five Years FY 2021-22 to FY 2025- 26				
			1	2	3	4	5
1	No. permanent connections	24	27	52	166	314	654
2	Permanent Power Demand in MVA	14.5	15.6	46.4	72.3	108.33	133.8
3	Expected Energy Consumption in MU /year	27.54	61.2	140.35	231.38	327.45	367.95

- ii. The above information is based on the existing demand and certain growth assumptions. AITL would make its detailed submission on the demand projection, expected number of consumers and category-wise break up for next five years, at the time of approval to the power procurement plan and ARR filing or as directed by the Commission.

7. At the E-hearing held on 13 August 2021:

7.1 Advocate appearing on behalf of AITL stated that:

- i. The Hon'ble ATE, vide its Judgment dated 30 June 2021 has allowed the Appeal filed by AITL and directed the Commission to grant the exemption to AITL from obtaining distribution licence under Section 13 of the EA within two months of the Judgment.
- ii. AITL has furnished the details sought by Office of the Commission. Accordingly, the Commission is requested to grant Licence exemption under Section 13 of the EA.

- 7.2 Advocate appearing on behalf of MSEDCL stated that:
- i. Under Section 125 of the EA, any person aggrieved by the Order of the Hon'ble ATE, may file an Appeal before the Hon'ble Supreme Court within sixty days from the date of communication of such Order.
 - ii. MSEDCL is examining its option to avail the legal remedy of approaching the Hon'ble Supreme Court under Section 125 of the EA, 2003. MSEDCL has sixty days' period to do so from the date of Judgement passed by the Hon'ble ATE. Accordingly, the Commission is requested not to pass the Order at least for a period of one week.
- 7.3 In response, advocate for AITL stated it is a settled principle of law that mere filing of Appeal doesn't amount to stay of the impugned Order. Here, it is the case where MSEDCL is yet to file an Appeal and is just indicating its intention to file an Appeal. The directions issued by the Hon'ble ATE are required to be implemented in a timebound manner of two months as directed by the Hon'ble ATE. Accordingly, the Commission should pass the Order immediately.
- 7.4 After hearing the Parties, the Commission directed AITL to serve the copies of its replies on MSEDCL. Also, MSEDCL was directed to file its response, if any, within a period of one week and AITL was directed to file its rejoinder, if any, within two days thereafter. However, no submission was filed by the Parties.

Commission's Analysis and Rulings

8. Government of India (**GoI**) has envisaged the development of Delhi Mumbai Industrial Corridor (**DMIC**) along the proposed multi-modal high axel load Dedicated Freight Corridor (**DFC**) between Delhi and Mumbai covering approximately 1483 km and passing through six States. In Maharashtra, Shendra-Bidkin Industrial Area, which is also known as Aurangabad Industrial City (**AURIC**) has been identified as a part of DMIC corridor for further development of the DMIC Project by GoI at the State level.
9. Development of AURIC is being carried through AITL, a Special Purpose Vehicle (**SPV**) and a Government Company, between the Maharashtra Industrial Development Corporation (**MIDC**) and Delhi-Mumbai Industrial Corridor Development Corporation (**DMICDC**), an agency of GoI, with 51% and 49% of the total stake in the SPV, respectively.
10. AITL has been incorporated on 12 December 2014 under the Companies Act, 2013 having its registered office at Udyog Sarathi, MIDC Office, Marol Industrial Area, Andheri (East), Mumbai.
11. The GoM vide its Notification dated 23 September, 2016 has notified AITL to act as 'Special Planning Authority' for the Notified Area and entrusted the planning, development, control and management of area of development of infrastructure of the AURIC Industrial Township project. The total area for development proposed to be covered through area of operations is 4143.89 Hectares comprising Shendra Industrial Area (851.49 Hectares) and Bidkin Industrial Area (3292.40 Hectares).

12. The GoM, vide its Letter dated 15 January 2019, has recommended to the Commission to recognize AITL as a 'Local Authority' as per the provisions of Section 2(41) of the EA for the purpose of electricity supply and distribution within the notified area of AURIC. The relevant extract of the recommendation of GoM dated 15 January, 2019 is as under:

"In pursuance of Section 13 of EA 2003, Government of Maharashtra hereby recommends that Aurangabad Industrial Township Limited (AITL), a joint venture company of Maharashtra Industrial Development Corporation (MIDC) and Delhi-Mumbai Industrial Corridor Development Corporation (DMICDC) be reckoned as a Local Authority responsible for planning, development, control and management of the specified industrial township area [AURIC City] including management and distribution of electricity in the said Notified Area for a period of Twenty Five years from the date of Notification by the Maharashtra Electricity Regulatory Commission (MERC). Further, GoM recommends that AITL may be granted exemption from availing licence u/s 12 of EA 2003 but its electricity distribution activities shall be governed by conditions as may stipulated by MERC."

13. AITL had approached the Commission seeking an exemption under Section 13 of the EA from availing the Distribution Licence for its notified area. The Order passed by the Commission had been challenged by AITL before the Hon'ble ATE. The Appeal filed by AITL has been allowed by the Hon'ble ATE and the Commission has been directed to grant the exemption under Section 13 of the EA to AITL from availing the distribution licence within two months from the date of the Judgment passed by the Hon'ble ATE. Thus, AITL has sought an exemption from Distribution Licence for the Aurangabad Industrial City and in terms of the directions issued by the Hon'ble ATE, AITL is entitled to get the said exemption.
14. In view of the above, the Commission takes on record the aforesaid recommendation of GoM and the Commission hereby grants an exemption to AITL under Section 13 of the EA from availing a Distribution Licence for its notified area and holds that Section 12 of the EA (which provides that only the person authorized by a Licence under Section 12 of the EA can undertake Distribution of electricity) shall not apply to AITL for its notified area.
15. AITL, in the original proceeding, had requested the Commission to issue Specific Conditions of Distribution License applicable to AITL for a period of 25 years to undertake Distribution Business in its Notified Area. The Commission notes that under Section 16 of the EA, the Commission is empowered to specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions are deemed to be conditions of such licence. In the present case, AITL would be exempted from availing a Distribution Licence under Section 13 of the EA. Hence, AITL cannot be issued Specific Conditions of Distribution Licence under Section 16 of the EA.
16. Section 13 of the EA reads as follows:

“Section 13. (Power to exempt): The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users’ association, co-operative societies, non-governmental organizations, or franchisees:”

17. Thus, as a part of grant of exemption in exercise of powers under Section 13 of the EA, the Commission is required to issue a notification stipulating the conditions and restrictions, if any, and also the period for which such exemption would prevail.
18. The Commission notes that the EA defines the word “*Notification*” as follows:

“ (46) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;”
19. Thus, the conjoint reading of the aforesaid provisions indicates that the operationalization of Distribution business of AITL shall be governed by the terms and conditions of the Notification to be issued in respect of AITL and such Notification needs to be published in official gazette.
20. AITL was asked to suggest the conditions and the period for the exemption. In response, AITL has not specifically suggested any condition or restriction for the grant of exemption of Licence, however, it has stated that considering the intention and long-term vision of GoM for industrial development in AURIC area, AITL may be granted an exemption for (25) twenty five years.
21. The Commission has identified certain conditions which might be stipulated in the Licence exemption notification to be issued to AITL. Few of which are given below:
 - i. All the provisions (as may be amended from time to time) of the EA 2003, Rules, all applicable Regulations notified by the Commission, Orders and Directions issued by the Commission from time to time and the provisions of all other applicable laws shall be mutatis mutandis applicable to AITL.
 - ii. The period for which AITL shall be exempted for Distribution Licence in the notified area shall be 25 years from the date of Notification which could be extended for further period based on future recommendations of the GoM from time to time and/or review taken by the Commission.
 - iii. If the Commission, after making an enquiry, is satisfied that if the public interest so requires, it may revoke the exemption granted to AITL under the circumstances as provided in the Section 19 of the EA and the conditions and procedure stipulated under Section 19 of the EA would apply mutatis mutandis for revocation of such exemption.
 - iv. Before revoking the exemption granted, the Commission may refer the matter to the State Government and decide on the arrangement to be made for discharging the obligations for Distribution and Supply of electricity in the notified area. The Commission may also ask the State Distribution Licensee i.e. Maharashtra State

- Electricity Distribution Co. Ltd. to supply in the notified area as an interim arrangement.
- v. In the event of revision in notified area in future, AITL, within 15 days of such notifications/de-notifications, shall approach the Commission for seeking amendment of the Notification. In the event of de-notification, AITL shall continue to supply the consumers within the notified area till alternative arrangement of supply is made available to those consumers in the de-notified area.
 - vi. AITL shall pay the Licence Exemption Fees on annual basis in line with the Annual Licence Fees applicable to other Distribution Licensees under the relevant Regulations.
 - vii. The Commission, at any time, may amend this Notification if circumstances so require.
22. The Commission notes that as per the submissions made by AITL, the Area of Supply within which AITL would supply electricity needs to be specified in the notification. As per AITL's submission, the notified area is the area admeasuring 4139.89 Hectares in Shendra-Bidkin Industrial Area (Aurangabad Industrial City (AURIC)) comprising Shendra Industrial Area (851.49 Ha) and Bidkin Industrial Area (3292.40 Ha). AITL has stated that this area has also been notified by the GoM vide its notification dated 23 September 2016. However, upon perusal of the aforesaid GoM Notification, it is observed that the total area mentioned in the GoM Notification works out to 3290.32 Hectares as against 4139.89 Hectares mentioned by AITL in the Petition. The area needs to be reconciled before finalization of the notification since the area of supply needs to be specified in the proposed Notification.
23. After grant of exemption of the Distribution Licence, AITL would be required to commence the Distribution Business in the notified area for which it would need to file Petition for PPA/ARR approval. AITL was asked to provide timelines for PPA Petition filing, ARR Petition filing, CGRF establishment etc. after issuance of exemption of Licence. However, AITL stated that it will make detailed submission on its plan for undertaking power procurement, filing of ARR and Tariff Petition, establishment of CGRF etc. The Commission notes that AITL would require to adhere to the timeframe for these activities. Hence, the Commission is of the view that timeframe for submission ARR and Tariff Petition, establishment of CGRF etc. and adhering to these timeframes may be made the condition of the Licence exemption Notification to be issued to AITL.
24. From the details submitted by AITL, it is seen that the area for which the Licence exemption is being sought by AITL comprises of two disjoint area, one for Shendra Industrial area and other for Bidkin Industrial Area. Further, it is seen that each individual area is also not contiguous and there are certain intervening areas. AITL cannot supply in areas which are not part of notified area in absence of necessary exemption for such areas, however, it may require to lay down its distribution network through such areas in order to supply in the notified area. AITL needs to confirm the

same and suggest a solution to address the issue. The proposed notification to be issued to AITL would need to cover suitable condition/stipulation addressing the issue.

25. In light of the above, the Commission is of the view that while through present Order, the Commission has granted the exemption to AITL under Section 13 of the EA from availing the Distribution Licence for its notified area, the notification for such Licence exemption needs to be issued separately after finalization of the issues mentioned above.
26. In light of the above, AITL is directed to address the aforesaid issues and file a separate Petition proposing the conditions for the Licence exemption for the notified area at the earliest. AITL may also propose provisional Tariff to be levied to the consumers in the notified area till the ARR for AITL is approved by the Commission. AITL is advised to make a detailed study of all Regulations, Rules and provisions of the EA to avoid need for further amendment to the Notification. The above Petition shall be filed within two months of the date of this Order.
27. Hence, the following Order:

ORDER

1. **Case No. 29 of 2019 is allowed.**
2. **The Commission grants an exemption to Aurangabad Industrial Township Ltd. under Section 13 of the Electricity Act, 2003 from availing a Distribution Licence for its notified area and holds that Section 12 of the Electricity Act, 2003 shall not apply to Aurangabad Industrial Township Ltd. for its notified area.**
3. **As mentioned at Para. 26 of this Order, Aurangabad Industrial Township Ltd. is directed to address the issues raised at para. 22 to 24 of this Order and file a separate Petition proposing the conditions for the Licence exemption for the notified area. The above Petition shall be filed within two months of the date of this Order.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Deshpande)
Secretary

