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company who makes investments for installation of the solar plant on the roof, maintains the plant and sells the power generated there to its partner company, which in the present case is the petitioner herein. The unit rate of energy and the period of service depend upon the agreement between RESCO and its partner company and upon the expiry of the service period the partner company becomes the owner of the entire solar plant.

- f) The concept of RESCO, read conjointly with Section 2(8) of the Electricity Act, 2003, which defines "Captive Generating Plant", does not necessarily disqualify the petitioner herein for net metering under the present regulatory dispensation put in place by this Commission.
- g) This Commission, vide an order dated March 19, 2021 in Case No. WBERC/A - 82/1 has granted time up to June 30, 2021 to the consumers to finish installation of their solar PV system and notify the same to the licensee within that date. It is also pertinent to mention herein that the Commission in aforesaid order has not disqualified and / or excluded the RESCO model from getting the benefit of net metering.
- h) It is also an admitted fact that the petitioner had made investments for the solar energy project based on Notification No. 50/WBERC dated March 22, 2013 and the First Amendment to WBERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations came into effect subsequently. This Commission in its Order dated March 19, 2021 passed in Case No. WBERC/A-82/1 has observed at Paragraph No. 5.0 that the projects where investments have been planned based on provisions prior to notification of the First Amendment Regulations the submission of consumers and solar entrepreneurs are reasonable. Under such circumstances, the petitioner herein is under a legitimate expectation that the case would be considered in such light and ruled in its favour.
- i) As far as the maintainability of the instant proceedings before the Commission, considering the fact that the petitioner is a consumer and not a licensee for which grievances between the consumer and distribution licensee are to be





decided by the Consumer Grievance Redressal Forum (CGRF) and not the Commission, is concerned, it is argued that the petitioner does not come within the ambit of the definition of 'consumer' as defined in section 2(15) of the Electricity Act, 2003, but ought to be considered as a 'generating company' as defined in section 2(28) of the Electricity Act, 2003.

- j) The petitioner denies the contention of the respondent that the adjudicatory functions of the State Commission does not extend to consumer disputes and that the disputes between the parties ought to be adjudicated and decided by the CGRF.
- k) The petitioner argues that section 82 of the Electricity Act, 2003 provides for constitution and setting up of State Commission and section 86 of the said Act enumerates the functions of the State Commission. In terms of sub-section (f) of the section 86 of the said Act, the Commission is empowered to adjudicate upon disputes between licensees and generating companies and to refer any dispute for arbitration.
- l) From a mere perusal of the provisions of law referred to hereinabove, the Commission has been empowered by the Electricity Act, 2003 to entertain, try and adjudicate the issues in disputes as are being agitated in the present case. Therefore, the remedy of the petitioner lies before the Commission in terms of section 86 of the Electricity Act, 2003 and not before the CGRF, as alleged or at all.

10.0 The submissions of CESC Limited are as follows:

- a) The petition filed by the Petitioner suffers from the vice of improper pleadings. The present petition is defective for want of proper pleadings inasmuch as the petition is vague and ambiguous. It is not clear as to what is the cause of action and the grievance of the Petitioner. While in the heading the petition mentions "Application for Net Metering for Roof Top Grid connected Solar Plant under RESCO Model, adjudication or resolution of dispute regarding regulation of purchase and procurement process of electricity", the relief sought towards





सत्यमेव जयते



the end of the Petition is "Based on the above, our RESCO Units can be declared as "Captive Generating Unit" for implementation of Net Metering by CESC'. While on one hand, the Petitioner is purportedly filing an application for net-metering for its Roof-top Grid connected Solar Plant under RESCO model, on the other hand it is seeking declaration of its RESCO Units as a 'Captive Generating Unit' for the consequential relief of implementation of net metering by the respondent.

- b) It is submitted that Section 86(1)(f) of the Electricity Act, 2003 provides that the State Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration. It is pertinent to highlight that the adjudicatory function of the State Commission does not extend to consumer disputes. The section 42(5) of the Act provides that every distribution licensee shall necessarily establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. The sub-sections (6) and (7) of section 42 of the Act provide that any consumer, aggrieved by non-redressal of their grievances under sub-sections (5), may make a representation before an Ombudsman to be appointed by the State Commission. The Rules, under Rule 7, also provide for provisions relating to Consumer Redressal Forum and Ombudsman. Hence, all grievances between the consumers and the distribution licensees are statutorily required to be decided by the Consumer Grievance Redressal Forums ("CGRF"), and if such order of the CGRF is deemed to be unsatisfactory, the aggrieved consumer can appeal to the Ombudsman appointed by the State Commission.
- c) The Respondent in complete compliance of Section 42(5) of the Act, and the WBERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) Regulations, 2013, has assigned Grievance Redressal Officers for 6 Region / District and 2 Central Grievance Redressal Officers for both commercial and supply matters.





सत्यमेव जयते



- d) The WBERC (Guidelines for Establishment of Forum for Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) (First Amendment), Regulations, 2020, ("CGRF First Amendment Regulations 2020") issued on 19.05.2020, before the present petition was filed, specified that a consumer grievance of any nature, has to be necessarily raised before CGRF.
- e) The petitioner is a consumer of CESC Limited in terms of the Electricity Act, 2003 having consumer numbers 0107101700 (Victoria Works, Agreemental load - 300 KW), 0107200100 (Clive Works, Agreemental load – 900 KW) and 0108901500 (Angus Works, Agreemental load – 2500 KW).
- f) The respondent relied upon a judgement of the Hon'ble Supreme Court in Jagmittar Sain Bhagat and Ors. – vs – Director, Health Services, Haryana and Ors. (2013) 10 SCC 136 which, inter-alia, held that a court cannot derive jurisdiction where the same is not provided under the statute.
- g) Hence, it is submitted that this Commission is not the proper forum for agitating and/or seeking redressal of any grievance that the Petitioner may have with regard to net metering and that the grievances of consumers are to be raised to and redressed by the CGRF and Ombudsman.
- h) It is submitted that under the Act and the Rules, 'captive generation plant' has a very distinct legal connotation. It is submitted that the Petitioner is required to establish its case to show how it is eligible for the net metering arrangements under the Renewable Regulations as amended by the First Amendment thereof.
- i) Furthermore, as is apparent from the definition of "eligible consumer" contained in the First Amendment and as is also clear from a conjoint reading of other provisions of the Regulations to be eligible for net metering or net billing arrangement, the solar PV generating system must be self-owned by the consumer. A rooftop plant set up through a third-party vendor or through RESCO route does not qualify for net metering under the present regulatory