BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA

Case No. HERC/PETITION NO. – 42 of 2021

Date of Hearing	:	**09.02.2022**
Date of Order	:	**28.02.2022**

IN THE MATTER OF:
Petition under Section 86(1)(f) of the Electricity Act, 2003 read with the provisions of the Haryana Electricity Regulatory Commission (terms and conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 for grant of open access of 2 MW for supply of power from the petitioner's ground mounted solar power plant (for captive consumption) and for directions to the respondents not to curtail grant of open access as per the contract demand of the consumer/captive user.

Petitioner
M/s. KRBL Ltd.

Respondents
1. Haryana Vidyut Prasaran Nigam Ltd (HVPNL), Panchkula
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL), Panchkula
3. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL), Panchkula

Present on behalf of the Petitioner, through Video Conferencing
1. Ms. Shikha Ohri, Advocate

Present On behalf of the Respondents, through Video Conferencing
1. Ms. Sonia Madan, Advocate, for Respondent No. 2

Quorum

Shri R.K. Pachnanda	**Chairman**
Shri Naresh Sardana	**Member**

ORDER

Brief Background of the case

1. The present petition has been filed by M/s. KRBL Ltd. challenging the curtailment of the capacity for the long-term open access granted to its project based on the contract demand of the consumer.
2. Brief submissions of the petitioner are as under:

i) That M/s. KRBL has set up a 2 MW ground mounted captive solar power plant at village Siwani, District Bhiwani, Haryana, in the solar park developed by M/s. Rays Power Experts (P) Ltd.

ii) That M/s. Rays Power Experts (P) Ltd submitted a proposal dated 10/07/2018 to the Haryana Renewable Energy Development Agency (HAREDA) for setting up of a private solar park of 50 MW at the proposed site in village Roopana, District Bhiwani. This proposal was accepted by HAREDA, vide letter dated 06/09/2018, subject to certain conditions. One

of the conditions mentioned in the said letter was that feasibility for connectivity was to be provided by the State Power Utilities.

iii) That HAREDA, vide a letter dated 08/03/2019, informed the petitioner that its proposal for setting up of a captive generating solar power project of 2 MW capacity at M/s. Rays Power Experts Solar Park, village Siwani, District Bhiwani had been approved for availing waivers of wheeling and transmission charges, subject to fulfilment of the conditions mentioned in the guidelines.

iv) That Haryana Vidyut Prasaran Nigam Ltd. (HVPNL) by a letter dated 02/05/2019 issued the final connectivity to M/s. Rays Power Experts Private Ltd. for its solar park. This connectivity was issued only for 10.1 MW capacity of the captive power plant. In this letter HVPNL, *inter-alia*, stated as follows:

"*Accordingly, the final connectivity of 10.1 MW is granted to the solar park of Rays Power Experts through 33 kV independent line at 33 KV substation Kheda for setting up captive solar power projects by different developers i.e., M/s. Goodrich Carbohydrates Ltd., M/s. Blow Packaging (India) Pvt. Ltd., M/s. Khamna Industries Pvt. Ltd., M/s. Dorset Industries Pvt. Ltd., M/s. KRBL Ltd., M/s. G.S. Spinning Mills, M/s. Garg Spinning Mills & M/s. Bhartiya Spinners as approved by HAREDA subject to the following conditions:*

…

vii) all the terms and conditions as prevalent in the HERC Open Access Regulation, 2012 shall be applicable to the applicant along with the terms conveyed in the final guidelines regarding connectivity.

…

xiii) the power drawn by consumers of Haryana shall not be more than its contract demand during any time slot of the day. The energy generated from the solar power plant shall be used for self-consumption only."

v) That HVPNL by a letter dated 03/06/2019 requested Uttar Haryana Bijili Vitran Nigam Ltd. (UHBVNL) and Dakshin Haryana Bijili Vitran Nigam Ltd. (DHBVN) to examine the Long-Term Open Access Application of the petitioner for its 2 MW captive solar power plant set up in the solar park of M/s Rays Power Experts Private Ltd.

vi) That M/s Rays Power Experts Private Ltd by a letter dated 23/10/2019 informed UHBVNL that:

"*We are writing you this letter to clarify in the matter at point xiii of the final connectivity letter which states as under:*

*"**xiii) the power drawn by the consumers of Haryana shall not be more than its of contracted demand during any time slot of the day. The energy generated from the solar power plant shall be used for self-consumption only***

And

vii) all the terms and conditions as prevalent in the HERC open access regulations, 2012 (regulation no. HERC/25/2012) shall be applicable to the applicant with the terms conveyed in the final guidelines regarding connectivity*.*

It is pertinent to mention here that the relevant clause of the principal regulations number HERC/25/2012, clause 8 (3) which states that:

*"**Provided that the person covered by a policy of the State Government, existing on the date of coming into force of these Regulations, relating to captive generation or generation from non conventional energy sources, shall be eligible to avail open access irrespective of contract demand"***

It is germane to mention that the source of power generation from which the open access has been tied up is a recognized non-conventional energy source. It is also important to mention here that the CUF of these plants range between 22-30% (which varies from technology to technology and its efficiency improvement), further, the capacity of the said plant is determined by considering/factoring their CUF*.*

Also, it is requested to please refer the Clause xii of the in-principal feasibility letter stated that:

xii) the power drawn by the consumers of Haryana shall not be more than its contract demand during any timeslot of the day. The energy generated from the solar power plant shall be used for self-consumption only.

The above clauses clearly clarify that at the time of in principal connectivity and final connectivity itself it was mentioned that there is no cap on the connected load of the power plant. This is in accordance with the principal regulations also.

The Commission in its order dated 13.05.2019 (Case No. HERC/PRO-22 of 2019), has also laid the following condition for the Capacity:-

"The CPP will be allowed to inject power as per the banking agreement. The consumer will be allowed to draw power from the CPP/banked power up to the contracted capacity. But, his overall drawl should remain within his contract demand. In case of exceeding the contract demand, penalty as per relevant Regulations shall be leviable." (Annexure A-1 Clause E. CPP RE Project for Banking)

It is evident that the open access/Project capacity is not limited to the contract demand of the consumer but the drawl of power.

We understand the concern of the NIGAM to ensure that there is least/minimum unutilised surplus solar power generation. Which is not possible in the case of agreement with the solar power generator as:

1. It is governed by the limitations given in the banking regulation as regards to the drawl of the same.

2. The CUF of the solar power plant is 1/3rd – 1/5th as compared to the convention power generation/consumption.

Therefore, we request you to kindly confirm that in some cases of our solar plants as mentioned in the final connectivity order, the connected load of solar power plant may be more than the contract demand at the consumer end. However, the same is in line with HERC regulations, final connectivity and in-principal feasibility."

vii) That HVPNL by a letter dated 13/12/2019 granted long-term open access to M/s Rays Power Experts Private Limited for its 8.15 MW solar power plant located at village Siwani. However, in the said approval as against the capacity of 2 MW of the petitioner's Solar Plant, HVPNL accorded consent for LTOA for only 0.95 MW through the 11 kV Safiabad, industrial feeder from 33 KV S/stn Barota, Sonipat at M/s KRBL Ltd Akbarpur, Barota, Kundli, Sonipat, Haryana.

viii) That the petitioner, vide its letter dated 21/12/2019 informed HVPNL that it has accepted the terms & conditions of LTOA 'under protest' and the open access/project capacity should not be limited to the contract demand of the consumer but the drawl of power.

ix) That constrained by the losses accruing on account of the delay in getting the open access and consequent losses suffered by the petitioner, the petitioner by a letter dated 21/01/2020 accepted all the terms and conditions mentioned in the letter dated 13.12.2019.

x) That the petitioner thereafter filed an application before HVPNL for extension of the load to 1499 KW/1500 kVA at its plant at Barota, Sonepat and paid the requisite charges for such extension on 02/07/2020. UHBVNL by a letter dated 19/08/2020 requested HVPNL to allow the extension of load of the petitioner from 1100 to 1500 kVA contract demand and 1199 to 1499 kWA connected load and take necessary action for replacement of Current Transformers (CT) of ABT meter.

xi) That the petitioner vide its letter dated 10/11/2020 informed HVPNL that the replacement of CT had been completed and accordingly requested HVPNL to execute the LTOA Agreement for the additional 500kW in addition to the already granted 950kW, that is for the total capacity of 1499kW/1500kVA.

xii) That HVPNL requested UHBVNL, vide its letters dated 13/11/2020 and 23/11/2020, to convey its consent for LTOA for 1.35 MW (1500KVA) to the petitioner instead of LTOA for 1.5 MW as was applied for by the Petitioner.

xiii) That aggrieved by the arbitrary reduction in the grant of open access of 1.5 MW, the petitioner vide an email dated 23/11/2020 pointed it out to HVPNL that the capacity for LTOA in MW had been incorrectly mentioned as 1.35MW. As the sanctioned load is 1499kW (1.499MW) and the contract demand is 1500kVA, the consent for LTOA capacity should be for 1.5MW. The petitioner, accordingly, requested HVPNL to issue a revised letter after correction.

xiv) That HVPNL by an email dated 02/12/2020 informed the petitioner that:

"In the matter, it is intimated that the format-II on which consent has been sought for LTOA from UHBVN has clearly mentioned the contract demand as 1500kVA/1.35MW. However for determining the MVA into MW, the same has been converted at a power factor of 0.9 as per HERC Regulation."

xv) That UHBVNL by an email dated 15/01/2021 sent the consent for Long Term Open Access for the petitioner's power plant to HVPNL. This consent was subject to certain terms and conditions including the following:

"v. The total power drawn by the consumer in any timeslot including transactions to be made by the consumer through long-term open access or bilateral transaction should not exceed the sanctioned contract demand by the Nigam at any given time during the consent in any time block.

…

xiii. consent given to the firm M/s. KRBL Limited is for injecting power not exceeding 1.35 MW for account no. 3522011000 in any time block of the day from its Solar Power Plant At Village Rupana, Tehsil Siwani, Bhiawani, (DHBVN) at its premises in Khasra no. 98/12, Sonepat, Narela Road, Opp Bolbam Bharamkanta, Akbarpuur Barota, Sonepat, Haryana."

xvi) That HVPNL by a letter dated 03/02/2021 informed the petitioner that its request for extension of long term open access from existing load of 950kW to 1350kW for drawl of solar power from its 2 MW solar power plant had been accepted. It was further informed that the terms and conditions of already granted LTOA approval dated 13/12/2019 shall remain the same. HVPNL called upon the petitioner to execute the LTOA agreement for the extended load. Thereafter, an addendum LTOA agreement was signed between the petitioner and the respondents on 23/07/2021.

GROUNDS

xvii) That the generation has been de-licensed under the provisions of the Electricity Act, 2003. A generating company, thus, exercises freedom in respect of choice of site and investment of the generation unit; choice of counter-party buyer; freedom from tariff regulation when the generating company supplies to a trader or directly to the consumer. The Hon'ble Supreme Court in the case of *Tata Power Co. Ltd. v. Reliance Energy Ltd.,* (2009) 16 SCC 659, has held that *if delicensing of the generation is the prime object of the Act, the courts while interpreting the provisions of the statute must guard itself from doing so in such a manner which would defeat the purpose thereof. It must bear in mind that licensing provisions are not brought back through the side-door of regulations.*

xviii) That under Section 2(47) of the Electricity Act, 2003 open access has been defined as under:-

(47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;"

Thus, a right to non-discriminatory grant of open access has been recognized under the Electricity Act, 2003.

xix) That Section 9 of the Electricity Act, 2003 provides that a captive generating plant has a right to open access for the purposes of carrying electricity from its captive generating plant to the destination of his use. This right is subject only to availability of adequate transmission facility. The relevant extract of the section is reproduced hereunder for convenience:

"Section 9. (Captive generation):

…

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission."

xx) That under Section 42 of the Electricity Act, 2003, grant of open access is subject to payment of open access charges and such other operational constraints as may be specified under the regulations:-

"Section 42. (Duties of distribution licensee and open access):

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:"

xxi) That the Commission has notified the Haryana Electricity Regulatory Commission (Terms and conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (hereinafter referred to as the "Open Access Regulations"). Under the said regulations grant of open access has been made subject to, *inter alia,* the following terms and conditions:

"7. System consideration for granting open access. - (1) Before granting long-term open access, the nodal agency shall give due consideration to the planning / augmentation required for the intra-State transmission system or distribution system.

…

(4) STU shall compute capacity availability for open access for each transmission segment and for every sub-station. Distribution licensee shall determine the available capacity for allotment for the portion of the distribution system over which open access has been requested for. STU shall compute capacity availability as per following methodology:

…

8. Eligibility and other conditions for open access. – (1) Any licensee, generating company, captive generating plant and consumer / person other than consumer of the distribution licensee, having a demand of 1 MW and above and connected at 11 KV or above, shall be eligible for availing open access to the intra-State transmission of STU and or transmission licensee other than STU and or distribution system of the distribution licensee on payment of various charges as per chapter VI of these regulations.

…

(3) A group of two or more consumers of the distribution licensee having a combined contracted demand of 1 MVA or above and connected to the distribution system of licensee at 11 kV or above through an independent feeder emanating from a grid sub-station, shall also be eligible for seeking open access if all such consumers collectively apply for open access through a group leader to be nominated by all such consumers on that feeder and also agree to the rostering restrictions that may have to be imposed by the utility.

Provided that a person covered by a policy of the State Government, existing on the date of coming into force of these regulations, relating to captive generation or generation from non conventional energy sources, shall be eligible to avail open access irrespective of contract demand.

…

13. Procedure for grant of long term open access involving intra-State transmission system and distribution system. –

…

(7) On receipt of the application, the nodal agency shall, in consultation and through coordination with other agencies involved in intra-State transmission system or distribution system to be used, process the application and carry out the necessary system studies as expeditiously as possible so as to ensure that the decision to grant long-term open access is arrived at within the timeframe as specified.

(8) Based on the system studies, the nodal agency shall specify the intra-State transmission system or distribution system that would be required to provide long-term

open access. In case augmentation to the existing intra-State transmission system or distribution system is required, the same shall be intimated to the applicant."

Therefore, grant of open access is only dependent upon available capacity in the transmission or distribution network and subject to the payment of open access charges.

xxii) That in the present case, the 2 MW captive solar plant capacity has been curtailed by the respondent licensees to the extent of contract demand of the consumer. This curtailment is contrary to the provisions of the Electricity Act, 2003 and the Regulations framed thereunder. The Electricity Act, 2003 was enacted with a view to encourage captive generation and generation of electricity from renewable and nonconventional sources. The preamble of the said Act recognises the objective of *promotion of efficient and environmentally benign policies.* However, contrary to the said objective the respondent licensees have curtailed the long-term open access granted the petitioner.

xxiii) That the CUF of solar power plants ranges between 22-25-30% (varying based on technology). Therefore, the curtailment of long-term open access to the solar power plant of the petitioner by restricting it to the contract demand of the consumer and by computing the capacity of such solar plant on the basis of its CUF, adversely impacts the petitioner. The petitioner is compelled to under generate in order to match the contract demand of the consumer.

xxiv) That solar power plants are must run projects under the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (hereinafter referred to as "HERC RE Regulations, 2021"). Any curtailment of solar power for reasons extraneous to grid safety, are in direct contravention of the provisions of the said regulations.

xxv) That the Commission vide its order dated 03/10/2017, passed in a case, *inter alia*, relating to amendment and / or modification of Haryana Electricity Regulatory Commission (Terms and Conditions of Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2010 and its subsequent amendments (hereinafter referred to as "**RE Regulations, 2010**") clarified that that Regulation relating to reduction of contract demand shall not be applicable for Solar PV Power. The Commission held that there is no provision under the RE Regulation, 2010 restricting the capacity of a Solar Plant upto the Contract Demand. As a natural corollary of the above it is quite clear that if the capacity of the solar power plant cannot be restricted to the contract demand of the consumer, the open access granted to such a power plant cannot also be held hostage to the contract demand of the consumer.

xxvi) That the aforesaid regulations have been repealed and replaced by the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of Tariff from Renewable

Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021 (hereinafter referred to as the "**RE Regulation, 2021**"). The said regulation clearly provides Rooftop Solar PV Power shall not be subjected to any reduction in contract demand. The relevant provision is reproduced hereunder for convenience:

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

xxvii) That the curtailment of open access granted to the petitioner is for reasons extraneous to the Electricity Act, 2003 and the regulations framed thereunder and accordingly ought to be set aside by this Commission. The petitioner is incurring a huge generation loss of around 1,70,000 units leading to a financial loss of around Rs. 11,30,000/- on a monthly basis. Therefore, an urgent intervention by this Commission in the matter is warranted.

xxviii) That Hon'ble Supreme Court in its order dated 08.05.2014 in the case of *Brihanmumbai Electric Supply and Transport Undertaking vs. MERC* in CA No. 4223 of 2012 has also elaborated upon the rights of the consumer to get open access without any restrictions other than those prescribed in the Electricity Act, 2003 itself and has reiterated the duty of the distribution licensee to provide the same. The relevant extract from the order dated 08.05.2014 is as below:

"20. After considering the rival contentions, we are of the opinion that the interpretation suggested by Mr. Mehta needs to prevail and therefore we do not find any fault with the view taken by the Appellate Tribunal. We have reproduced above provisions of Section 42 (3) of the Act. As pointed out above, Section 42 of the Act deals with the duties of distribution licensee and open access. Sub-section (1) thereof provides that it shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in the Act. Sub-section (2) casts an obligation upon the State Commission to introduce open access in phases and subject to such conditions, as may be specified, these conditions may include the cross subsidies and other operational constraints. It is thereafter in Sub-section (3) of Section 42 provision is made for wheeling of electricity with respect to supply stating that duties of distribution licensee shall be of a common carroer providing non-discriminatory open access. Thus Sub-section (3) provides for open access and casts a duty upon the distribution licensee in this behalf….

….

21. Thus, on a conjoint reading of Sections 42 and 43 of the Act along with the objectives and purpose for which Act 2003 is enacted, it becomes clear that there are two ways in which a consumer stated in a particular area can avail supply of electricity, as pointed out by the learned senior Counsel for TPC and noted above. When an application is made by a consumer to a distribution licensee for supply of electricity, such a distribution licensee can

request other distribution licensee in the area to provide its network to make available for wheeling electricity to such consumers and this open access is to be given a sper provisions of Section 42 (3) of the Act. It is here only that local authority is exempted from such an obligation and may refuse to provide makes it network available. Second option is, under Section 43 of the Act, to provide the electricity to the consumer by the distribution licensee from its own network. Therefore, if in a particular area local authority has its network and it does not permit wheeling of electricity from by making available its network, the other distribution licensee will have to provide the electricity from its own network. For this purpose, if its is not having its network, it will have to lay down its network if it requires in order to supply electricity to a consumer seeking supply.

22. This interpretation of ours is in consonance of the objective and purpose of the Act. The aforesaid objective is further clarified by the Tariff Policy and the National Electricity Policy under Section 3 of the Act which emphasized the need for efficiency and competition in the distribution business. On going through the statement of objects and reasons contained in the new Act, the interpretation, which we are leading to, gets further facilitated. Prior to this Act, there were three Acts, namely of 1910, 1948 and 1988 which were governing the laws relating to electricity and were operating in the field. Within few years, it was felt that the three Acts of 1910, 1948 and 1998 which were operating in the field needed to be brought in a new self contained comprehensive legislation with the policy of encouraging private sector participation in generation, transmission and distribution and also the objectives of distancing the regulatory responsibilities from the Government and giving it to the Regulatory Commission. With these objectives in mind the Electricity Act, 2003 has been enacted. Significant addition is the provisions for newer concepts like power trading and open access. Various features of the 2003 Act which are outlined in the statement if objects and reasons to this Act. Notably, generation is being delicensed and captive generation is being freely permitted. The Act makes provision for private transmission licensees. It now provides open access in transmission from the outset. While open access in transmission implies freedom to the licensee to procure power from any source of his choice, ***open access in distribution, with which we are concerned here, means freedom to the consumer to get supply from any source of his choice. The provision of open access to consumers ensures right of the consumer to get supply from a person other than the distribution licensee of his area of supply by using the distribution system of such distribution licensee.***

23. ***The concept of open access under the Act enables competing generating companies and trading licensees, besides the area distribution licensees, to sell electricity to consumers when open access in distribution is introduced by the State Electricity Regulatory Commissions. Supply by way of open access is a completely***

different regime as is also clear from the fact that consumers who have been allowed open access under Section 42 may enter into an agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them under Section 49 of the Act unlike consumers who take supply under Section 43 of the Act*."* {Emphasis Supplied}

xxix) That *r*espondents have calculated the open access under two different methodologies. While in the first instance, the petitioner was granted .95 MW open access against the contract demand of .95 MW, however, in the second instant the respondents have granted 1.35 MW against a contract demand of 1.50 MW. Whereas, two different methodologies cannot be adopted by the respondents for the same purpose.

xxx) Following prayers have been made:-

a. Direct the respondents to grant LTOA to the petitioner for its full approved capacity of 2000 kW, unrestricted by the contract demand at the consumer end from the date of grant of connectivity to the petitioner's 2 MW ground mounted Solar PV Plant;

b. Direct the respondent No. 2 (UHBVNL) to compensate to the petitioner for the generation loss caused on account of the illegal curtailment of its LOTA from the date of connectivity of the petitioner's 2 MW ground mounted Solar PV Plant up to the date the LTOA for 2 MW is granted;

c. Pass orders as to interest;

3. The respondent no. 2 i.e. UHBVNL filed its reply, under affidavit dated 22.12.2021, submitting as under:-

i) That the petitioner has raised issues that have been settled by this Hon'ble Commission in PRO-23 of 2020, i.e. in the matter of M/s. Greenyana Pvt. Ltd. vs. HPVN & Ors. vide order dated 24.09.2020. The Commission has already conclusively decided the question of law sought to be raised by the petitioner herein. The Commission in the said case had framed various questions of law, the following cover the issue raised in the present case:-

" *i) Whether the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands bad in law?"*

The Hon'ble Commission in order to answer the question of law quoted above, analysed in the matter of M/s. Greenyana Pvt. Ltd. vs. HPVN & Ors. vide order dated 24.09.2020 and various applicable regulations of HERC Open Access Regulations (being Regulations 5, 8, 24, 42, 43, 45) and reasoned as follows:-

i) The system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit;

ii) Regulation 8 of HERC Open Access Regulations clearly provides that the provisions thereof are subject to the other regulations contained in Open Access Regulations and the proviso to it cannot be read to mean that there cannot be any restriction on drawl of power;

iii) A conjoint reading of regulations 24, 42, 43 and 45 prescribed consequences and penalties for over drawl of electricity by an open access consumer beyond their contract demand in the form of imbalance charges, demand surcharges etc. Therefore, they place restrictions on open access consumers to limit their drawl upto contract capacity; and

iv) The requirement of law which is implicit in the regulations do not become illegal when explicitly included while granting open access to a consumer.

Therefore, in line with the above reasoning in deciding the aforesaid issue, the Hon'ble Commission upheld the validity of the conditions imposed in both approvals and decided in favour of the answering respondents.

The relevant part of the Order of the Hon'ble Commission in PRO-23 of 2020, M/s. Greenyana Pvt. Ltd. vs. HPVN & Ors.dated 24.09.2020, is reproduced as under:-

"c) Whether the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands bad in law?

65. In order to answer the question framed above, the Commission has carefully examined the provisions of HERC Open Access Regulations, as amended from time to time. The relevant clauses are reproduced hereunder:-

"5. Eligibility for connectivity. –

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

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

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

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8. Entitlement and other conditions for open access. –

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

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

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24. Imbalance Charges. –

……

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

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

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

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

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

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42. Eligibility criteria, procedure and conditions to be satisfied for grant of long term open access, medium term open access and short term open access to embedded consumers shall be same as applicable to other short-term open access consumers*.*

However, the day-ahead transactions, bilateral as well as collective through power exchange or through NRLDC, by embedded open access consumers under short term open access shall be subject to the following additional terms and conditions:

(1)……

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

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

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

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

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

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

……..

(3) During peak load hour restrictions, the embedded open access consumer shall be entitled to bring open access power upto his contract demand without the requirement of any approval of special dispensation from the licensee provided his total drawl i.e. drawl through open access plus the drawl from the licensee does not exceed his contract demand. Further he shall restrict his drawl from the distribution licensee to peak load exemption limit/special dispensation allowed by the licensee. In case the total drawl of the consumer exceeds the contract demand by more than 5% at any time during the month as per his energy meter, the demand surcharge as per relevant schedule of tariff approved by the Commission from time to time shall be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs."

66. A reference has been made to Regulation 5 and 8 extracted above by the Petitioner to contend that there is no restriction provided under these regulations on contracted capacity that can be availed under open access. Thus, it was argued by the Petitioner that the

clause(s) of the in-principle approval and final approval restricting the drawl of power by the consumer up to its contract demand and restriction on the agreement that can be entered into between the captive user and the generator upto their respective contract demands is bad in law.

67. This Commission has analysed the provision of Regulation 5 read with Regulation 8 of the Open Access Regulations. Regulation 5 provides for the eligibility of a consumer/person seeking connectivity for open access from the DISCOM in as much as it prescribes the voltage level at which open access is to be granted in general. Regulation 8(1) lays down the qualification criterion for entitlement of open access which in general cases can be availed by consumers having a minimum capacity/demand of I MW. It further specifies that this restriction of minimum capacity is not applicable in case of generators based on renewable energy. Clearly, the above provision lays down the minimum threshold limit prescribed for grant of open access and in no way relates to the limit on drawl beyond contracted capacity. ***The system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit. The Commission has deliberately put penalty for drawl beyond open access in lieu of system security. In this regard reference is made to S. No. 2.5 of statement of reasons given in OA regulations first amendment.***

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

"In case the maximum demand of the consumer exceeds his contract demand in any month by more than 5%, a surcharge of 25% will be levied on the SOP amount for that month."

The main reason for providing such a heavy / deterrent penalty for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system. The Commission observes that if an embedded open access consumer, who is drawing power partly or whole of it through open access, exceeds his contract demand by more than 5% as per his energy meter, he is subjecting the system of the licensee to the same risk as is being done by another consumer, who is not drawing any power through open access, when he exceeds his contract demand. So the penalty in the two cases has to be same. It has been accordingly provided that in case total drawl (i.e. drawl from the licensee plus drawl through open access) of an embedded open access consumer exceeds his contract demand by more than 5% at any time during the month as per his energy meter, he will be levied demand surcharge as per schedule of tariff approved by the Commission from time to time and for

the purpose of levying demand surcharge, the total energy drawn during the month including drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of SOP, will be worked out at the applicable tariff for the category to which the consumer belongs. The amendment in the regulations has been made accordingly."

68. ***The proviso to Regulation 8 (1) cannot in any manner be read to understand that there cannot be any restriction on drawl of power by a captive consumer of a Solar based Captive generating plant, as has been argued by the Petitioner. The Petitioner's above argument is arising out of misreading of the above Regulations. Regulation 8 clearly provides that the provisions thereof are subject to the other regulations contained in Open Access Regulations. Thus, Regulation 8 shall have to be read along with other applicable regulations of OpenAccess Regulations., i.e. Regulations 24, 42, 43 and 45.***

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

70. In case open access power drawl of any consumer of the Petitioner exceeds his contract demand, then in terms of the above provisions he shall be liable for penalties prescribed. The incorporation of the condition that open access granted to the Petitioner shall be restricted to the contract demand of its open access consumer is thus, in line with the provisions above mentioned. There is no illegality in making explicit what the above provisions prescribe.

Further, such restrictions are necessary to be placed in the approvals for connectivity granted to the solar power developers to prevent/reduce unutilized surplus solar power.

72. Accordingly, the condition no. (viii) of the in-principle connectivity which reads as:-

"viii. The power drawn by the consumer/applicant shall not be more than its contract demand during any time slot of the day", and the condition no. (viii) of the final connectivity, which reads as: "Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation" are legal and in consonance with the Open Access Regulations.

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

ii) That the Hon'ble APTEL in Appeal No. 164 of 2020 upheld the above mentioned order dated 20.09.2021. in following terms-

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

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

iii) That subsequent to the same, the Commission vide its letter dated 15.04.2021 approved Procedure for Intra-State Short Term Open Access of Transmission and/or Distribution System of the HVPNL/ UHBVNL and DHBVNL, wherein at Annexure-D, which is a format for *'Undertaking/ Affidavit to be furnished by the Customer for Intra-State Medium Term/ Long Term Purchase/Sale Of Power Under Open Access'* clearly provided that the **c**ustomer will restrict total demand to be within sanctioned contract demand during non-peak load hours and during peak load restriction hrs and will be eligible only to draw total power (Power from UHBVN & DHBVN +OA power) admissible as per sanctioned Contract Demand. Further, as per said procedure, the conversion to MW has to be done based on sanctioned CD and considering standard Power Factor (PF) as 0.9 for the purpose to assess the capacity in MW only.

iv) That in PRO-73 of 2020 titled as M/s. Merino Panel Products Limited v HVPNL and ors., the similar issue came before the Hon'ble Commission yet again, wherein the Hon'ble Commission reiterated the decision passed in PRO-23 of 2020 (referred above) and held as under –

*"Thus, the issue raised by the Petitioner has already been decided by the Commission in its Order dated 24.09.2020. The objection raised by the Petitioner that the ibid Order dated 24.09.2020 was passed in relation to the grant of connectivity, does not hold good, as the ibid Order was passed specifically taking reference from the Commission's Order dated 13.05.2019 (HERC/PRO-22 of 2019), in which procedure/guidelines for banking of RE Power was approved The said procedure prepared in compliance to the HERC RE Regulations, 2017 (notified on 24.07.2018) and are to be read in conjunction of the said Regulations, provides that "**Any solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for."***

Further, a reference has been made by the Petitioner to the following observation of the Commission in its Order dated 30.06.2018:-

"The Commission has considered the issues raised above and is of the considered view that Regulation relating to reduction of contract demand shall not be applicable for Solar PV Power. Further no provision is envisaged in the RE Regulation on the restriction of capacity of Solar Plant up to the Contract Demand."

The Commission has examined the above observation and is of the view that the said observation was made in reference to the Regulation clause 45 of HERC OA Regulations, which provides for the reduction in contract demand of the consumer to the extent of power drawn through open access. Therefore, the Commission in its Order dated 30.06.2018 had opined that contract demand of the consumer shall not be reduced due to such captive consumption, for the purpose of levy of Peak Load Exemption charges. The Petitioner has wrongly sought to apply the said principle on the injection of solar power into the grid banking arrangements.

Accordingly, the Commission answers the issue framed above in affirmative i.e. the Petitioner is allowed to inject power for banking and draw power therefrom only up to the contract demand irrespective of the plant capacity."

v) That such restriction helps DISCOMs and transmission licensees to plan and maintain grid discipline. In case open access is allowed for the capacity beyond the contract demand, it would adversely affect the grid. Further, any variation in the schedule, energy drawl at the periphery attract the Deviation Settlement Mechanism (DSM) which subsequently increases the power procurement cost. During the peak load period when the solar power is not available, the demand by such open access consumers shifts to DISCOMs forcing them to buy power at a much higher rate, resulting in increased power purchase cost which is against the interest of the consumers. The loss to DISCOMs was higher when consumers opted for open access under the captive or renewable open access power. Further, in case the consumers did not retain their contract demand with DISCOMs, the DISCOMs would

lose fixed revenue and revenue from energy charges. Therefore, restriction of open access drawl up till contract demand is necessary to safeguard the interests of consumers at large.

vi) That the legal issue involved in the present petition has already been settled meaning thereby the restriction on drawl of electricity by an open access consumer as well as the capacity for which an agreement can be entered into up to their respective contract demand is legally valid. In light of there being no illegal curtailment of LTOA, the claim of the petitioner for grant of compensation is also liable to be rejected.

4. The petitioner filed its rejoinder to the reply filed by the respondent, under affidavit dated 24.01.2022. The rejoinder of the petitioner is briefed as under:-

i) That the respondent No. 2 in its reply has sought to place reliance upon the judgment dated 24.09.2020, passed by this Hon'ble Commission in PRO-23 of 2020 in the matter of *Greenyana Pvt. Ltd. v. HPVN & Ors*. (**"Greenyana case"**) and the judgment dated 20.09.2021, passed by the Hon'ble Appellate Tribunal for Electricity (**"Hon'ble Tribunal"**) in Appeal No. 164 of 2020 in the matter of *Greenyana Pvt. Ltd. v. HERC & Ors.,* to contend that the open access granted to a captive generating plant for the purposes of carrying electricity to the destination of his use can be curtailed/restricted on the basis of the contract demand of the captive user.

ii) That in a recent judgment passed by the Hon'ble Supreme Court on 10.12.2021 in CA No. 5074-5075 of 2019 in the matter of *MSEDCL v. JSW & Ors*., the Apex Court has recognized that the right to open access available to a captive generating plant, for the purposes of carrying electricity from his captive generating plant to the destination of his use is not subject to permission by the State Commission. The right to open access to transmit/carry electricity to the captive user is granted by the Electricity Act, 2003 and is not subject to and does not require the State Commission's permission. The right is conditioned only and only by the availability of transmission facility, which aspect can be determined by the Central/State Transmission Utility.

Relevant extract from the judgment dated 10.12.2021 is extracted below for ready reference:

"On a fair reading of Section 9, it can be seen that captive generation is permitted under sub-section (1) of Section 9. As per sub-section (2), every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use, but of course subject to availability of adequate transmission facility determined by the Central Transmission Utility or the State Transmission Utility, as the case may be. So, the captive generation/captive use is statutorily provided/available and for which a permission of the State Commission is not required. The submission on behalf of

the appellant that the captive generation under Section 9 is subject to the regulations as per first proviso to sub-section (1) of Section 9 and that even open access for the purpose of carrying electricity from his captive generating plant to the destination of his use shall be subject to availability of the adequate transmission facility determined by the Central Transmission Utility or the State Transmission Utility, as the case may be, sub-section (4) of Section 42 shall be applicable and such captive users are liable to pay the additional surcharge leviable under sub-section (4) of section 42, has no substance and has to be rejected outright. Construction and/or maintenance and operation of a captive generating plant and dedicated transmission lines is not subjected to any permission by the State Commission. As provided under Section 9 of the Act, 2003, any person may construct, maintain or operate a captive generating plant and dedicated transmission lines. Merely because the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company or the open access for the purpose of carrying electricity from the captive generating plant to the destination of his use shall be subject to availability of the adequate transmission facility determined by the Central Transmission Utility or the State Transmission Utility, it cannot be said that for captive generation plant, the State Commission's permission is required. Right to open access to transmit/carry electricity to the captive user is granted by the Act and is not subject to and does not require the Sate Commission's permission. The right is conditioned by availability of transmission facility, which aspect can be determined by the Central or State transmission utility. Only in case of dispute, the State Commission may adjudicate."

iii) That the aforesaid judgment was passed by the Hon'ble Supreme Court in an appeal filed by the Maharashtra State Electricity Distribution Company Limited (**"MSEDCL")** against the order dated 27.03.2019 passed by Hon'ble Tribunal in Appeal No. 311 of 2018 in the matter of *M/s JSW Steel Ltd. & Anr. V. MERC & Anr. And Batch*, wherein the Hon'ble Tribunal has examined the relevant provisions pertaining to open access applicable to captive generating plants, under the Electricity Act, 2003 and held as below:

"45. Section 9 (2) of the Act creates or vests a positive right to a person who has constructed a captive generating plant to have the right to open access for the purpose of carrying electricity from his generating plant to the destination of his use. The first proviso to Section 9 (2) refers to availability of adequate transmission facilities. It would mean that the right to have open access for the purpose of carrying electricity is subject to availability of transmission facilities. Except this condition of availability of transmission facilities, we do not find any other condition which is imposed in terms Section 9 (2) of the Act.

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54. Then coming to sub-section (4) of Section 42, one has to see whether levy of any charge is both on captive user as well as on general consumers. In terms of Section 9 (2), the right to open access to the captive user of a generating plant for carrying electricity to the destination of its own use is provided. We have to see whether the State Commission can control this right to open access, since Section 42 (4) says that State Commission may permit a consumer or a class of consumers to receive electricity from a person other than the distribution licensees od its area. This is quite contrast to the right of the captive generating plant to carry electricity from captive generating plant to the destination of its won use in terms of Section 9 (2). There is no such permission required by the State Commission, though such permission is required under Section 42 (4) when a consumer or class of consumers want to receive electricity from a person other than the distribution licensee of its area of supply. In this context, i.e. Section 42 (4), one has to see whether the captive user can be equated with a normal consumer as referred in Section 42 (4). A captive user gets electricity from its own plant in terms of scheme envisaged under Section 9 of the Electricity Act 2003. Could we equate words 'receive supply of electricity' with the words 'carrying the electricity to the destination of its own use'? One has to understand the word 'supply' being used under various provisions, referred to above. Section 9 (2) and fourth proviso to Section 42 (2) refer to transaction of a captive generating plant and its users. The word 'supply' has not been consciously used in the context of a transaction between a captive generating plant and its users. Therefore, one has to understand Section 42 (4) with reference to context and language in the context of captive generating plant and the end user being its own members."

iv) That grant of open access in the State of Haryana is governed by the provisions of the HERC (Terms and Conditions of grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 ("HERC Open Access Regulations**"**). Under the said Regulations, the STU/the distribution licensee shall determine the available capacity for grant of open access in terms of the formula provided in Regulation 7 and Regulation 8. In the present case, the denial of open access to the petitioner is not based on unavailability of capacity in the transmission/distribution system, computed in terms of Regulation 7(4). Therefore, such denial/curtailment is illegal and directly contrary to the provisions of the Electricity Act, 2003 and the HERC Open Access Regulations.

v) That the Hon'ble Tribunal by the full bench judgment dated 21.02.2011 passed in Appeal No. 270 of 2006 in the matter of *Chhattisgarh State Power Distribution Co. Ltd. v. Shri. J.P. Saboo, Urla Industied Association Ltd. & Ors*. ("Saboo judgment"), has held that the

contract demand of a captive user can even be reduced to zero. The relevant para from the order dated 21.02.2011 is extracted below for reference:-

*"**38. SUMMARY OF FINDINGS***

I. *The 1st issue is the waiver of minimum energy charge. The Captive Consumers are different from other consumers as the Captive Consumers will normally take electricity only from other consumers as the Captive Consumers will normally take electricity only from Captive Power Plant. The Captive consumer will be taking electricity from grid only in exceptional circumstances, that too, when the Captive Power is under an outage. The Captive consumers have been already paying demand charges for the contract demand as is applicable to all the other consumers. That apart, the transmission and the wheeling charges are being paid by the Captive Consumer to compensate the fixed cost incurred by the Appellant. The Electricity Act, National Electricity Policy and the National Tariff Policy place Captive Consumer in a separate category.*

Therefore, the Captive Consumers of the Captive Power Plant have to be treated as different categories of consumers of a Licensee. Therefore, the findings given by the State Commission to waive the minimum energy charge to be paid by Captive Consumers of the Captive Power Plant is perfectly justified.

II. *The next issue is the Zero Contract Demand. Section 63 (3) of the Electricity Act, 2003 recognizes the power of the State Commission while determining the Tariff to differentiate consumers on the basis of the various categories, such as, loaf factor, power factor, voltage, total consumption of electricity, the nature of supply and for the purpose for which supply is required, etc. The captive users do not require supply during normal conditions. The Licensee is only required to supply temporarily, that too, when the generating plant is an outage. According to the Appellant, it has to keep special infra-structure ready to supply to any Captive Power Plant/Captive User with Zero Contract Demand as and when the demand for supply is made, in that process, the Appellant has incurred substantial expenditure. This contention has not been substantiated as it has not been established that due to the same, substantial expenditure had been incurred by the Appellant. As a matter of fact, in the impugned order, the State Commission has protected the interest of the Appellant by ordering the Captive Consumers to pay $1^{1/2}$ times for the power drawn as per the Open Access Agreement and 2 times for the power drawn in excess of the capacity prescribed in the Open Access Agreement. Therefore, there is nothing wrong in the order of the State Commission allowing the captive user to reduce the contract demand to zero."*

vi) That without prejudice to the above, if there is any conflict between the Regulations notified by this Hon'ble Commission, and the provisions of the Electricity Act, 2003 and the Rules framed thereunder, then the Regulations must be read down to the extent of such conflict. It is submitted that Rule 3 of the Electricity Rules, 2005 provides that for a power plant to qualify as a 'captive' generating plant under Section 9 read with clause (8) of section 2 of the Electricity Act, 2003, not less than 51% of the aggregate electricity generated in such plant, determined on an annual basis, is to be consumed for captive use. Thus, Rule 3 prescribed the minimum consumption, which shall satisfy the requirement of being a captive generating plant. It is pertinent to note that the requirement in Rule 3 is qua 'generation' and not qua 'consumption'. Thus, Rule 3 only envisages that 51% of the energy generated shall be consumed for captive user and the generator is free to sell the remaining as per its other agreements with the discom or other consumers. However, the interpretation sought to be given by the respondent No. 2 renders any electricity generated which is not consumed for captive use, as dumped energy and unreasonably restricts the generation to contract demand of the captive user. It may also be pertinent to mention herein that the Hon'ble Supreme Court in the matter of PTC v. CERC vide its judgment dated 15.03.2010 has recognized that under the Electricity Act, 2003 power generation has been de-licensed and captive generation is freely permitted, subject to approval as indicated in Sections 7, 8 and 9 of the Electricity Act, 2003. The interpretation sought to be given by respondent no. 2 is a manner of bringing the license raj back through the back door.

vii) That the decision in the *Greenyana case* was passed without the benefit of the judgment passed by the Hon'ble Supreme Court in the JSW Case and the full bench decision of the Hon'ble Tribunal in the *Saboo judgment.*

viii) That the reliance placed upon Regulations 42, 43 and 45 to justify curtailment of grant of open access to a captive generating plant in contravention of the clear provisions of the Electricity Act, 2003, is erroneous.

5. In the hearing held on 25.01.2022, the Commission directed respondent no. 2 i.e. UHBVNL to study the rejoinder filed by the petitioner and respond on the same. In response, the respondent no. 2 filed its submissions, briefed as under:-

i) That in the rejoinder filed by the petitioner, the following judgments had been relied upon and contended that while passing judgment in PRO-23 of 2020 or Appeal no. 164 of 2020, these judgments were not brought to notice of the Hon'ble Commission or the Hon'ble APTEL:-

a) MSEDCL v M/s JSW Steel Ltd. &Ors. CA No. 5074-5075 of 2019 dated 10.12.2021 – arising out of Judgment of Hon'ble APTEL in M/s JSW Steel Ltd. v MERC and anr. (Appeal No. 311 of 2018)

b) Chhattisgarh State Power Distribution Co. Ltd. v Shri J.P. Saboo, UrlaIndustries Association Ltd. and Ors. (Appeal No. 270 of 2006)

ii) That the present case is distinct in nature and the judgment of MSEDCL v M/s JSW Steel Ltd. & Ors. CA No. 5074-5075 of 2019 dated 10.12.2021 ('MSEDCL Case' for short) is not applicable, in view of the followings:-

a) In the MSEDCL case, the issue emanated from the order of the Commission wherein it was held that the additional surcharge is leviable under Section 42(4) of the Act, 2003 on the captive consumers/captive users. The issue involved in the instant judgment was therefore,-***Whether the captive consumers/captive users are liable to pay the additional surcharge leviable under Section 42(4) of the Electricity Act, 2003?***

b) The Hon'ble Supreme Court held that the captive consumers/captive users shall not be subjected to and/or liable to pay additional surcharge leviable under Section 42(4) of the Act, 2003. The basis of arriving at such finding has been culled out in following points, which by no means have been contradicted by the judgment of the Hon'ble Commission in PRO-23 of 2020 and the said judgment is instead in consonance with the decision of MSEDCL Case –

Findings in MSEDCL Case	**Remarks of Respondent**
Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access **for the purposes of carrying electricity from his captive generating plant to the destination of his use**, **but of-course subject to availability of adequate transmission facility determined by the Central Transmission Utility or the State Transmission Utility, as the case may be.**	The said judgment recognizes that the restriction that can be placed upon an open access consumer. The restriction is with respect to the system design. The judgment of the Hon'ble Commission in PRO-23 of 2020 or Hon'ble APTEL in Appeal No. 164 of 2020 also hold the same view in stating that the system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit. It is submitted that the levy of **Additional Surcharge** in MSEDCL case is a **financial parameter** that may impact a captive plant adversely and may therefore, discourage investment in the Plant. However, in the instant case, the petitioner has failed to demonstrate with specific figures as to whether there is any financially adverse effect to the extent that it

	discourage captive generator to invest in the Plant. It is also relevant here to point out that that there is no dispute to the fact that Open Access Regulations, 2012 which were in vogue at the time the petitioner envisaged setting up of Plant stipulated restrictions on open access consumers to limit their drawl up to its contracted capacity. The LTOA agreement was signed under the relevant provisions of HERC OA Regulations, 2012. Further, this Hon'ble Commission in its ARR and Retail Tariff Order has made provision for levy of penalty for exceeding contracted maximum demand wherein it was stipulated that in case the consumer exceeds his Contract Demand in any month by more than 5%, a surcharge of 25% will be levied on the Sale of Power (SOP) / monthly minimum charges. It was also provided that if in any case the maximum demand is being measured in KW, the same shall be converted in KVA by the use of actual power factor. The condition restricting the drawl capacity is well reasoned and explains in detail in the judgment of the Hon'ble Commission. The system design of the Licensee which has cannot be compromised for a category of consumers. **The ratio of MSEDCL case is not applicable to the instant case as additional surcharge does not pose any issues which have larger impact.** This condition also cannot therefore, be said to be against the tenets of the Electricity Act, 2003. The Hon'ble Commission in various orders observed that **main reason for providing such a heavy / deterrent penalty for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system.** The Commission

	observed that if an embedded open access consumer, who is drawing power partly or whole of it through open access, exceeds his contract demand by more than 5% as per his energy meter, he is subjecting the system of the licensee to the same risk as is being done by another consumer, who is not drawing any power through open access, when he exceeds his contract demand. So, the penalty in the two cases has to be same. All these stipulations read together makes **it incumbent upon the captive generator to envisage the setting up of plant considering that drawl of power shall not exceed contract demand.** In that view, it cannot be said that the provision with respect to restriction of drawl capacity would make the plant financially unviable as this ought to have been taken into account while envisaging the setting up of Plant.
In the case of the captive consumers/captive users, **they have also to incur the expenditure and/or invest the money for constructing, maintaining or operating a captive generating plant and dedicated transmission lines. Therefore,** as such the Appellate Tribunal has rightly held that so far as the captive consumers/captive users are concerned, **the additional surcharge under sub-section (4) of Section 42 of the Act, 2003 shall not be leviable.** The captive consumers who are a separate class by themselves if subjected to levy of additional surcharge under Section 42(4), will be subjected to discrimination.	The sum and substance of the root issue in the judgment lies in this finding. The additional surcharge was held inapplicable in view of the fact that the investment incurred on building captive plant shall not be rendered unviable by levy of excess charges. **In the instant case, however, the restriction on drawl capacity is envisaged in reading of the said Regulations 24, 42, 43 and 45 which prescribe certain consequences and penalties for over drawl of electricity. Regulation 42 read with regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc.** **From this, it is evident that the generator cannot plead that the viability of plant is affected due on restrictions placed on drawl capacity under open access.** **On this ground alone, the judgment of MSEDCL case is clearly distinguishable from**

	present case and the reliance on same is highly misplaced.

iii) That the present case is distinct in nature and the judgment of Chhattisgarh State Power Distribution Co. Ltd. v Shri J.P. Saboo, Urla Industries Association Ltd. and Ors. (Appeal No. 270 of 2006) ('CSPDCL case' in short) is not applicable, in view of the followings:-

a) The petitioner has placed reliance on CSPDCL case with respect to two findings i.e. (i) Waiver of minimum energy charges; and (ii) Zero Contract Demand. As regards the finding of the waiver of minimum energy charge, the said finding of the Hon'ble APTEL has the similar rationale as the finding contained in MSEDCL case. It was held that since captive consumers are a distinct category which is encouraged under the Electricity Act, therefore, any minimum energy charge shall be waived. The rationale of same lies in the fact in view of the fact that the investment incurred on building captive plant shall not be rendered unviable by levy of excess charges. As stated above, the judgment of the Hon'ble Commission in PRO-23 of 2020 or Hon'ble APTEL in Appeal No. 164 of 2020 does not impact the viability of the investment as this the drawl capacity is not a consideration while making a decision to invest in the Plant. Instead, in view of the Regulations 24, 42, 43 and 45, the Captive Plant Owner ought to keep the cushion for imbalance charges, demand surcharges etc.

b) As regards finding of the zero contract demand, in the present case, the restriction is imposed to the maximum demand only considering the system design. There is apparently no contradiction in the finding of the CSPDCL case and Appeal no. 164 of 2020. The reliance on the same is therefore, irrelevant.

Proceedings in the Case

6. The case was heard through video conferencing on 09.02.2022, as scheduled, in view of the COVID-19 pandemic. The petitioner as well as the respondent herein, mainly reiterated the contents of their written submissions, which for the sake of brevity have not been reproduced here.

Commission's order

7. The Commission has heard the arguments of the parties at length as well as perused the filings placed on record by the parties. After hearing the rival contentions and careful examination of the documents placed on record by the parties, the Commission observes that grievance of the petitioner concerning the curtailment of the capacity, for the long-term open access granted to its project based on the contract demand of the consumer, has already been adjudicated by the Commission, vide its order dated 24.09.2020 (PRO-23 of

2020, in the matter of M/s. Greenyana Pvt. Ltd. vs. HPVN & Ors.). The relevant part of the ibid order of the Commission dated 24.09.2020, is reproduced hereunder:-

" *i) Whether the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands bad in law?"*

65. In order to answer the question framed above, the Commission has carefully examined the provisions of HERC Open Access Regulations, as amended from time to time. The relevant clauses are reproduced hereunder:-

"5. Eligibility for connectivity. –

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

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

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

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8. Entitlement and other conditions for open access. –

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

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

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24. Imbalance Charges. –

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

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

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

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

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

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

(1)……

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

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

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

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

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

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

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(3) During peak load hour restrictions, the embedded open access consumer shall be entitled to bring open access power upto his contract demand without the requirement of any approval of special dispensation from the licensee provided his total drawl i.e. drawl through open access plus the drawl from the licensee does not exceed his contract demand. Further he shall restrict his drawl from the distribution licensee to peak load exemption limit/special dispensation allowed by the licensee. In case the total drawl of the consumer exceeds the contract demand by more than 5% at any time during the month as per his energy meter, the demand surcharge as per relevant schedule of tariff approved by the Commission from time to time shall be leviable. For the purpose of calculating demand surcharge in such cases, the total energy drawl during the month including the energy drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of levy of demand surcharge, will be worked out at the applicable tariff for the category to which the consumer belongs."

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

67. This Commission has analysed the provision of Regulation 5 read with Regulation 8 of the Open Access Regulations. Regulation 5 provides for the eligibility of a consumer/person seeking connectivity for open access from the DISCOM in as much as it prescribes the voltage level at which open access is to be granted in general. Regulation 8(1) lays down the qualification criterion for entitlement of open access which in general cases can be availed by consumers having a minimum capacity/demand of I MW. It further specifies that this restriction of minimum capacity is not applicable in case of generators based on renewable energy. Clearly, the above provision lays down the minimum threshold limit prescribed for grant of open access and in no way relates to the limit on drawl beyond contracted capacity. The system design is based on contracted capacity as such contracted capacity is a system parameter and the open access has to be restricted within that limit. The Commission has deliberately put penalty for drawl beyond open access in lieu of

system security. In this regard reference is made to S. No. 2.5 of statement of reasons given in OA regulations first amendment.

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

"In case the maximum demand of the consumer exceeds his contract demand in any month by more than 5%, a surcharge of 25% will be levied on the SOP amount for that month." The main reason for providing such a heavy / deterrent penalty for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system. The Commission observes that if an embedded open access consumer, who is drawing power partly or whole of it through open access, exceeds his contract demand by more than 5% as per his energy meter, he is subjecting the system of the licensee to the same risk as is being done by another consumer, who is not drawing any power through open access, when he exceeds his contract demand. So the penalty in the two cases has to be same. It has been accordingly provided that in case total drawl (i.e. drawl from the licensee plus drawl through open access) of an embedded open access consumer exceeds his contract demand by more than 5% at any time during the month as per his energy meter, he will be levied demand surcharge as per schedule of tariff approved by the Commission from time to time and for the purpose of levying demand surcharge, the total energy drawn during the month including drawl through open access shall be considered. The consumption charges for the energy drawl through open access, for the purpose of SOP, will be worked out at the applicable tariff for the category to which the consumer belongs. The amendment in the regulations has been made accordingly."

68. The proviso to Regulation 8 (1) cannot in any manner be read to understand that there cannot be any restriction on drawl of power by a captive consumer of a Solar based Captive generating plant, as has been argued by the Petitioner. The Petitioner's above argument is arising out of misreading of the above Regulations. Regulation 8 clearly provides that the provisions thereof are subject to the other regulations contained in Open Access Regulations. Thus, Regulation 8 shall have to be read along with other applicable regulations of OpenAccess Regulations., i.e. Regulations 24, 42, 43 and 45.

69. A conjoint reading of the said Regulations 24, 42, 43 and 45 prescribe certain consequences and penalties for over drawl of electricity by an open access consumer beyond their contract demand. These regulations in essence place restrictions on open access consumers to limit their drawl up to its contracted capacity. Regulation 42 read with

regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc.

70. In case open access power drawl of any consumer of the Petitioner exceeds his contract demand, then in terms of the above provisions he shall be liable for penalties prescribed. The incorporation of the condition that open access granted to the Petitioner shall be restricted to the contract demand of its open access consumer is thus, in line with the provisions above mentioned. There is no illegality in making explicit what the above provisions prescribe.

Further, such restrictions are necessary to be placed in the approvals for connectivity granted to the solar power developers to prevent/reduce unutilized surplus solar power.

72. Accordingly, the condition no. (viii) of the in-principle connectivity which reads as:-

"viii. The power drawn by the consumer/applicant shall not be more than its contract demand during any time slot of the day", and the condition no. (viii) of the final connectivity, which reads as: "Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation" are legal and in consonance with the Open Access Regulations.

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

The above decision of the Commission has been upheld by the Hon'ble APTEL, in its order dated 20.09.2021 (Appeal No. 164 of 2020), in the following terms:-

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

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282. <u>We agree with the view of the State Commission that the conditions imposed under In-Principle Feasibility and Final Connectivity granted by HVPNL restricting the drawl of</u>

electricity by open access consumers as well as the capacity for which an agreement can be entered into upto their respective contract demands, respectively, are legally valid."

(Emphasis supplied)

In view of the above judgements of this Commission as well as that of the Hon'ble APTEL, the petitioner set up its case around the following judgements of the Hon'ble Supreme Court and Hon'ble APTEL, on the plea that these judgements were passed consequent to the ibid order of the Commission dated 24.09.2020 and of the Hon'ble APTEL dated 20.09.2021:-

a) The judgement of the Hon'ble Supreme Court, dated 10.12.2021, in the matter of MSEDCL v M/s JSW Steel Ltd. & Ors. CA No. 5074-5075 of 2019, arising out of the judgment of the Hon'ble APTEL dated 27.03.2019 in M/s JSW Steel Ltd. v MERC and anr. (Appeal No. 311 of 2018).
b) The judgement of the Hon'ble APTEL dated 21.02.2011, in the matter of Chhattisgarh State Power Distribution Co. Ltd. v Shri J.P. Saboo, Urla Industries Association Ltd. and Ors. (Appeal No. 270 of 2006).

The learned counsel vehemently argued to establish that the 'Greenyana case' adjudicated by the Commission stands on a different footing as compared to the instant case being urged before this Hon'ble Commission, while the case laws cited above are squarely applicable in the present matter.

Per-contra, the respondent argued at length that the judgements relied upon by the petitioner were passed in entirely different context. In the MSEDCL case, the issue emanated from the order of the Commission, wherein, it was held that the additional surcharge is leviable under section 42(4) of the Act, 2003 on the captive consumers/captive users. Therefore, the issue involved in the instant judgment was 'whether the captive consumers/captive users are liable to pay the additional surcharge leviable under section 42(4) of the Electricity Act, 2003?'. The Hon'ble Supreme Court held that the captive consumers/captive users shall not be subjected to and/or liable to pay additional surcharge leviable under section 42(4) of the Act, 2003. In the instant case, however, the restriction on drawl capacity is envisaged in reading of the said Regulations 24, 42, 43 and 45 which prescribe certain consequences and penalties for over drawl of the electricity. Regulation 42 read with regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc. From this, it is evident that the generator cannot plead that the viability of plant is affected due to restrictions placed on drawl capacity under open access. The main reason for providing such a heavy /deterrent penalty

for drawl or maximum demand of the consumer exceeding his contract demand is that in doing so the consumer is over loading or straining the system of the licensee beyond permissible design limits which may sometime even cause damage to the system. Similarly, CSPDCL case, is on entirely different premise, wherein it was held that since the captive consumers are a distinct category which is encouraged under the Electricity Act, therefore, any minimum energy charge shall be waived.

It needs to be noted that the restrictions imposed upon by this Commission is in line with the provisions of the Electricity Act, 2003 i.e. non-discriminatory open access subject to "system constraints". In simple terms, to avoid and discourage congestion in the intra-state transmission system, this Commission has provided for levy of peak load exemption charges (PLEC) for exceeding the contract demand. In furtherance of the same, the capacity permissible under open access also needs to be regulated. In its absence, as generation is an un-regulated activity, the captive users may set up CPP of whatever capacity they find feasible and then seek open access to carry the said power from point of generation to the point of consumption, thereby leading to system constraints and its consequence thereto.

On the judgement cited by the petitioner, the Commission is of the considered view that it is in the context of applicability of the additional surcharge, waiver of minimum energy charge etc. and are not applicable in the present case, where the connectivity has been restricted upto the contract demand of the petitioner, in consideration of the system constraints and the need to plan and augment the system. Such dispensation is in line with the Commission's regulations occupying the field as well as the Electricity Act, 2003, as discussed earlier in the present order.

The Commission further observes that the Hon'ble Supreme Court in the judgment relied upon by the respondents has categorically said that captive generation/ captive use is statutorily provided/ available and for which permission of the State Commission is not required. The petitioner has quoted the observation of the Hon'ble Supreme Court, "that section 9(2) of the Electricity Act, 2003 creates or vests a power upon a person who has constructed a captive generating plant to have the right to open access for the purpose of carrying electricity from his generating plant to the destination of his use". While observing the same the Hon'ble Apex Court has further held that as per first proviso to sub section (1) of section 9 of the Electricity Act, 2003, open access for transmitting electricity from location of the generator to the destination of captive usage is subject to the availability of adequate transmission facility. Hence, 'transmission constraint' as also mentioned in the Electricity Act, 2003 has been affirmed by the Hon'ble Apex Court in Civil Appeal

<u>Nos. 5074-75 of 2019, Maharashtra State Electricity Distribution Co. Ltd. V. M/s JSW Steel Limited and ors</u>. (In case open access is allowed for the capacity beyond the contract demand, it would adversely affect the grid and such restrictions helps Discoms and transmission licensees to plan and maintain grid discipline). Therefore, the Supreme Court judgment relied upon by the respondents herein is distinguishable on the facts and circumstances of the present case.

In view of the above discussions, the Commission does not find any reason to deviate from its earlier decision taken on the issue in PRO- 23 of 2020(M/s. Greenyana Pvt. Ltd. vs. HPVN & Ors) dated 24.09.2020. Hence, the present petition brought before this Commission is rejected being devoid of merit.

In terms of the above order, the present petition is dismissed accordingly.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 28.02.2022.

Date: 28.02.2022	(Naresh Sardana)	(R.K. Pachnanda)
Place: Panchkula	Member	Chairman