

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Miscellaneous Application No. 22 of 2021 in Case No. 68 of 2021

**Miscellaneous Application of Adani Electricity Mumbai Ltd.- Distribution seeking
impleadment in Case No. 68 of 2021 in the matter of Petition filed by Tata Power
Company Ltd.- Distribution challenging the legality of the Letters dated 8 October 2020
and 9 December 2020 issued by the State Transmission Utility**

Adani Electricity Mumbai Ltd.- Distribution Applicant in MA 22 of 2021

V/s.

Tata Power Company Ltd.- DistributionPetitioner in Case No. 68 of 2021

State Transmission UtilityRespondent No. 1 in Case No. 68 of 2021

Bharat Petroleum Corporation Ltd.Respondent No. 2 in Case No. 68 of 2021

Appearance:

For Adani Electricity Mumbai Ltd.- Distribution Smt. Deepa Chavan (Adv.)

For Tata Power Company Ltd.- Distribution Shri Sajan Poovayya (Adv.)

For State Transmission UtilityShri Umesh Bhagat (Rep.)

For Bharat Petroleum Corporation Ltd.Shri Roopadaksha Basu (Rep.)

Coram

Sanjay Kumar, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member

ORDER

Date: 7 October, 2021

1. Tata Power Company Ltd.- Distribution (TPC-D) has filed a Petition in Case No. 68 of 2021 challenging the legality of the letters dated 8 October 2020 and 9 December 2020

issued by the State Transmission Utility (STU). STU, vide these letters, had approved and confirmed the grid connectivity to the EHV consumer i.e. M/s. Bharat Petroleum Corporation Ltd. (BPCL) directly to the Intra-State Transmission (InSTS) network and TPC-D has sought a declaration that the aforesaid grid connectivity granted by STU is contrary to the provisions of the Electricity Act, 2003 (EA).

2. On 6 July 2021, Adani Electricity Mumbai Ltd.-Distribution (AEML-D) filed an Application seeking its impleadment in Case No. 68 of 2021.
3. **Main prayers of AEML-D's Application in MA 22 of 2021 in Case No. 68 of 2021 are as under:**

“a) Allow the present application and implead the Applicant/ AEML-D as a party Respondent in the present petition;

b) Consequently, direct the Petitioner/ TPC-D to provide the Applicant/ AEML-D with a copy of the complete set of the present petition in order to enable the said applicant to file its reply on merits;”

4. **AEML-D's Application states as follows:**

- 4.1 AEML-D is seeking impleadment as a Respondent in the matter, since it is a necessary and proper party. This is on account of the fact that AEML-D is a parallel Distribution Licensee, and therefore, is entitled to supply electricity to the consumer, BPCL, once connectivity has been granted by the STU.
- 4.2 AEML-D has learnt that in the present proceedings, TPC-D is claiming that STU could not have granted connectivity directly to the consumer, when the connection application was made by TPC-D. It has also learnt by AEML-D that TPC-D is further claiming that the aforesaid connectivity could not have been provided by STU without specifying the Distribution Licensee which would provide the last mile connectivity, even if it is 220 kV connectivity.
- 4.3 Being a consumer in the common licensed area, BPCL has every right to make its choice with respect to which Distribution Licensee will provide the contract demand, i.e., from either AEML-D or TPC-D. Further, the said consumer may even decide that it has to become a Full Open Access User in terms of the MERC (Distribution Open Access) Regulations, 2016 and its amendment. In this context, the connectivity granted by the STU is within the statutory parameters, and the same safeguards the aforesaid right of BPCL.
- 4.4 However, in the event the Petition in Case No. 68 of 2021 is allowed without making AEML-D a party respondent, and that this Commission holds that BPCL will enter into a supply agreement with TPC-D, then the same would not only be against the interests of a consumer in light of the intent of the EA behind providing parallel distribution licensees, but would adversely prejudice the Applicant/ AEML-D.
- 4.5 Therefore, being a parallel distribution licensee, AEML-D has every right to implead in the present proceedings as a Respondent, as both a necessary and a proper party. The concept of parallel distribution licensees in a licensed area has been incorporated in the EA so that it is the consumer which gets the absolute right to choose the distribution licensee from whom it has to avail the contract demand. However, it has been learnt by AEML-D

that TPC-D is representing that since the application for connectivity to InSTS has been made by TPC-D, then STU could not have directly granted connectivity to the consumer, and that too without specifying the distribution licensee (i.e., TPC-D).

- 4.6 As such, TPC-D, through the Petition in Case No. 68 of 2021, is seeking a relief that since the application for connectivity was made by TPC-D, on behalf of BPCL, then the connectivity with InSTS was required to be granted through TPC-D, and that it would be TPC-D alone which would have thereafter executed the necessary connection agreement and the supply agreement with the consumer.
- 4.7 Further, if grid connectivity is granted in the name of TPC-D, then the consumer will have no option of going to any other licensee (i.e., AEML-D) through switchover or changeover, as connectivity with the InSTS is non-transferrable in terms of Clause 1.9 of the Grid Connectivity Procedure. In effect, TPC-D is seeking to force the consumer to opt for TPC-D's contract demand, so that later on the consumer is unable to shift to other Distribution Licensee (AEML-D) because of implication of Cross Subsidy Surcharge (CSS).
- 4.8 Hence, if BPCL wishes to avail contract demand from the other parallel distribution licensee (AEML-D), then the same will require additional Grid connectivity by such licensee, which becomes uneconomical as STU will not grant additional connectivity. Hence, the effect of the Petition in Case No. 68 of 2021 is that it may result in a protocol to be devised qua all the prospective EHV consumers in common distribution license area, thereby materially affecting the interests of AEML-D.
- 4.9 It appears that the Petition in Case No. 68 of 2021 is against the statutory/ regulatory framework. In this context, reference be made Regulation 4.2 of the MERC (Electricity Supply Code and Standards of Performance for Distribution Licensees, including Power Quality) Regulations, 2021 (**Supply Code and SoP Regulations 2021**), which categorically provide that the cost of network for providing connection to an EHV Consumer is to be borne by the Transmission Licensee. Furthermore, Statement of Reasons (SOR) for these Regulations provides that EHV service lines cannot be made part of distribution system, as the said lines are in the nature of transmission lines. The transmission lines, being part of interconnected transmission grid, are required to ensure that their operation and maintenance need to comply with the provisions of MERC (State Grid Code) Regulations, 2020, and therefore, the aforesaid SOR provides that the same will consistently be better maintained by the Transmission Licensees under the guidance of STU and the State Load Dispatch Centre (SLDC). Hence, in the aforesaid SOR, the Commission has opined that EHV lines are to be considered as part of Transmission Licensee only. Hence, TPC-D cannot be allowed to contend that connectivity to the InSTS is to be granted through TPC-D, or that the EHV service line has to be treated as part of the distribution system.
- 4.10 It appears that the intent of TPC-D is clearly to force the consumer to choose the said licensee for its supply requirement (through providing contract demand). In case of EHV consumers, the consumer is the party seeking to connect to the transmission system, the system for connection is to be built by the Transmission Licensee directly and thereafter, the consumer will be free to opt for contract demand from any Distribution Licensee of its choice, operating in the area of supply.

- 4.11 In the present case, the connectivity with InSTS has been granted through the transmission network of Adani Electricity Mumbai Ltd.-Transmission (AEML-T), on account of the fact that providing connectivity from the said network was more economical. STU was well within its rights to have granted connectivity. Further, STU is obligated to study the technical and economical parameters while deciding the connectivity to optimise the overall cost of new development.
- 4.12 In any event, since there is a parallel distribution licensee, STU could not have specified a particular Distribution Licensee which would be involved for the purpose of execution of connection agreement with the STU and supply agreement with the consumer. The entire case being made out by TPC-D is under the misconception that it is the only licensee and not a parallel licensee, and therefore, by default only it can provide the last mile connectivity.
- 4.13 Hence, AEML-D becomes a necessary as well as a proper party to the present proceedings. In fact, it was incumbent upon TPC-D to have made AEML-D a respondent as once a fresh connectivity with STU/ InSTS is granted, then a consumer will have the choice as to from which distribution licensee it would have a contract demand.
- 4.14 A proceeding cannot be decided without arraying necessary and proper parties as Respondents. In the absence of necessary and proper parties, the proceedings will suffer from non-joinder of parties, thereby leading to any Order which is passed as null and void. In this context, reference may be made to the Judgments of the Hon'ble Supreme Court in *Vidur Impex and Trader Private Limited and Ors. v. Tosh Apartments Private Limited and Ors.* reported in (2012), in *Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*, and in *Khetrabasi Biswal v. Ajaya Kumar Baral*.
- 4.15 Any Order passed in this matter will have implications on all the EHV consumers in the common distribution license area of TPC-D and AEML-D. Further, since AEML-D has not been made a party to the present proceedings, consequently, it does not have the benefit of perusing the contents of the present Petition. Any Order passed in the present Petition, without hearing AEML-D, would have an adverse impact upon the interests of AEML-D, as well as that of BPCL, as the said consumer has the right to choose any of the parallel distribution licensees. AEML-D reserves its rights to file a reply on merits of the Petition in Case No. 68 of 2021, once it is impleaded as a Respondent and is provided with a copy of the present Petition.
- 4.16 Hence, AEML-D is seeking impleadment as a Party Respondent and suitably participation in the present proceeding. In the event the Applicant is not impleaded and the Commission passes any Orders, the same would result in passage of Orders without granting any opportunity of hearing to a parallel distribution licensee, thereby leading to a travesty of justice.
5. **TPC-D in its reply dated 27 July 2021 stated as under:**
- 5.1 TPC-D has not served the Petition in Case No. 68 of 2021 on AEML-D and neither the Commission has issued any direction in this regard. An Impleadment application can be filed by a necessary and proper party establishing the prejudice being caused to such a party it is not made a party to a proceeding. However, a party seeking to be impleaded as

a Respondent in a matter cannot possibly have a say on the merits of the matter till the time they are impleaded by the directions of a court of law. Hence, TPC-D is unable to comprehend as to how AEML-D has adduced the facts of the matter, or the submissions made in the Petition. This shows that there is an attempt to cause serious prejudice to the interest of TPC-D. AEML-D is not even remotely concerned or connected with the matter at hand. The issue sought to be highlighted by AEML-D and grounds being raised therein are not even remotely connected to the subject matter of the Petition. The said Impleadment Application of AEML-D ought to be dismissed on this ground alone.

- 5.2 AEML-D's claim to be a proper and necessary party to the present set of proceedings is primarily based on its status of being a parallel distribution licensee in Mumbai. The said contention is premised on a very illogical understanding of law by AEML-D. Merely because AEML-D has the status of a parallel licensee, does not automatically translate into the fact that AEML-D becomes a necessary and proper party in the present dispute. The issue in the present matter is not relating to the right of the consumer to choose a Distribution Licensee, but against the conduct of STU in granting connectivity to a consumer directly when the application was made by a Distribution Licensee. Admittedly, the right of the consumer to choose the licensee is not in question in the present Petition. Assuming without admitting that AEML-D's contention regarding AEML-D being a parallel distribution licensee and therefore, it is a 'necessary' and a 'proper' party has some merit, by applying such superfluous logic, AEML-D should be made a party in all the disputes being contested by the Petitioner herein. By making such absurd submissions, AEML-D is not only abusing the process of law but also creating unnecessary hurdles in the road to justice for the Petitioner.
- 5.3 AEML-D is neither a necessary party nor a proper party for the purpose of adjudication of the present proceedings. As per the settled position of law, reiterated in the case of *Globe Ground (India) Employees Union v. Lufthansa German Airlines, (2019)*, the expressions 'necessary' or 'proper' have separate and different connotations. A necessary party is one without whom no Order can be made effectively, and a proper party is one in whose absence, an effective Order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings. AEML-D's presence isn't required for the adjudication of the matter at hand primarily because AEML-D has absolutely no role to play in the application filed by the Petitioner. Merely because AEML-D is a parallel distribution licensee in the area does not warrant AEML-D to be impleaded in the present proceedings.
- 5.4 AEML-D is intending to obfuscate and pre-judge the instant proceedings. It was BPCL, who being an existing consumer of TPC-D, sought additional load of 200 MW to meet its energy requirement. The option to choose the licensee is available with BPCL, however it has exercised its right and has opted for TPC-D to provide last mile connectivity. TPC-D based on this request had applied to STU for grid connectivity at 220 kV through LILO of 220 kV Trombay-Saki line at Mahul. Therefore, BPCL (being an existing consumer of TPC-D) had already made a choice of the distribution licensee who shall be the last mile connectivity provider for the additional load. AEML-D's contention that BPCL's right shall be affected since it has a choice to exercise is utterly baseless. Further, even otherwise BPCL or any consumer in similar context always has the option to choose AEML-D as the

supply Distribution Licensee (changeover). Merely because the connectivity is granted to a Distribution Licensee (as prayed for) does not restrict the choice available to the consumer to changeover to another Distribution Licensee at any point in time and therefore, interest of the consumers and as well as the distribution licensees is safeguarded.

- 5.5 AEML-D in its Impleadment Application is making submissions on the merits of the matter which itself shows complete disregard of the procedure mandated to be followed under law. In the absence of any substantial reasons for it to be impleaded as a party to the present proceedings, AEML-D is opting to obfuscate the Commission by making submissions on merits of the matter, which is impermissible.
- 5.6 It is also the submission of AEML-D that present Petition is against the statutory/regulatory framework set out in the Supply Code and SoP Regulations 2021. In this regard, it is submitted that the connectivity granted by STU was dated 8 October 2020 which was much before the said Supply Code and SoP Regulations 2021 which were notified on 24 February 2021. Therefore, the intention of AEML-D is only to prejudice the minds of the Commission by making such misleading and false statements.
- 5.7 The extant statutory framework is crystal clear on the aspect of a distribution licensee supplying electricity to the end consumer, irrespective of the quantum of demand or the nature of lines i.e. extra high voltage, high voltage or low voltage. Without going into the merits of the matter, as the same is not required for the purpose of adjudication of the present application, reference may be made to the Hon'ble Andhra Pradesh High Court's Order in Writ Petition No. 674 of 2021 dated 17 June 2021 which held that there can be no supply of electricity to the end consumer by any other regulated entity other than a distribution licensee. Therefore, AEML-D's attempt to support the errors of STU by stating that interface of a distribution licensee isn't required, is entirely fallacious and falls flat. Further, on one hand, it is supporting the rationale of STU to not provide an interface of a distribution licensee whilst processing Petitioner's application, and on the other hand is making an extraneous attempt to be impleaded as a party to the present proceedings claiming that its rights and interest will get affected. Such diametrically opposite stands taken in the same application demonstrates the entire intent with which AEML-D is approaching this matter. Parties cannot be permitted to approbate and reprobate at the same time.
- 5.8 The case laws being relied upon by AEML-D are of no help as by merely citing case laws does not make AEML-D a 'necessary' or a 'proper' party. AEML-D has failed to make any case for its Impleadment in the present matter.
- 5.9 If AEML-D is impleaded, it will hinder the due adjudication of the lis and adversely affect the rights of TPC-D. Moreover, in case the Impleadment of the AEML-D is allowed in the present case, it will set a wrong precedent, where every matter involving any of the distribution company before the Commission will necessarily have both parallel licensees as party. Such automatic Impleadment without being able to demonstrate any prejudice is impermissible and will undermine the entire adjudicatory process undertaken by the Commission. The Commission is requested not to implead the AEML-D as a Respondent in the Petition in Case No. 68 of 2021 as it is neither a 'necessary' nor a 'proper' party in terms of the settled principles of law.

6. At the E-hearing held on 24 August 2021:

6.1 Advocate appearing on behalf of AEML-D stated that:

- i. STU has marked its letters to AEML as well and thus, the applicant has been part of the matter. Hence, AEML-D has an idea about the dispute raised by TPC-D even though TPC-D has not made the copy of the Petition in Case No. 68 of 2021 available to AEML-D inspite of AEML-D's specific request.
- ii. If while disposing the matter, the Commission deems it appropriate to address the issue by laying down a protocol to be followed by the Distribution Licensees while releasing connection to EHV consumers, then AEML-D would also be impacted by the outcome of the present proceeding. Further, the stand taken by the Commission in present Petition in Case No. 68 of 2021 may create a precedence which would be applicable to all Distribution Licensees. Thus, AEML-D will be impacted by the outcome of the Petition in Case No. 68 of 2021 and hence, AEML-D needs to be heard.
- iii. AEML-D's participation in the present proceeding may also avoid future litigations.
- iv. As held by the Hon'ble Supreme Court in its Judgment in the matter of *Kundanmal Hirachand v/s MCGM*, a declaratory Judgment in respect of a disputed status will be binding not only on the parties actually before the Court but also upon persons claiming through them respectively. The aforesaid Judgment also states that for pressing impleadment, the intervenor or the impleader has to demonstrate that whether the Order, which the Petitioner (Plaintiff) is asking, will affect the said impleader in the enjoyment of his legal rights.
- v. Whether AEML-D's legal rights would be directly affected is the question that needs to be decided by the Commission in present impleadment Application of AEML-D.
- vi. Regulatory jurisdiction of the Commission has been invoked in present Petition and various issues such as interpretation of Grid Code Regulations, Transmission Open Access Regulations, role of Transmission Licensees etc. are likely to come up in the present proceeding which are relevant to all Distribution Licensees in the State.
- vii. It appears that the STU's letter has not been impugned in its entirety and only omission of mention of the Distribution Licensee in the letter may be the objection on behalf of TPC-D.
- viii. TPC-D has contended that AEML-D's impleadment will delay the proceeding, however, it is submitted that AEML-D has immediately filed its impleadment Application upon being aware of the Petition in Case No. 68 of 2021 filed by TPC-D.
- ix. TPC-D's reply to the AEML-D's Application state that its Petition may be read part and parcel of its reply. However, TPC-D has declined AEML-D's request to provide a copy of the Petition.

- x. STU has not objected to the Impleadment Application of AEML-D
- 6.2 Advocate appearing on behalf of TPC-D stated that:
- i. STU, being the co-respondent has no role to object the Impleadment Application of AEML-D.
 - ii. While deciding the Application of AEML-D, the Commission needs to take into consideration the nature of the relief sought by TPC-D and the Commission needs to verify as to whether the relief can be granted in absence of intervener.
 - iii. TPC-D is not seeking any declaration that all such future cases need to be dealt with in an identical manner, which would affect all the Distribution Licensees and TPC-D is just seeking to set aside the STU's letters.
 - iv. Copies of the STU's letters were marked to AEML-T and not AEML-D and therefore AEML-D was never involved in the matter.
 - v. Assuming and not admitting, if AEML-D has some material to produce before the Court, AEML-D would become the witness and not a Party to the proceeding. However, AEML-D has no material to produce before the Commission.
 - vi. It is the claim of AEML-D that since the Order that will be passed by the Commission in the matter Case No. 68 of 2021 will be binding on it and hence it needs to be impleaded in the matter. TPC-D submits that all Orders of the Commission and the Hon'ble Appellate Tribunal for Electricity (ATE) are binding on all related stakeholders, however, not all proceedings before the Commission and Hon'ble ATE are conducted through a public hearing. If the claim of AEML-D is to be accepted, then all the Distribution Licensees need to be impleaded in the matter.
 - vii. STU is the necessary party in the present matter and BPCL is the proper party as no relief has been prayed against BPCL.
 - viii. AEML-D has relied on the Judgment passed by the Hon'ble Supreme Court in the matter of *Ramesh Hirachand Kundanmal v. MCGM* to support its impleadment in the matter. However, no relief was given to Hindustan Petroleum Corporation Ltd. (HPCL) (the Applicant seeking an impleadment in that matter) inspite of the fact the matter was related to unauthorized construction on the land held by HPCL.
 - ix. The only issue involved in present matter about correctness/legality of the letters issued by STU.
 - x. In its Judgment in the matter of *Kasturi v. Iyyamperumal and Others*, the Hon'ble Supreme Court has laid down the tests for impleadment of another Party, according to which there must be a right to some relief against such party in respect of the controversies involved in the proceedings and no effective decree can be passed in the absence of such party. However, TPC-D is just seeking to set aside the STU's letters and no relief has been sought against AEML-D. Further, an Order in Case No. 68 of 2021 can be passed in absence of AEML-D.

- xi. A Party does not become a necessary Party to the proceeding merely because the outcome of the proceeding may affect such party. As per ruling of the Hon'ble Supreme Court in its Judgment in the matter of *Mumbai International Airport Pvt. Ltd. v/s. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.*, AEML-D does have some vested right post outcome of the present Petition, that itself is not a ground to be impleaded as a party to a proceeding.
 - xii. As held by the Hon'ble Supreme Court in its Judgment in the matter of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, a decision is an authority for which it is decided and not what can logically be deduced therefrom and a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.
 - xiii. There is nothing in the Grid Code Regulations which permits the Transmission Licensee to directly connect the consumer's premise.
 - xiv. The present proceeding should not be converted to a public hearing.
 - xv. Judgment in a matter is not binding for what logically flows from the Judgment, rather it is the ratio decidendi of the Judgement which is binding.
- 6.3 Representative of STU stated that it had no say on the impleadment Application of AEML-D.
- 6.4 Representative of BPCL stated that it had no objection to the impleadment Application of AEML-D and BPCL will abide by the Order of the Commission.
- 6.5 Responding to the arguments of TPC-D, the advocate for AEML-D stated that:
- i. TPC-D, in its reply, stated that BPCL has the option of changeover. However, the consumer might be deprived of the right to switchover from TPC-D to AEML-D.
 - ii. Under the Grid Code Regulations, the consumer can also be the user of the InSTS and it is not necessary that only the Distribution Licensee needs to be granted the grid connectivity.
 - iii. TPC-D, through its prayers, is essentially diluting competition and the choices available to the consumers cannot be closed.
 - iv. As contended by TPC-D, not all the Distribution Licensees in the State are required to be impleaded, but AEML-D, which is a parallel Distribution Licensee operating in the area where BPCL is located, needs to be impleaded.
 - v. It is correct that the Judgment is a Judgment for the case which it decides, however, it lays down principles for future cases.
 - vi. TPC-D has relied upon the Judgment of Hon'ble Supreme Court in the matter of *Kasturi v. Iyyamperumal and Others*. However, this Judgment, in fact, supports the case of AEML-D as AEML-D's right might be curtailed if TPC-D's prayers are allowed.

- vii. TPC-D has stated that the present proceeding should not be converted into a public hearing proceeding, however, regulatory jurisdiction of the Commission has been invoked in the present proceeding.
 - viii. If connectivity is granted to TPC-D, BPCL's right to switchover would get curtailed.
- 6.6 The Parties sought liberty of the Commission to file written submissions. The Commission directed the Parties to file their respective written submissions within three days with copy served on all the parties.
7. **AEML-D, in its written submissions dated 27 August 2021, stated as under:**
- 7.1 The apprehension and stand of the Applicant, AEML-D stands justified in view of the contents of Paragraph 10 of the Reply to the Impleadment Application filed by TPC.
- 7.2 Further, AEML-T was marked a copy of one of the letters dated 8 October 2020, which have allegedly been impugned in the Petition in Case No. 68 of 2021. It is observed from a reading of the above letter that STU granted the grid connectivity to BPCL. However, STU, rightly so, did not identify a distribution licensee in this connectivity permission. From the notice dated 14 June 2021 issued by Office of the Commission to the present Petition, it is apparent that the challenge by TPC-D to the above letter is to the extent that the STU granted connectivity without 'identifying' or specifying the intervening distribution system or licensee.
- 7.3 AEML-D was severely at a disadvantage during the deliberations before the Commission on 24 August 2021, during consideration of the Application for its impleadment, as despite, TPC-D in its reply dated 26 July 2021 in paragraph 3 thereof, relying on its Petition and stating that the same be treated as part of its reply to the impleadment application and despite the Advocate for AEML-D vide its mail dated 29 July 2021 requesting TPC-D for copy of the Petition, the same was denied as the said email remained unanswered.
- The prejudice caused to AEML-D if it is not impleaded as a Party to the present proceedings.
- 7.4 It is apparent that the entire aim of TPC-D is to force BPCL to have load sanction only from TPC-D at the time of getting connected to the InSTS, thereby keeping only the option of "changeover" open to BPCL. In case BPCL wants to avail supply from AEML-D, TPC-D wants to present the situation as a fait accompli, leaving no choice of Distribution Licensee in its entirety to BPCL at the time of getting connected. When AEML-D is a Distribution Licensee in the same area of supply, a choice should necessarily be available to BPCL. This choice cannot be obliquely skewed to curtail absolute choice available to a consumer as against a curtailed choice. Further, by seeking to record its name in the connectivity, TPC-D wants to permanently close the option of "switchover" to BPCL as the connectivity is non-transferable.
- 7.5 These submissions are made by AEML-D in view of the contents of paragraph 10 of the reply dated 26 July 2021 filed by TPC-D, which stated that option to choose the licensee is available with BPCL, however, it has already made a choice of the distribution licensee who shall be the last mile connectivity provider for the additional load. TPC-D, in its reply,

further stated that BPCL or any consumer in similar context, always has the option to choose AEML-D as the Supply Distribution Licensee (changeover) and therefore, interest of the consumers and as well as the distribution licenses is safeguarded.

- 7.6 In view of the aforesaid, AEML-D becomes a necessary party as the stand and claim of TPC-D seeks to permanently unsuit AEML-D from being available as an option to BPCL at the time of getting connected, or through “switchover” (as the connectivity is non-transferable). As such, AEML-D is directly aggrieved by the stand of TPC-D, and that no relief can be granted to TPC-D which directly affects the interests of AEML-D, without affording an opportunity of hearing on merits to AEML-D.
- 7.7 In the particular instance, the network connection is already decided by the STU in the most economical manner, through AEML-T (which network is part of InSTS and will be laid by neither of the Distribution Licensees) and hence the choice of both Distribution Licensees should remain available to BPCL for load sanction at the time of getting connected, so that it is able to choose either one of them to optimize its Tariff.
- 7.8 This right of choice has been granted to a distribution licensee as well as to a consumer by the Commission in its Order dated 12 June 2017 on account of interpretation of Section 43 of the EA. Section 43 of the EA provides for universal supply obligation of a distribution licensee, and that the Commission interpreted the said provision in a parallel licence scenario (on account of AEML-D and TPC-D both being parallel licensees in Mumbai Suburbs), thereby providing the right of switchover and changeover.
- 7.9 Under switchover, a licensee has the right to supply to a consumer on its own distribution network, by getting the consumer disconnected from the network of the other parallel licensee. Whereas, under changeover protocol, the distribution licensee can supply electricity to its consumer by using the network of the other licensee. In the changeover protocol, the licensee who wishes to supply electricity to the consumer, has to bear wheeling charges and the concerned consumer has to bear cross subsidy surcharge to be paid to the other parallel licensee.
- 7.10 In view of the aforesaid, if the switchover right is exercised by a distribution licensee and a consumer, then the consumer need not have to make payment of any cross-subsidy surcharge, thereby making the said option of switchover a financially viable option as compared to changeover. In case of EHV consumers, the last mile infrastructure is laid by the Transmission Licensee identified by the STU, which, in this case, is AEML-T. The connection works will not belong to either TPC-D or AEML-D directly. Hence, TPC-D wants to get its name recorded as “connectivity granted through TPC-D”, so that ‘only’ the option of “Changeover” remains with BPCL. This is the entire aim of TPC-D through Petition in Case No. 68 of 2021 which will force BPCL to only go through the process of changeover if it wants to opt for AEML-D.

No denial of TPC-D during deliberations/ hearing held on 24 August 2021 of the contentions relating to taking away of right of switchover from AEML-D (and the consumer):

- 7.11 In the entire hearing held on 24 August 2021, there was no iota of argument put forth by TPC-D on the aforesaid issue of ‘permanent denial of the option of supply by AEML-D

through “switchover”. In case of EHV consumers, the “switchover” does not refer to the physical process of getting disconnected from network of one Distribution Licensee and connected to that of another. It would logically only refer to transfer of connectivity in STU records.

- 7.12 The aforesaid establishes the entire case of impleadment of AEML-D, as it is categorically “admitted” by TPC-D that, in the event the present Petition is allowed, then the option which will be available to AEML-D and BPCL would be that of ‘changeover’. Thus, AEML-D would neither be able to present itself as a choice of distribution licensee for the purpose of load sanction at the time of BPCL getting connected to the InSTS, nor would the option of “switchover” be available to BPCL, as the connectivity is non-transferable.
- 7.13 This aspect was left altogether unanswered/ unaddressed by TPC-D in its oral arguments made before the Commission on 24 August 2021.

STU action of granting connectivity ensures a level playing field:

- 7.14 It is the case of AEML-D that, in a parallel distribution license area, wherein BPCL is located, the STU has rightly not identified any intervening distribution licensee, while granting grid connectivity to BPCL. This is on account of the fact that connectivity with InSTS, once granted, is “non-transferable”.
- 7.15 The aim of TPC-D is to somehow get reflected as a distribution licensee in the connectivity granted by the STU, so that such grant of connectivity cannot at all be transferred to AEML-D, in the event BPCL wishes to avail supply from AEML-D. The prayers of TPC-D, if granted, would thus, make AEML-D unavailable and unviable as a Distribution Licensee to BPCL at the time of getting connected. Then, for availing “switchover”, AEML-D (and BPCL) will have to seek another connectivity with the STU, which will not be permitted as the same will result in duplication of the transmission system and its redundancy, which is contrary and is barred by Section 39(2)(c) of the EA, which mandates that STU has to ensure an efficient and economical system of InSTS. Even if “switchover” is to be carried out by merely replacing TPC-D by AEML-D in STU connectivity records, it won’t be possible as the connectivity, according to STU procedure, is non-transferable.

The curious case of the application filed by TPC-D

- 7.16 AEML-D is precluded from assisting the Commission in the case thoroughly. This is because wherever the assistance requires perusal and consideration of the contents of the Petition, AEML-D has to humbly seek the Commission’s attention and merely point out the issues. Further, it needs to be analyzed on merits if TPC-D “misrepresented” itself as the applicant for grant of grid connectivity, when the consumer is BPCL. It needs to be considered as to who can be an applicant, in terms of the Grid Code Regulations. It further needs to be considered that in a parallel license situation, whether Distribution Licensee can be permitted to apply for connectivity on ‘behalf’ of a consumer. It also needs to be considered whether the ministerial act of filing an application creates any rights and interests in any Distribution Licensee. It needs to be further considered by the Commission that there has to be a level playing field for both the Distribution Licensees.

- 7.17 In such a parallel licence scenario, AEML-D then becomes a necessary party. This is because its legal rights and interests are vitally impacted by any decision taken in the present case.
- 7.18 The aforesaid aspects need to be considered by the Commission, only after impleading AEML-D, since the issue raised in the present Petition is a sectoral issue which will decide the rights of all the stakeholders involved, including AEML-D. The counsel for AEML-D sent an email to the counsel of TPC-D, on 29 July 2021, seeking copy of the Petition. However, the said email remained unanswered.

Apparently TPC-D has filed proceedings invoking regulatory jurisdiction of the Commission:

- 7.19 Further, in the hearing held on 24 August 2021, there was absolutely no answer provided by TPC-D to the contention of AEML-D that it appears that in the present Petition, Section 86(1)(f) of the EA, has not been invoked which deals with the disputes and the adjudicatory powers of the Commission. Once the said provision is not invoked, the same means that the issue raised is a “regulatory” issue, where the general principles applicable to the law of impleadment in deciding civil suits (i.e., disputes) under the Civil Procedure Code, 1908, will be applicable in a much liberal manner.
- 7.20 The Hon’ble Supreme Court in *State of Gujarat v. Utility Users' Welfare Assn.*, held that any electricity Regulatory Commission like this Commission, performs myriad functions which include regulatory functions (such as Tariff determination, regulation of electricity purchase and procurement process of distribution licensees, facilitating intra-State transmission, issuing licences, promoting cogeneration and generation of electricity from renewable sources, levy fee, specify or enforce standards, fix trading margins etc.), dispute adjudication function (such as adjudicating the disputes between the licensees and generating companies or to refer such disputes to arbitration) and advisory function. AEML-D submits that considering the nature of the prayer sought by TPC-D, the relief sought seems to be in the regulatory domain of the Commission.
- 7.21 The relief sought by TPC-D seems to be contrary to the definition of the term “user” in the State Grid Code, 2006. The term stands defined thus:

“User” means persons, including in State Generating Stations, Distribution Licensees, Consumers of the Distribution Licensees directly connected to Intra State transmission system and persons availing of Open Access, who are connected to and / or use the intra-State Transmission System:”

- 7.22 From the aforesaid definition, it needs to be deliberated by the Commission as to whether it is TPC-D which is to be treated be the ‘user’ or the ‘user’ is BPCL as it is the one which is connected and using the InSTS. This aspect cannot be considered by the Commission without the assistance of AEML-D, which is a necessary stakeholder on account of being a parallel distribution licensee.

Case law relating to impleadment of parties as necessary and proper party:

- 7.23 In view of the aforesaid, it now becomes necessary to refer to the case laws on the law qua impleadment of parties. Some of the case laws are cited hereinbelow:

A. In *Ramesh Hirachand Kundanmal v. MCGM*, (1992) 2 SCC 524, the Hon'ble Supreme Court held as follows:

*“14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon v. Raphael Tuck & Sons Ltd.* [(1956) 1 All ER 273 : (1956) 1 QB 357], wherein after quoting the observations of *Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England* [(1950) 2 All ER 605, 611], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, *Devlin, J.* has stated:*

“The test is ‘May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights’.”

- 7.24 The above Judgment lays down the test that for pressing impleadment, the intervenor or the impleader has to demonstrate that whether the Order, which the Petitioner (Plaintiff) is asking, will affect the said impleader in the enjoyment of his legal rights.
- 7.25 In the present case, the right of AEML-D to be available as a choice of Distribution Licensee to BPCL at the time of getting connected itself or to get BPCL “switched-over” from TPC-D, which right is guaranteed vide the Order dated 12 June 2017 passed by the Commission in Case Nos. 182 of 2014 and 40 of 2015, is sought to be taken away by TPC-D. As stated before, TPC-D had no answer, whatsoever, to the said contention of AEML-D in the oral hearing held on 24 August 2021. Hence, AEML-D, would be adversely affected and would be “devoid” of its rights in the event the present Petition is allowed without even providing an opportunity of being heard on merits to AEML-D.
- 7.26 TPC-D sought to also wrongfully rely upon the Judgment passed by the Hon'ble Supreme Court in the *Kundanmal Matter*, by relying on paragraphs 15 and 19 thereby contending that no relief was given to HPCL (the Applicant in that matter before the Hon'ble Supreme Court) by impleading it. However, it is the ratio decidendi of the Judgement which is relied upon by the Applicant. It is also stated that though CPC does not apply to the proceedings before the Commission, nevertheless the principles analogous to Order 1 Rule 10 shall

invariably apply. It is the legal rights of AEML-D which are being affected today. As demonstrated above, the legal right of presenting itself as an optional Distribution Licensee to a new consumer at the time of seeking connection, or the right of “switchover” available to AEML-D becomes an issue which arises in the Petition in Case No. 68 of 2021. If the Petition in Case No. 68 of 2021 is considered without hearing and behind the back of AEML-D, though the case of AEML-D squarely fulfills the test contained in the above Judgment, it would lead to a situation wherein amongst several reasons for not doing so one would be that the parallel Distribution Licensee (AEML-D) is prevented from bringing to the notice of the Regulator the reasons and rationale for the Petition which would skew the level playing field between two Distribution Licensees in a parallel license scenario.

- 7.27 In fact, while relying on the Judgment, it was pointed out on behalf of AEML-D that the Hon’ble Supreme Court, after discussing the law, did not allow the impleadment. This does not take away the right of a litigant to rely on the ratio decidendi in the case.
- 7.28 If AEML-D is not impleaded, it would result in it being subjected to a fait accompli vis-à-vis the Distribution Licensee choice and would be prevented from agitating all factual and legal issues in the case. To avoid such a situation, it would be more appropriate for the Commission as a State Regulator to insist on the parallel Distribution Licensee being made a party to the proceeding.
- 7.29 AEML-D relies on the Leathem Principle. It is well established principle of law, known as the “*Leathem Principle*” that a case can only be considered an authority for what it actually says, and inferences / logical corollaries or hidden meanings cannot be drawn from it. This principle was laid down by *Lord Halsbury in the classical case of Quinn Vs. Leathem, (1901) AC 495*, as follows:

“...every judgement must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a made of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

- 7.30 The principle laid down by Lord Halsbury in *Quinn Vs. Leathem* (supra) has been followed by the Hon’ble Supreme Court of India in a multitude of cases, including in *Bank of India Vs. K. Mohandas – 2009 (5) SCC 313*, and *Dinubhai Boghabhai Solanki Vs. State of Gujarat – 2014 (4) SCC 626*.
- 7.31 In *Vidur Impex and Trader Pvt. Ltd. and Others v. Tosh Apartments Pvt. Ltd. and Others*, (2012) 8 SCC 384, the Hon’ble Supreme Court held as under:

“41. ...the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have

been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment.”

Distinguishing the Judgement relied upon by the TPC-D:

7.32 TPC-D relied on *Kasturi v. Iyyamperumal and Others*, (2005) 6 SCC 733, wherein the Hon’ble Supreme Court held as follows:

“7.the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

7.33 AEML-D in fact, supports this reliance of TPC-D on *Kasturi (supra)*. This is because AEML-D fulfills both the tests laid down in the judgement.

7.34 AEML-D fulfills both the said tests, as TPC-D seeks to permanently close the right of supply through new connection or the right of “switchover” available to AEML-D qua the issue of connectivity to BPCL raised in the present Petition. Further, being a parallel distribution licensee in the area where BPCL is situated, the presence of AEML-D is necessary for putting forth the law qua such connectivity to be granted in such area, as the legal rights and status of AEML-D is vitally affected. The views of AEML-D would also be most relevant for enabling the Commission to interpret relevant Regulations qua connectivity in a situation of a parallel distribution license.

7.35 Following prayer is made in the Petition

Set aside the impugned Letters dated 08.10.2020 and 09.12.2020 issued by the STU, insofar as they do not provide for the last mile connectivity to the consumer through the distribution system; and / or

- 7.36 Thus, TPC-D is trying to make out the case of mandatory last mile connectivity to the consumer through the distribution system vis-à-vis inter alia the connectivity sanction letter dated 8 October 2020.
- 7.37 The words “declare” and / or “declaration” are not used in the prayer as it stands on page 26 of the Petition which was inserted during the hearing.
- 7.38 The Commission will have to consider whether intervening distribution system is mandatory for connecting a consumer with InSTS. Such a prayer would apply to all such similar situations even qua AEML-D besides severely prejudicing AEML-D vis-à-vis the restriction on choice to BPCL. The contents of the prayer are such that they would prevent future litigation at the stage of regulator by removing the existing cause of controversy. All issues and aspects concerning the controversy raised would be determined. As such, it is a declaratory relief even though the wording of the prayer may not contain any word or term specifically mentioning declaration. In respect of such a declaratory relief sought by TPC-D which would adversely impact the functioning of AEML-D by restricting the choice of the consumer BPCL, AEML-D becomes a necessary party. The decision of the Commission would operate as a decision in rem while adversely impacting AEML-D if the proposition advanced was to be allowed by curtailing the choice of the consumer. Thus, the relief claimed by TPC-D itself necessitates impleadment of AEML-D as a parallel licensee.
- 7.39 A perusal of the letter dated 8 October 2020 does not clearly reveal which portion thereof has been impugned by TPC-D.
- 7.40 A perusal of the prayer in Para (20 a) on Page 26 of the Petition reveals that there is a limited challenge to the letter dated 8 October 2020 “in so far as” it does “not provide for the last mile connectivity to the consumer through the distribution system”. Despite, the prayer in the Petition being worded as a limited challenge, it will be in the realm of surmises and conjectures to fathom and comprehend the exact challenge vis-à-vis the connectivity sanction letter dated 8 October 2020. The only clause in the letter which could be possibly challenged by TPC-D is Clause (iv) on the second page of the second paragraph of the letter dated 8 October 2020. The said clause (iv) reads as under:

*“iv. Copy of the “**Load sanction**” from Distribution Licensee to M/s. BPCL”*

- 7.41 This clause is in furtherance of the objective of level playing field and the question which arises for consideration of the Commission is whether TPC-D is an Applicant for connectivity or can be construed so under law. Another vital question which would arise is whether a ministerial act of filing a form result in rights getting crystallized in favour of the entity filing the form and whether such an act of preempting competition an exercise of absolute choice in entirety by consumer, is tenable in law. This makes the presence of the AEML-D necessary in the present proceedings. It is the case of AEML-D, that it is a necessary as well as a proper party, on account of being a parallel distribution licensee and directly affected by the outcome of the present Petition.

7.42 TPC-D relied on *Mumbai International Airport Pvt. Ltd. v. Maharashtra Electricity Regulatory Commission – 2009* wherein the Hon’ble Supreme Court held as follows:

“15. The rule of natural justice requires the Commission to issue a public notice about the ARR and Tariff petition of the licensee and to allow the public to make its submissions on the ARR and Tariff proposals. The Commission has, thereafter, to design the scheme for recovery of the ARR keeping in view various relevant factors. If the classification of the consumers can be supported on any of the grounds mentioned in section 62(3) it would not be proper to say that the tariff fixing was violative of principles of natural justice because the Commission did not issue a public notice of the tariff categories which the Commission had intended to create.”

7.43 AEML-D also relies on the same Judgement and states that it is an exposition of law applicable to the case of AEML-D.

7.44 In its reply dated 26 July 2021, TPC-D has relied on the judgement dated 17 June 2021 of the Ld. Single Judge of the Hon’ble High Court, Andhra Pradesh in Writ Petition No. 674 of 2021. In this regard, AEML-D points out that TPC-D has filed its Reply on 26 July 2021 after the Hon’ble Division Bench of the Hon’ble High Court, Andhra Pradesh, vide its Order dated 20 July 2021, had suspended the operation of the Judgement dated 17 June 2021 passed by the Ld. Single Judge. This vital fact ought to have been pointed out by TPC-D which is also involved in the said litigation. The aforesaid reliance on the Judgement dated 17 June 2021 by TPC-D is therefore misplaced and untenable.

7.45 TPC-D has relied on paragraph 59 of the Judgement in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* passed by the Hon’ble Supreme Court. AEML-D has no dispute with the said proposition and has in fact relied on Leathem Principle in support of its case for impleadment while citing the Case Law. The paragraph 59 of the Judgement reads as under:

“59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

The Commission ought to follow the principles of natural justice:

7.46 It is also a settled principle of law that, where in a proceeding, an Order can be passed which affects the rights of a party, then that party has to be granted an opportunity of being heard. In this context, reference be made to the following judgments of the Hon’ble Supreme Court:

A. *Official Liquidator v. Dayanand and Others, reported in (2008) 10 SCC 1,*

B. *State Bank of Patiala v. S.K. Sharma, reported in (1996) 3 SCC 364,*

7.47 As held by the Hon’ble Supreme Court in aforesaid Judgments, where an authority decides the rights of the individuals, then it is mandatory to follow the principles of natural justice, i.e., the opportunity of a fair hearing. Denying hearing to AEML-D on merits without serving a copy of the Petition, would result in deciding its right to be able to supply power to the consumer at the time of new connection or through switchover, without providing an opportunity of a hearing, which ought not to be permitted by the Commission.

7.48 In view of the submissions made hereinabove, the application seeking impleadment by AEML-D is required to be allowed, as otherwise the issue of grant of connectivity in InSTS would be decided without involvement of the other parallel distribution licensee (AEML-D) thereby directly affecting the said licensees' right to supply power to a consumer under Section 43 of the EA.

8. **TPC-D, in its written submissions dated 31 August 2021, stated as under:**

8.1 The present written submission can be read along with the reply filed by TPC-D against the impleadment Application.

AEML-D is neither a Necessary Party nor Proper Party

8.2 In the present lis, the Petitioner is the dominus litis and has the right to array the respondents in light of the relief being sought under the Petition. No person can forcefully make himself a party wrongfully canvassing issues which are immaterial to the proceedings. The entire dispute in the present Petition revolves around the two communications issued by the STU. In the entire gamut of facts, there is no role, whatsoever, of AEML-D and any submissions made otherwise cannot be countenanced.

8.3 AEML-D is neither a proper nor a necessary party for the purposes of disputes raised by the Petitioner in present Petition. In *Kasturi v/s Iyyamperumal*, the Hon'ble Supreme Court has set the following two tests for determining the question whether a particular party is necessary or a proper party to a proceeding:-

a. There must be right to some relief against such party in respect of the matter involved in the proceeding in question and

b. It should not be possible to pass an effective decree in the absence of such party.

8.4 Assuming without admitting that AEML-D does have some vested right post outcome of the present Petition, that itself is not a ground to be impleaded as a party to a proceeding. In *Mumbai International Airport Pvt. Ltd. v/s. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.*, the Hon'ble Supreme Court observed as under:

“ A necessary Party is a person who ought to have been joined as a party and whose absence no effective Order could be passed at all by the Court. If a necessary party is not impleaded, the suit itself is liable to be dismissed. A proper party is a party who though not a necessary party is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance. ”

8.5 BPCL (being the existing consumer of the Petitioner) has already made a choice of the distribution licensee who shall be the distribution licensee for additional load. AEML-D's contention that BPCL's right shall be affected since it has a choice or this shall lead to stifling of competition is utterly baseless and conceived in light of the facts of the present

case. BPCL or any consumer in similar context always has the option to choose AEML-D as the supply distribution licensee (changeover). Therefore, interest of the consumers as well as the distribution licensee is safeguarded. This stand has also been clarified by the Commission in the Order dated 12 June 2017 in Case No. 182 of 2014.

- 8.6 In the present case, the dispute is between two parties i.e. in light of the application made by the Petitioner to STU and there is not even a remote connection of AEML-D in the present lis.

The nature of present relief cannot be altered

- 8.7 Without prejudice, it should be noted that under the present Petition, no relief has been claimed against AEML-D or the reliefs, if granted by the Commission shall have any implication on AEML-D's operations. In any case, in terms of the applicable statutory framework, if AEML-D or any stakeholder have any issue with the Order passed in favour of the Petitioner, they will be entitled to challenge the same under Section 111 of the EA before the ATE.
- 8.8 Further, under the extant statutory framework, the Commission may conduct public hearing for an issue seeking comments from public at large, whilst there is no such equivalent provision for seeking stakeholder/public comments during adjudication of the dispute under Section 86 of the EA. Therefore impleadment of AEML-D in the present matter, would be against the extant statutory and regulatory framework. Applicant's impleadment would change the nature of lis. It is a settled principle of law that a third party cannot be impleaded as a party if it changes the scope of the Petition. In *Bharat Karsondas Thakkar v/s. Kiran Constructions Co.*, the Hon'ble Supreme Court observed as under:

“ Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for a specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of “parties to the agreement”. The Appellant does not come within the ambit of Section 19 of the said Act which provides for relief against parties and persons claiming under them by subsequent title. This aspect of the matter has been dealt with in detail in Kasturi case [(2005) 6 SCC 733]. While holding that the scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession, Their Lordships observed that a third party or a stranger to the contract could not be added so as to convert a suit of one character to a suit of different character.”

- 8.9 The relief sought (by the Petitioner) if granted by the Commission would lead to striking down of the two letters issued by the STU which shall have no ramification at all in the operations of AEML-D. Therefore, there is no question of AEML-D being heard at this stage of the Petition. No prejudice will be caused to AEML-D by not being impleaded as one of the Respondents. The presence of AEML-D is not necessary to pass an effective

relief in the Petition. On the contrary, if AEML-D is impleaded, it will only widen the scope of the matter and take the character of the public hearing, which is untenable. Moreover, in case the impleadment of AEML-D is allowed in the present case, it will set a wrong precedent, where every matter before the Commission may be sought to be dealt as a public hearing. Such conversion is not allowed under the Act and will undermine the entire adjudicatory process undertaken by the Commission.

AEML-D's questionable conduct

- 8.10 If AEML-D's application is allowed, it shall give rise to slew of frivolous applications being faced by the Distribution Licensees in every other matter pending before the Commission initiated by some distribution licensee. AEML-D has given the wrong impression to the Commission that the reliefs sought by the Petitioner has larger scope and impacts the sector whereas the relief sought by TPC-D are very limited to the context of striking down the letters dated 8 October 2020 and 9 December 2020.
- 8.11 AEML-D has vehemently argued to be impleaded as a party to the present proceeding by relying on the letters issued by STU whereas AEML-D was not even marked in the said letters. Moreover, the letters clearly stipulates that the connectivity to BPCL was granted through AEML-T. Furthermore, by bare reading of the impleadment Application, it is clear that AEML-D has raised contentions of merit of the Petition. This raises an issue regarding sanctity of the impleadment application as well as the conduct of AEML-D. AEML-D has filed the impleadment application in a scrupulous manner to create unwarranted impediments for the Petitioner, being the direct competitor and therefore has not come with clean hands before the Commission. In *Chengalvaraya Naidu v/s. Jagnath*, the Hon'ble Supreme Court observed as under:

“The principles of “finality of litigation” cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of Law are meant for imparting justice to between the parties. One must come to the Court, must come with clean hands. We are constrained to say that more often than not the process of the Court is being abused. Property grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court – process a convenient lever to retain the illegal gain indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court.....”

Illogical reliance placed on extant regulatory framework

- 8.12 Regulation 13 of the Grid Code 2006 pertains to Application for connection by a user. Further, as per Regulation 2(y) of the Grid Code 2006, a 'user' includes distribution licensees and consumers of distribution licensees. Thus, a distribution licensee like the Petitioner herein, can make a grid connectivity Application under Regulation 13.1 of the Grid Code 2006.
- 8.13 AEML-D has erroneously placed reliance on Clause 1.9 of the “Procedure for Grant of Grid Connectivity to InSTS” to state that the Petitioner is seeking to force the consumer to opt for Petitioner's contract demand, so that later on the consumer is unable to shift to another Distribution Licensee like AEML-D because of implication of CSS. The said

contention is absolutely meritless and another attempt to obfuscate the Commission. It is always open to a consumer to exercise its right as envisaged under the Act which has been explained in the Order passed by the Commission in Case No. 182 of 2014. Any submission to imply that TPC-D is forcing the consumer such as BPCL is fallacious. Furthermore, a complete reading of Clause 1.9 “Procedure for Grant of Grid connectivity to InSTS” clearly stipulates that the grid connectivity can only be granted to an applicant. Therefore, this only strengthens the merits of the case of the Petitioner.

- 8.14 AEML-D ought not be impleaded as a Respondent in the present proceedings as it is neither a Necessary nor a Proper Party.

Commission’s Analysis and Rulings

9. Before going into the merits of the Impleadment Application of AEML-D, it would be relevant to examine the facts of the matter. BPCL is the existing consumer of TPC-D with 90 MW contract demand and connected through 3 nos. of 22 kV feeders. As per the submissions made in the Petition, BPCL sought an additional load of 200 MW to meet its additional energy requirement in FY 2018-19 vide load enhancement form dated 22 May 2018. On 27 February 2019, TPC-D submitted an application to STU for grid connectivity at 220 kV level. Thereafter, STU, vide its letter dated 8 October 2020, granted grid connectivity directly to BPCL with the following scope of work:
- i. Establishment of 220 kV Substation at M/s BPCL premises
 - ii. LILO on one ckt of 220 kV Chembur (AEML) — Trombay (MSETCL) D/C UG cable-0.25 km.
 - iii. Suitable ABT Metering arrangement along with the AMR facility with integration to SLDC, Airoli
 - iv. Establishing SCADA with real time data visibility to SLDC, Kalwa.
10. The grid connectivity letter issued by STU stated that the work is to be executed at the cost of BPCL and as per standard specification under the supervision of the Transmission Licensee. The letter further mentioned that EHV lines/cables will become part of InSTS Transmission network although the load would be sanctioned and released by the Distribution Licensee.
11. In response to the query raised by TPC-D, STU, vide its letter dated 9 December 2020, confirmed its earlier stand to grant the grid connectivity directly to BPCL. Aggrieved by the aforesaid act of STU, the Petition in Case No. 68 of 2021 has been filed by TPC-D requesting the Commission to set aside the letters issued by STU on the ground that these letters issued by STU are illegal and contrary to the provisions of EA and relevant Regulations.
12. AEML-D has sought its impleadment in the matter through this Application. AEML-D’s key ground for the impleadment are as under:
- i. AEML-D is a parallel Distribution Licensee, and therefore, is entitled to supply electricity to BPCL once connectivity has been granted by the STU.

- ii. In the event the Petition in Case No. 68 of 2021 is allowed without making AEML-D a party respondent, and that the Commission holds that BPCL will enter into a supply agreement with TPC-D, then the same would not only be against the interests of consumers in the light of the intent of the EA behind providing parallel distribution licensees, but would adversely prejudice AEML-D.
 - iii. The effect of the present Petition is that it may result in a protocol to be devised qua all the prospective EHV consumers in common distribution licence area, thereby materially affecting the interests of AEML-D.
 - iv. Any Order passed in this matter will have implications on all the EHV consumers in the common distribution licence area of TPC-D and AEML-D, as the said consumers have the right to choose any of the parallel distribution licensees.
 - v. BPCL has the option of changeover. However, it might be deprived of the right to switchover from TPC-D to AEML-D.
 - vi. The right of AEML-D to be available as a choice of Distribution Licensee to BPCL at the time of getting connected itself or to get BPCL “switched-over” from TPC-D, which right is guaranteed vide the Order dated 12 June 2017 passed by the Commission in Case Nos. 182 of 2014 and 40 of 2015, is sought to be taken away by TPC-D.
 - vii. Regulatory jurisdiction of the Commission has been invoked in Petition in Case No. 68 of 2021 and various issues such as interpretation of Grid Code Regulations, Transmission Open Access Regulations, role of Transmission Licensees etc. are likely to come up in the proceedings of Case No. 68 of 2021 which are relevant to all Distribution Licensees in the State. These are sectoral issues which will decide the rights of all the stakeholders involved, including AEML-D.
 - viii. The Commission can get assistance of AEML-D for resolving all the questions arising in the matter of Case No. 68 of 2021 filed by TPC-D.
 - ix. The Commission ought to follow the principles of natural justice and allow the impleadment of AEML-D which would be affected party if the Petition in Case No. 68 of 2021 is allowed.
13. To the contrary, TPC-D has stated that:
- i. Merely because AEML-D has the status of a parallel distribution licensee, does not automatically translate into the fact that AEML-D becomes a necessary and proper party in the present dispute of Case No. 68 of 2021. If such contention is to be accepted, then AEML-D should be made a party in all the disputes being contested by TPC-D.
 - ii. The issue in the present matter of Case No. 68 of 2021 is not relating to the right of the consumer to choose a Distribution Licensee, but against the conduct of STU in granting connectivity to a consumer directly when the application was made by a Distribution Licensee.
 - iii. The option to choose the distribution licensee is available with BPCL, however it has already exercised its right and has opted for TPC-D to provide last mile connectivity.

Further, BPCL or any consumer in similar context, always has the option to choose AEML-D as the supply Distribution Licensee (changeover).

- iv. On the one hand, AEML-D is supporting the rationale of STU to not provide an interface of a distribution licensee whilst processing Petitioner's application, and on the other hand is making an extraneous attempt to be impleaded as a party to the proceedings in Case No. 68 of 2021 claiming that its rights and interest will get affected.
 - v. In case the Impleadment of the AEML-D is allowed in the Case No. 68 of 2021, it will set a wrong precedent, where every matter involving any of the distribution companies before the Commission will necessarily have both parallel licensees as party and it shall give rise to slew of frivolous applications being faced by the Distribution Licensees in every other matter pending before the Commission initiated by some distribution licensee.
 - vi. All Orders of the Commission and Hon'ble ATE are binding on all related stakeholders, however, not all proceedings before the Commission and the Hon'ble ATE are conducted through a public hearing. If the claim of AEML-D is to be accepted, then all the Distribution Licensees need to be impleaded in the matter.
 - vii. In its Judgment in the matter of *Kasturi v. Iyyamperumal and Others*, the Hon'ble Supreme Court has laid down the tests for impleadment of another Party, according to which there must be a right to some relief against such party in respect of the controversies involved in the proceedings and no effective decree can be passed in the absence of such party. However, TPC-D is just seeking to set aside the STU's grid connectivity letters and no relief has been sought against AEML-D. The only issue involved in present matter about correctness /legality of the letters issued by STU. Further, an Order can be passed in absence of AEML-D.
 - viii. A Party does not become a necessary Party to the proceeding merely because the outcome of the proceeding may affect such party. As per the ruling of the Hon'ble Supreme Court in its Judgment in the matter of *Mumbai International Airport Pvt. Ltd. v/s. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.*, AEML-D does have some vested right post outcome of the Petition in Case No. 68 of 2021, that itself is not a ground to be impleaded as a party to a proceeding.
 - ix. It is a settled principle of law that a third party cannot be impleaded as a party if it changes the scope of the Petition.
14. Thus, key contentions raised by AEML-D revolve around the consumers' choice in licence area common to AEML-D and TPC-D. As per AEML-D, through Petition in Case No. 68 of 2021, TPC-D is seeking to curtail the choice available to the consumers. If Petition in Case No. 68 of 2021 is allowed, BPCL will only have the option of changeover if it wishes to avail the supply from AEML-D. Accordingly, the rights of AEML-D to supply to BPCL through switchover will be taken away in case the Petition filed by TPC-D in Case No. 68 of 2021 is allowed.
15. In this context, it is relevant to examine the prayer made by TPC-D in Case No. 68 of 2021 which reads as under:

“ Set aside the Impugned Letters dated 08.10.2020 and 09.12.2020 issued by the STU, insofar as they do not provide for the last mile connectivity to the consumer through the distribution system; ”

16. From the aforesaid prayer, it is seen that the subject matter of the Petition in Case No. 68 of 2021 is the dispute raised by TPC-D regarding the correctness/legality of the grid connectivity letters issued by STU which needs to be examined in terms of the relevant EA provisions, Regulations and past Orders passed by the Commission. As it is evident from the aforesaid prayer, the key ground of TPC-D's challenge to STU's letters is that STU's letter mentioned that the EHV lines which would be terminating at the consumer's premise will become part of InSTS Transmission network while it is the claim of TPC-D that these lines are in fact last mile connectivity to the consumer and the same needs to be a part of the Distribution System. Thus, although the dispute is between TPC-D and STU and limited to the adjudication of the legality of the STU's letters, the bone of contention is the issue of a principle raised in main Petition in Case No. 68 of 2021 regarding appropriate categorizing the proposed 220 kV EHV LILO lines among the Distribution System or Transmission System. Thus the issue raised in main Petition in Case No. 68 of 2021 is not specific and limited to present matter being dealt in deciding this MA of AEML-D in the main matter between TPC-D and STU and it needs to be considered in light of the relevant legal provisions and also along with all relevant and incidental issues.
17. Further, although legality of the STU's letters is the subject matter in main Petition in Case No. 68 of 2021, the genesis of the matter is the power supply application made by BPCL to TPC-D. Process to be followed by TPC-D and AEML-D in response to the power supply applications received from the consumers situated in the common licence area of TPC-D and AEML-D (i.e. Mumbai suburban area) and underlying principles for the network laying in response to such power supply applications which have been stipulated in the Order dated 12 June 2017 passed by the Commission in Case No. 182 of 2014 and Case No. 40 of 2015. Hence, it would not be appropriate to decide the main Petition in Case No. 68 of 2021 in isolated and limited manner as is being argued in the MA 22. There is need to take a holistic view upon due consideration of all relevant factors and in the interest of all concerned including consumers in the common area of parallel licensees.
18. The Commission further notes that TPC-D had raised its objection and sought clarification from STU regarding grant of grid connectivity directly to BPCL through a Transmission System. STU, while clarifying its position, has stated that the consumer may decide necessary power procurement arrangement by following relevant Rules & Regulations. Thus, STU has taken into consideration the issue of choice of the Distribution Licensee available to the consumers for deciding the source for their power demand (i.e. Distribution Licensee TPC-D or AEML-D among the parallel licensees operating in the area or any other source under the Open Access arrangement). Thus, the choice available to the consumers to choose the Distribution Licensee/Open Access source of their choice is a closely coupled issue in the present matter and also while deciding the main Petition in Case No. 68 of 2021, this issue would also require a detailed consideration of all related facts and legal aspects.

19. AEML-D has stated that acceptance of TPC-D's prayer would have implication on the switchover option available to BPCL (for that matter, on the switchover option available to all such similarly placed EHV consumers). It is the contention of AEML-D that BPCL would not be able to exercise the switchover option if the InSTS grid connectivity is granted to TPC-D. On the other hand, TPC-D has stated that the consumer would have the option of changeover to get supply from AEML-D as a supply distribution licensee, however, TPC-D has not expressly denied the aforesaid contention of AEML-D about unavailability of switchover option. The Commission notes that switchover is a concept that has evolved in the parallel licensing scenario and AEML-D is a stakeholder on this issue in the parallel licensing scenario prevailing in the Mumbai suburban area.
20. Under parallel licensing scenario, apart from the changeover option, switchover option is also available to the consumers for migration from one Distribution Licensee to another Distribution Licensee, subject to certain conditions stipulated in the Order dated 12 June 2017 in Case No. 182 of 2014 and Case No. 40 of 2015. Prima facie, it is seen that if TPC-D's prayer is allowed, availability of switchover option to the consumer will also get automatically decided as BPCL, in future, may not be able to switchover to AEML-D as grid connectivity is not transferable. Also, the connection of BPCL will be subsequently (including for Open Access option) treated as the original consumer of TPC-D. Thus, if outcome of the main Petition in Case No. 68 of 2021 results into some additional condition /restriction on the switchover eligibility, the consumers' choice would get affected. The issue regarding choice available to the consumers has been raised by AEML-D in its impleadment Application and the Commission is of the view that the impact of the outcome of the present Petition in Case No. 68 of 2021 on the consumers' choice would also need to be examined.
21. The Commission further notes that AEML-D has highlighted the issue of non-transferrable grid connectivity. The issue of implication of non-transferrable grid connectivity on the choice available to the consumers or relevance of non-transferable InSTS grid connectivity under parallel licensing scenario has arisen for the first time and may need to be examined in detail in the main Petition in Case No. 68 of 2021. It would be necessary to have clarity on this issue by giving chance for participating in the proceedings to the concerned parties/applicant.
22. The Commission agrees with AEML-D that the outcome of present Petition in Case No. 68 of 2021 would have implications in all such future cases.
23. It is also observed that TPC-D relied on *Kasturi v. Iyyamperumal and Others*, (2005) 6 SCC 733, wherein the Hon'ble Supreme Court held as follows:

"7.the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are — (1) there

must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party.”

24. It is observed that the issue involved in present matter is whether only TPC-D can release the required load to BPCL (as claimed by TPC-D) or it is open for BPCL to choose either TPC-D or AEML-D (as stated by STU in the grid connectivity letter) as the Distribution Licensee of its choice. As mentioned earlier, prima facie, it is seen that if TPC-D’s prayer is allowed, the option of AEML-D would get ruled out, not only at the time of releasing the load to BPCL but the option of AEML-D as a Distribution Licensee for switchover would also get closed. This would also impact BPCL in case it wants to opt for Full Transmission Open Access in future. Thus, the prayer of TPC-D, apart from BPCL would also impact AEML-D and hence in terms of the principle laid down by the Hon’ble Supreme Court in the matter of *Kasturi v. Iyyamperumal and Others*, AEML-D’s impleadment request would need to be given a favorable consideration.
25. The Commission notes the submissions of AEML-D that various issues such as interpretation of Grid Code Regulations, Transmission Open Access Regulations, role of Transmission Licensees etc. are likely to come up in the present proceeding in Case No. 68 of 2021. All these issues and the issues related to consumers’ choice are interlinked and closely coupled with the issues in the present matter.
26. The Hon’ble Supreme Court in the matter of *Vidur Impex and Trader Pvt. Ltd. and Others v. Tosh Apartments Pvt. Ltd. and Others*, has held as under:

“41. ...the broad principles which should govern disposal of an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
27. The Commission is of the view that the issues raised by AEML-D are relevant and would require deliberations in larger interest of consumers. Submissions of AEML-D during the proceedings in Main Petition would help the Commission to take an informed decision after considering the holistic picture of the issues involved. Thus, AEML-D would be the proper party to the present proceeding in Case No. 68 of 2021 for enabling the Commission to effectively and completely adjudicate upon and settle all questions involved in the Petition in Case No. 68 of 2021.
28. In light of the above discussion, the Commission deems it proper and fit to allow the impleadment application of AEML-D and hence TPC-D, STU and BPCL are directed to immediately serve the copies of their respective submissions to AEML-D. AEML-D shall

file its reply on the main Petition in Case No. 68 of 2021 within ten days of this Order. Rejoinder, if any, may be filed by other parties within ten days thereafter. The main Petition in Case No. 68 of 2021 would be taken up thereafter for further processing.

29. Hence, the following Order:

ORDER

1. MA 22 of 2021 in Case No. 68 of 2021 is allowed.
2. Tata Power Company Ltd.-Distribution, State Transmission Utility and Bharat Petroleum Corporation Ltd. are directed to immediately serve the copies of their respective petitions and submissions to Adani Electricity Mumbai Ltd.-Distribution.
3. Adani Electricity Mumbai Ltd.-Distribution shall file its reply on the main Petition in Case No. 68 of 2021 within ten days of this Order. Rejoinder, if any, may be filed within ten days thereafter by other parties.
4. Next date for E-hearing in Case No. 68 of 2021 shall be informed by the Secretariat of the Commission.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

