

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/P. No. 41 of 2022

Date of Hearing : 13.12.2023

Date of Order : 29.02.2024

IN THE MATTER OF:

Petition under Section 43, 46 and 50 of the Electricity Act, 2003 and Regulation 8 and 9 of the HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to require Security) Regulations, 2016 (“Duty to Supply Regulations”) and Regulation 16 of the HERC Electricity Supply Code Regulations, 2014 (“Supply Code”) read with Section 142 and 146 of the Electricity Act, 2003.

Petitioner

Dakshin Haryana Bijli Vitran Nigam, Vidyut Sadan, Vidyut Nagar, Hisar, Haryana
– 125005

VERSUS

Respondent:

M/s Malibu Estates Pvt. Ltd.; 38, DDA Commercial Complex, Kailash Colony,
Extn- Zamrudpur, New Delhi -110048

Present

On behalf of the Petitioner

1. Sh. Samir Malik, Advocate
2. Sh. Shaida Dass, Advocate
3. Sh. Rajesh Kaushik, SDO, DHBVN

On behalf of the Respondent

1. Sh. Anurag Jain, Advocate
2. Sh. Manish Yadav

QUORUM

Shri Naresh Sardana, Member

ORDER

Brief background of the case

1. The present Petition has been filed by the Petitioner inter alia to ameliorate the hardships faced by the owners/occupants of premises/units seeking new electricity connection/additional load etc. within projects/areas, where

Respondent Developer has not installed adequate electrical infrastructure. The reliefs sought vide the present Petition are reproduced herein below:

- (a) Permission to the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 63 to 65 herein below and in terms of the HERC Order dated 02.02.2022 passed in PRO 55 of 2021, from each of the prospective applicant(s) seeking new connections, consumers seeking grant of additional load or no objection (situated within the Projects), subject to adjustment/refund on curing deficiencies by the Respondent or payment of cost thereof (in any of the manner mentioned below), so as to grant immediate respite of granting connections/additional load to applicants/consumers within the Projects in any of the manner mentioned in Annexure P -3, or any other manner as this Hon'ble Commission may deem fit and proper.
- (b) Directions to the Respondent to, forthwith: -
 - (i) cure inadequacies within the projects being developed by the Respondent; or
 - (ii) pay a sum of money either: -
 - (1) in cash deposit equivalent to the cost of curing the aforesaid inadequacies; or
 - (2) by way of bank guarantee(s) of the cost of curing the aforesaid inadequacies to the Petitioner; and
 - (3) by way of transfer of an immovable property duly certified by DTCP to be of encumbrance free and of value equivalent to the cost of curing the aforesaid inadequacies.
- (c) Ad-interim/interim permission to the Petitioner in terms of the clause (a) above during pendency of this Petition.

2. **Petitioner's submissions** (DHBVN):

- a. Prior to the filing of the present petition, the Petitioner had agitated this issue in PRO-55 of 2021 before this Hon'ble Commission in which all the Delinquent Developers were made parties. Vide order dated 02.02.2022, this Hon'ble Commission was pleased to grant immediate relief to the distressed residents of the subject areas/projects developed by the Respondent Developers and permitted the Petitioner to release new electricity connections/additional load on voluntary payment of development charges mentioned in the Petition.
- b. Pursuant to the Order dated 02.02.2022, DHBVN has already started releasing connections/ additional load for applicants of the subject areas/projects developed by the respondent developer who voluntarily opt to pay development charges.

- c. Subsequently, it was argued by the Respondent and other Delinquent Developers before the Hon'ble Commission that each builder's agreement is to be seen separately with the peculiar facts of the agreement.
- d. Thus, the Hon'ble Commission vide order dated 18.05.2022 directed the Petitioner to file separate petitions regarding inadequacy of infrastructure in respect of each developer with all the relevant details. Hence, the present Petition was filed in compliance of the said order.
- e. Regulation 4.1 of Duty to Supply Regulations empowers DHBVNL to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.6 of the Duty to Supply Regulations further provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer. Regulation 3.10 read with Regulations 4.1 and 4.12 of the aforesaid regulations inter alia empower DHBVN to recover charges for extension of distribution system.
- f. It emanates from these regulations that liability to bear cost of extending the distribution system etc. shall be borne by an applicant of a connection i.e. either the builder, who developed a project and/or consumer(s) within such projects.
- g. Regulation 4.2.3 of the Supply Code provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by this Hon'ble Commission under Section 46 of the Electricity Act, 2003. This stipulation is exactly same as that of Regulation 4.6 of the Duty to Supply Regulation.
- h. Second proviso to Regulation 6.1. (a) of Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020 ("Single Point Regulations") provides that if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of Duty to Supply Regulations. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee.
- i. Non-grant of completion certificate by the DTCP signifies that the works in the colony developed by the developer are incomplete and its obligation under HRDUA Act, 1975 as well as the Electricity Act, 2003 and the Regulations framed there under has not been discharged.

- j. DHBVN's Sales Circular No. D- 15/2010 dated 14.12.2010 after approval by the State Government stated that DHBVN will take over the electrical infrastructure in the area being developed by the developers after the same has been upgraded as per the new load norms. Thus, the stage of 'taking over' of the electrical infrastructure of an area by a distribution licensee arises when the entire work in such area is complete and when final completion certificate has been granted by DTCP.
- k. The Bilateral Agreements signed by the builders/ colonizers with DTCP at the time of grant of license also mandates a condition that the builders are required to arrange electric connection for the area developed by them.
- l. On 20.09.2013, the Petitioner issued a notice bearing memo no.12609/20 calling upon the Respondent to furnish cost or bank guarantee on account of inadequate electrical infrastructure in Respondent's projects/colonies. The Petitioner specifically highlighted various provisions of the Electricity Act, 2003, Regulations framed there under and conditions of license issued by the Directorate of Town and Country Planning.
- m. On 24.12.2015, Director General, Town and Country Planning, Haryana, Chandigarh also issued a notice vide Endst. No.25604 to Malibu Estate and Infrastructure demanding cost of deficient electrical infrastructure having inadequacy amounting to Rs. 59.17 Cr. or bank guarantee equivalent to 1.5 times the said cost in terms of the obligation of the Respondent under the bilateral agreement signed at the time of grant of license to arrange electric connection.
- n. Ansal Properties and Infrastructure Ltd. had also filed a writ petition titled as Ansal Properties and Infrastructure Ltd. v. State of Haryana, CWP No.2467/2013 inter alia challenging its obligation to erect/bear cost of required electrical infrastructure. This writ petition was dismissed as withdrawn by the Hon'ble High Court on 19.07.2017.
- o. The issue of inadequacy in electrical infrastructure installed by a private developer of Faridabad was recently dealt with by the HERC in "Anandvilas 81 Resident Welfare Association v. DHBVNL, HERC/PRO-48/2020." This Commission, by its Order dated 09.08.2021, disposed of this petition and inter alia held that it is obligatory on the part of developer (License holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of the electrical infrastructure for the licensed area before release of the electrical connection for which compliance is required to be made by M/s Country Wide developers.
- p. Lack of adequate electrical infrastructure has caused serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under:-
 - i. On one hand, under applicable provisions of the Electricity Act, 2003 read with the Duty to Supply Regulations and Supply Code, the Petitioner cannot, in law either release new connections to the buyers of such premises or sanction additional load to existing consumers owning

such premises on account of existing deficiencies in installed electrical infrastructure.

- ii. On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure.
- q. This Commission vide its order dated 02.02.2022 has provided ad-interim relief in form of release of new connections to the applicants on voluntary payment of Development Charges, but as noted by the Commission, the money due towards inadequacies is to be recovered from the Delinquent Developers and the money received as Development charges has to be adjusted/refunded. The voluntary payment of development charges only provides respite to the consumers with the ability to incur such expenses, the other consumers who are unable to bear such expenses still have to be provided relief.
- r. The issue of inadequacy in infrastructure, attains a sense of urgency particularly on account of use of DG sets and their impact on the health of the environment, especially in colonies / buildings including that of the Respondent where these DG sets have been installed by colonizers / developers, as stop gap arrangement, between installing the required necessary infrastructure and meeting consumer demand on the other.
- s. Applying the formula as stipulated in the Petition, proposed Project wise Development Charge(s) computed for the deficient projects having multi point/ individual connections have been annexed as Annexure P-3. The charges are proposed to be applicable up to 31.03.2023 and be enhanced by 10% every financial year thereafter. The new applicants of domestic category may kindly be given an option to deposit proportionate 'development charge(s)' in lump sum or in 12 no. EMI (in case of monthly bills) and 6 no. EMI (in case of bimonthly bills). A rebate of 4% (four per cent) would be allowed to domestic applicants/consumers opting to deposit development charges in lump sum in one go.
- t. The applicants of other than domestic categories would be required to deposit the proportionate development charges in one go before release of their connections as the load of other than DS categories would be quite higher and would require immediate creation of infrastructure to release the same. The above development charges, so deposited by the applicants/consumers would be refunded afterwards subject to recoveries that would be made from defaulting developers. It is also worthwhile to mention here that there are 32 no. projects of these Delinquent Developers where single point connections have been taken from the Nigam but inadequacy of infrastructure exist viz-a-viz the ultimate load requirements.

3. Respondent's Reply dated 25.10.2022:

- a. That this Commission lacks jurisdiction to entertain the present dispute as it can only adjudicate upon the disputes between distribution licensees and generating companies, whereas the present dispute is between a distribution licensee and consumers;

- b.** That this Tribunal being a statutory Tribunal, cannot travel beyond the provisions of the Electricity Act. In this regard, reliance has been placed on the decision rendered by the Hon'ble Supreme Court in Gujrat Urja Vikas Nigam Ltd. v. Solar Semiconductor Power Co. (India) Pvt Ltd [(2017) 16 SCC 498], Maharashtra Electricity Regulatory Commission v Reliance Energy Ltd. [(2007) 8 SCC 281], Gujrat Urja Vikas Nigam Ltd. v Essar Power Ltd. [(2008) 4 SCC 755];
- c.** Section 43, 46, and 50 (as relied upon by the Petitioner) no where enables exercise of jurisdiction for the purposes of the present Petition.
- d.** The Petitioner has not identified what is the difficulty being faced by it towards implementation of the Duty to Supply Regulations and the Supply Code. The "Removal of Difficulty" clause, as worded in the 2016 Regulations and the Supply Code have a precondition regarding the existence of a difficulty. Without any of the said difficulties being specified, the Petitioner could not have invoked such powers.
- e.** The Petitioner has deliberately not made DTCP a party before this Hon'ble Commission as the Commission has no jurisdiction in law to pass directions against DTCP.
- f.** The Respondent was granted license for developing plotted as well as group housing society on land measuring 204.76 acre, at Sector 47 and 50, Gurugram. The said licenses were issued by Town and Country Planning commencing from year 1992 to 1997 and one license which include land measuring 24.68 acre was issued in the year 2008. The answering Respondent has completed the development work including the internal and external electrification. The licensed area for which part completion certificate has been issued by the concerned authority and for the last license for the year 2008 the part completion certificate has been issued in the year 2016. Thus, the areas of the township for which the licenses were issued prior to 2003, are not amenable to the provisions of Electricity Act, 2003 and for this reason as well, the Petition is liable to be dismissed, as the inadequacy of electrical infrastructure being alleged, pertains to consolidated licensed area i.e., 204.796 acre.
- g.** Initially, the electrification of the licensed areas of the answering Respondent was envisaged with 11 KV substation. Thereafter, with the issuance of license in the year 2008, the electrification scheme of the answering respondent has been envisaged with creation of 33 Kv substation, having load of 25 MVA and the same was approved by the office of the Petitioner on the approved plan. The answering Respondent has accordingly allotted the work for supply, erection, commissioning, and testing of 33Kv sub – station to M/s Global Engineers on 24.03.2012 for an approx. cost of Rs. 61.7 lakhs. The answering Respondent has purchased 3 transformers from Crompton Greaves Ltd.
- h.** Since the existing 11 Kv substation has to be upgraded to 33 Kv substation, the answering Respondent submitted a request for seeking permission to the office of town and country planning department for doing the needful. However, office of Town and Country Planning department, vide their

communication dated 24.11.2025, stated that the Respondent had not complied with the condition of the license due to lack of electrical infrastructure and that the cost of inadequacy has to be born by the Respondent.

- i. The Town and Country Planning, vide memo dated 07.03.2019, granted approval for revising the sanctioned lay out plan for licensed area situated at Sector 47 and 50, Gurugram. The residents of the locality raised an objection to the change of lay out plan by submitting a representation to the office of District Town Planner.
- j. Due to objection being raised by the residents of the locality, the work of installation of 33 Kv sub – station has got halted and the moment final approval for revising the existing site plan qua the 33 Kv sub – station, is granted the said substation shall be commissioned on urgent basis. Thus, it is apparent that the answering Respondent has been meticulously complying with all the statutory provisions of as well as instructions issued by its licensing authority from time to time.

4. Petitioner's Rejoinder:

- a. It is submitted that prior to filing of this petition, Hon'ble Commission vide order dated 02.02.2022 passed in PRO No. 55 of 2021 was pleased to grant the immediate relief to the distressed residents of the subject areas developed by different builders and permitted the Petitioner to release new connections on voluntary payment of development charges mentioned in the petition. Thereafter, Hon'ble Commission vide order dated 18.05.2022 directed the Petitioner to file separate petitions in respect of each developer which lead to filing of present petition.
- b. It is submitted that this Hon'ble Commission has jurisdiction to adjudicate on the present issue under section 86 (1) (k) of Electricity Act, 2003 (Act) which states that "discharge such other functions as may be assigned to it under this Act."
- c. Further, this Hon'ble Commission vide its judgement dated 20.02.2015 passed in HERC PRO No. 21 and 23 of 2013 titled as Ansal Buildwell Vs. DHBVNL & Others, held that Ansal Buildwell is liable to cure the electrical inadequacy which is also the facts of present case. Vide this judgement, Hon'ble Commission has already adjudicated on the issue of jurisdiction and decided that this Hon'ble Commission has jurisdiction to decide such issue as raised in present petition. The said order and judgement has been challenged vide CWP No. 6460 of 2015 and 6452 of 2016 and the same are pending for adjudication. It is noteworthy that there is no stayed by the Hon'ble P&H High Court. At present, the judgement dated 20.02.2015 is occupying the filed of law.
- d. This Hon'ble Commission in its order dated 09.08.2021 passed in HERC PRO NO. 48 of 2020 held that it is obligatory on the part of developer (license Holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of electrical infrastructure for the licensed area before release of electrical

connection for which compliance is required to be made by developer. Vide this judgement, it is already decided by this Hon'ble Commission that it is obligatory on the part of developer/Respondent to deposit bank guarantee for the development of electrical infrastructure. Thus, the issue of jurisdiction cannot be agitated by the Respondent.

- e. In supplemental to the above made submissions, this Hon'ble Commission is empowered under section 46 of Act to frame regulations to authorise a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and plant are defined under section 2(20) and 2 (22) of the Act.
- f. Further, due to lack of adequate electrical infrastructure has caused serious prejudice to the petitioner as well as buyers of the premises in Projects. It is the difficulty of the Petitioner that it cannot in law take over the deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity. Therefore, the powers to remove difficulty has been rightly pleaded by the Petitioner and Hon'ble Commission ought to exercise this power to remove such difficulty.
- g. Further, as far as the issue of compensation vis-à-vis contempt is concerned, it is submitted that Section 142 contains the work any order, which is widely worded and it is an admitted position that despite of order passed in 2015 by this Hon'ble Commission, Respondent has failed to comply with the said judgement. It is also noteworthy that the Petitioner is not seeking any compensation, but only seeking the compliance by the Respondent which is nothing but the levy of statutory charge in terms of extant regulations.
- h. It is submitted that the Respondent has already admitted in its reply at Page No. 21-22 that the Respondent is working towards electrification infrastructure. It is evident from the pleadings of the Respondent that it has acted towards curing inadequacy in electrical infrastructure and at this stage, Respondent is estopped from alleging that it is not the obligation of Respondent.
- i. In terms of power conferred under section 181 (2) (t&v), read with Section 43, 46 and 47 of the Act, this Hon'ble Commission notified Duty to Supply Regulations, 2016 to enable Petitioner to recover expenditure under regulation 4. Thereafter, Regulation 4.12.2 was inserted into said regulations by way of the amendment notified on 19.03.2020. It provides that the Respondent has to ensure the electrical infrastructure and to pay 1.5 times of the estimated cost of balance work to be executed as per the approved plant.
- j. Further, in terms of Section 50 and 181 (2) (x) of the Act, this Hon'ble Commission notified Electricity Supply Code, 2014 to deal with procedure for connection, disconnection, reconnection, assessment of load, changes in existing connections including load modifications, change of name and change of tariff category.

- k. Further, in terms of proviso to regulation 6.1 of Single Point Regulations, it provides that if at the time of energisation of system, it is noted that the concerned developer has not executed the complete work as per electrification plan approved by the Licensee, the Developer/Respondent shall also be required to furnish bank guarantee for the balance incomplete work in terms of regulation 4.12 of Duty to Supply Regulations.
- l. It is submitted that the Petitioner has prayed to this Hon'ble Commission to exercise its power under the Act and direct the Developer/Respondent to cure electrical infrastructure and recover development charges from consumers seeking new connections.
- m. It is submitted that the issue pertains to the lack of inadequacy which is to be cured by Respondent. It is noteworthy that the present petition is governing from Duty to Supply Regulations discussed above, read with the Act and there is no point of impleading DTCP as a party because there is no relief sought qua DTCP in the petition. Without prejudice to the rights and contentions of Petitioner, the DTCP may be impleaded in the present petition if this Hon'ble Commission deems fit and proper.

5. Petitioner's Affidavit dated 01.5.2023:

- a. It is submitted that the inadequacies in the Respondent's Project are configured as per the load norms stipulated in Sales Circular No. D-16/2017 dated 12.04.2017 issued by the Petitioner. These norms determined on the basis of the size and area of the plot upon which projects are to be developed and total load capacity thereupon required to be installed to cater to the expected demand.
- b. It is submitted that in order to reassess the total inadequacies on account of the load norm mentioned above, a committee was constituted in June 2019 to work out the amount of electrical inadequacies against the Respondent and other delinquent developers. This committee conducted thorough inspections and concluded that the ultimate capacity required to be installed the Respondent's project was 24410.29 KVA. The capacity currently installed by the Respondent is 18600 KVA in the 33Kv sub station.
- c. It is submitted that the internal inadequacy is calculated as per the load capacity requirement and the cost of the installed substation for the area of plotted land as well as that required for high rising group housing societies and commercial lands. The external inadequacy pertains to the physically installed substation and the underground electrical lines essential for meeting the load requirements, like the 11kV underground line and the 33kV underground line. The final component is the feeding end of the substation. The cost is calculated for the substation and feeding end is based on the Mega Volt Amp (MVA) of electricity.
- d. It is submitted that till date, the Respondent has not cured these inadequacies nor have they deposited the cost or furnished Bank Guarantee to the Petitioner to cure it. Due to the persistent inadequacies, the substation has become overloaded as it is unable to cater to the demands of the consumers in the subject Project.
- e. A detailed breakup of the inadequacies as assessed by the Petitioner has been annexed along with said Affidavit.

6. **Analysis**

Re: The non maintainability of the Petition

1. Under the Electricity Act, 2003, an electricity connection under S. 43 can only be provided when infrastructure required for supply of electricity is adequate to cater to the load of such consumer. Pertinently, proviso to S. 43 (1) of the Electricity Act, 2003 provides that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply electricity to such premises only after such extension or commissioning within period "as may be specified by the appropriate commission". Thus, if the infrastructure required as per the peak load requirement of an area is inadequate and DHBVN releases new connections and provides electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose.
2. In supplemental to the above made submissions, this Hon'ble Commission is empowered under Section 46 of Act to frame regulations to authorize a distribution licensee to charge from a person requiring a supply of electricity any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Electric lines and plant are defined under section 2(20) and 2 (22) of the Act. The relevant provisions are reproduced herein below for ready reference:

"Section 43 (Duty to supply on request) 1. Save as otherwise provided in the Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premise, within one month after receipt of the application rearguing such supply. Provided that where such supply requires extension of distribution mains or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Section 45 (Power to Recover Cost) 1. Subject to this section, the prices to be charges by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license. ... (3) the charges for electricity supplied by a distribution licensee may include (a)... (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply." (emphasis supplied)

Section 2 (20) "electric line" means any line which is used for carrying electricity for any purpose and includes – (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and (b) any apparatus connected to any such line for the purpose of carrying electricity;

Section 2 (22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include- (a) an electric line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or (c) an electrical equipment, apparatus or appliance under the control of a consumer;"

It is pertinent to note that an appropriate "Electrical Line" and "Electrical Plant" make part of the adequate electrical infrastructure that is required to achieve the ultimate load of a particular sanctioned area.

3. It is submitted that in terms of Section 46 of the Act, as is mentioned above, this Hon'ble Commission has framed the Haryana Electricity Regulatory Commission Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security Regulations, 2016 ("2016 Regulations"). The Regulation 4.1 of said regulation empowers DHBVN to recover expenditure referred to in Section 46 of the Electricity Act, 2003. Regulation 4.1 reads as under:

"Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations." (Emphasis supplied)

4. Further Regulation 4.6 of the 2016 Regulations provides for recovery of costs for extension of distribution main and/or its up-gradation up to the point of supply for meeting the demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer.
5. It is submitted that Regulation 4.2.3 of Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 ("Supply Code") provides that the cost of extension of distribution main and its up-gradation up to the point of supply for meeting demand of a consumer, whether new or existing, and any strengthening/augmentation/up-gradation in the system starting from the feeding substation for giving supply to that consumer, shall be payable by the consumer or any collective body of such consumers as per the Regulations framed by this Hon'ble Commission under Section 46 of the Electricity Act, 2003. This stipulation is exactly same as that of Regulation 4.6 of the Duty to Supply Regulations.
6. The 2016 Regulations further empowers this Hon'ble Commission vide Regulation 8 to issue directions and orders as considered appropriate for implementation of these Regulations. It also empowers this Hon'ble Commission vide Regulation 9 to remove any difficulty which may arise in giving effect to the provisions of the Regulations. The relevant regulations are reproduced for ease of reference:

"8. POWER TO GIVE DIRECTIONS The commission may from time to time issue direction and orders as considered appropriate for implementation of these Regulations.

9. REMOVAL OF DIFFICULTIES If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, give the necessary clarification, not being inconsistent or expedient for the purpose of removing difficulties.”

7. It is apparent from the bare perusal of Regulation 8 and 9 of 2016 Regulations, that this Hon’ble Commission has the jurisdiction to issue directions as well as remove difficulties for the implementation of the 2016 Regulations.

8. Further, Regulation 16 of the Supply Code also provides a “removal of difficulty” clause. The same is reproduced herein below for ease of reference:

“16. Power to remove difficulties

If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or special order, give necessary clarifications, not being inconsistent with the Electricity Act, 2003, which appears to the Commission to be necessary or expedient for the purpose of removing difficulties.”

9. It is the contention of the Respondent that the Petitioner has failed to identify the difficulty faced in the implementation of the Regulations framed by this Hon’ble Commission. It has been clearly specified in the Petition that due to lack of adequate electrical infrastructure there has been a serious prejudice caused to the petitioner as well as buyers of the premises in Projects. In fact this Hon’ble Commission while taking cognizance of this difficulty has been pleased to pass interim order in Pro 55 of 2021 to ease the hardship caused to the consumers.

10. It is the difficulty of the Petitioner that it cannot in law take over the deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity. Therefore, the powers to remove difficulty has been rightly pleaded by the Petitioner iterating the difficulty in its obligation to supply electricity to the consumers at large on account of inadequate infrastructure as well the provisions of the Regulation 2016 stated above. Hon’ble Commission has the prerogative and jurisdiction to exercise this power to remove such difficulty. The Hon’ble Supreme Court in Madera Upendra Sinani vs. Union of India (1975) 3 SCC 765 recognized the principle:

“40, Again, the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not difficulty arising aliunde, or an extraneous difficulty. Further, the central government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further”

Even in the case of Ratnagiri Gas Power Private Limited vs Central Electricity Regulatory Commission (2011) ELR (APTEL) 532, the Hon’ble Tribunal held that:

“10.3 In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. Thus, the exercising power to remove difficulties does not arise in the present case.

10.7. The above regulations and the decision to give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non-exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation.”

11. In terms of the settled principle of law relating to “removal of difficulty” clauses and their invocation as stated above, the petitioner has thoroughly furnished as to how the lack of adequate infrastructure on account of the Respondent is consonant with the difficulty faced by the Petitioner in performing its duty to supply electricity to the consumers under the Electricity Act and the Regulations reproduced above. The scheme of the Electricity Act, 2003 and the power accorded to this Hon’ble Commission to frame regulations has to be read harmoniously to establish the need for removing difficulty caused by Respondent in giving effect to the Regulations.
12. Even in terms of proviso to Regulation 6.1 of Single Point Supply to Employers’ Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ Regulations, 2020 (“Single Point Regulations”), if at the time of energization of system, it is noted that the concerned developer has not executed the complete work as per electrification plan approved by the Licensee, the Developer/Respondent shall also be required to furnish bank guarantee for the balance incomplete work in terms of Regulation 4.12 of Duty to Supply Regulations. The Respondent has failed to make any averments or reply towards its liability in terms of the above regulation passed by this Hon’ble Tribunal. Regulation 6.1 of Single Point Regulations is reproduced below for ready reference:

“6.1 Employers’ Colonies, Group Housing Societies, Developers’ Commercial Complexes/ Shopping Malls/Industrial Estate/IT Parks/ SEZ covered under Regulation 3.1, Regulation 4.1, Regulation 5.1 and Regulation 5.2 respectively.

(a) For supply of electricity at Single Point to colonies falling under the purview of Regulation 3.1, a GHS as per Regulation 4.1 consumer covered under appropriate Govt/deemed licensee as per regulation 5.1 and Commercial Complex/ Industrial Estates/ IT park/SEZ covered under Regulation 5.2, the Employer/ GHS/Developer/ Users Association shall be obliged to seek connection for supply of electricity at a single point at 11 kV or higher voltage under these Regulations by submitting an application in the prescribed form with requisite charges to the Distribution Licensee giving complete details of the load of all residential units, common services and other non-domestic/ Industrial loads if any. The Distribution Licensee will supply electricity at a Single Point at 11 KV or higher voltage subject to technical feasibility.

Provided that in case of Developer/Users Association covered under Regulation 4.1 or 5.2, the distribution licensee shall ensure, before release of Single Point Supply connection, that the Developer has completed the installation of entire electrical infrastructure within its complex as per the approved electrification Plan.

Provided, if at the time of energization of the system it is noted that the concerned Developer has not executed the complete work as per the electrification plan approved by the licensee, the Developer shall be required to furnish the Bank Guarantee for the balance incomplete work as per regulation 4.12 of HERC Duty to Supply Electricity on request, Power to recover expenditure incurred in providing supply and Power to require Security Regulations, 2016 as amended from time to time. The licensee shall not release single point supply Connection or individual connections under Regulation 4.1(b) to the residents/users in such areas without taking requisite Bank Guarantee. Provided further, that on completion of the electrical infrastructure by the Developer, the operation and maintenance of these assets shall be handed over to the RWA/Users Association and the Single Point Supply connection if any taken by the Developer shall be got transferred/changed in the name of RWA/Users Association along with all the securities deposited with the distribution licensee and other guarantee/warranty of the electrical equipment installed. b) The Employer/GHS/ Developer/ Appropriate Government/Users Association will install, operate & maintain all infrastructure, including substations/transformers, required for distribution of electricity within the premises of the Employer/GHS/Developer/Users Association at his own cost.”

13. It is submitted that Regulation 10 and 11 of the Single Point Regulations also stipulates the power of the commission to issue direction and remove difficulties for its implementation. Regulations 10 and 11 are reproduced before for ready reference:

“10. Miscellaneous Subject to the provisions of the Act, and these Regulations, the Commission may, from time to time, issue orders and directions in regard to the implementation of these Regulations and matters incidental or ancillary thereto.

11. Power to remove difficulties If any difficulty arises in giving effect to any of the provisions of these Regulations, the Commission may, by general or specific order, do or undertake things not being inconsistent with the provisions of the Act which appear to the Commission to be necessary or expedient for the purpose of removing difficulties.”

14. A bare perusal of the provisions as enumerated above would reflect that this Hon'ble Commission is empowered to issue appropriate orders/ directions to ensure compliance of the extant regulations.
15. The power to adjudicate the present issue also arises from a bare reading of Regulation 4.1 of 2016 Regulations which is reproduced herein below for ready reference:

“4.1 Subject to the provisions of the Act and these Regulations and subject further to such directions, orders or guidelines issued by the Commission, every distribution licensee is entitled to recover from an applicant requiring a supply of electricity or modification in existing connection, any expenses reasonably incurred by the distribution licensee in providing any electric line or electrical plant used for the purpose of giving that supply. The service connection charges or the actual expenditure to recover such expenses shall be computed in accordance with these Regulations.”

16. Even otherwise, this Hon'ble Commission has jurisdiction to adjudicate on the present issue under section 86 (1) (i) and (k) of Electricity Act, 2003 (“Act”) which stipulates the function of a State Commission to enforce standards with respect to quality, continuity and reliability of service by licensee and to discharge functions as it may be assigned to it under this Act.
17. Further, it is submitted that this Hon'ble Commission vide its judgement dated 20.02.2015 passed in HERC PRO No. 21 and 23 of 2013 titled as Ansal Buildwell Vs. DHBVNL & ORs, held that Ansal Buildwell is liable to cure the electrical inadequacy which is also the facts of present case. It may not be out of place to state that vide this judgement, this Hon'ble Commission rightly exercising its jurisdiction has already adjudicated on the issue of inadequacy and the obligation of the builders and developers to that extent. The relevant portion of the judgement is reproduced herein below for ready reference:

“Issue No. 5 Whether the Respondent can ask for the share cost/Bank Guarantee for the inadequacy in electrical infrastructure in respect of colony being developed by the Petitioner?

The Petitioner in his submission before the Commission has submitted that the plea taken by Respondent No.1 that the Petitioner would be required to furnish the Bank Guarantees and/or share the cost in the ratio of 75:25 between it and DHBVN is illegal and erroneous, that even reference made to certain policies and/or guidelines, unilaterally at their own end, in that regard, is misconceived, misplaced besides being illegal and without jurisdiction. It has been further submitted by the Petitioner that the said guidelines/policies cannot be made applicable keeping in view the nature of relief being sought for by the Petitioner, more so when the release of load is being sought only to the extent the same has been certified and for which requisite infrastructure has been laid.

On the other hand, the Respondent No. 1 submitted that as per Section 43 of the Electricity Act, a Distribution Licensee is obliged to supply electricity on request. However, Section 45 provides for recovery of charges i.e. energy tariff and Section 46 provides for the recovery of reasonable expenditure incurred in the supply of electricity to a person requiring supply of electricity, if such supply would require extension of distribution network, commissioning of new substation, electrical line or electrical plant etc.

The Commission observes that the above submission of the Respondent No. 1 is in-line with the provision with the Electricity Act, 2003 and the Regulations framed by the Commission there under. Further, HERC (Duty to supply Electricity on request and Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2005 empower

the Distribution Licensee to recover the share cost of any augmentation/creation of the feeding capacity for supply of power in line with the Regulations 4.5.2, 4.5.4 and 4.10.4 of bid Regulations. Thus, there is no illegality on the part of the Distribution Licensee to ask for the share cost for the inadequacy in electrical infrastructure in respect of the colony being developed by the Petitioner

...

The Commission observes that on the one hand the Petitioner has applied for completion certificate and all development works are being claimed to be complete, whereas on the other hand, it has provided only about 30% of the internal electrical infrastructure and is yet to take action for installation of external electrical works like grid sub-station. Thus, the Commission is inclined to accept the need for the Respondent No. 1 to ask the Petitioners to furnish a Bank Guarantee as a measure of security so that in case the Petitioner do not come forward to create the electrical infrastructure, it would get it done at the cost of Petitioner by invoking the Bank Guarantee.”

The said order has been challenged by the developer vide CWP No. 6460 of 2015 and 6452 of 2016 and the same are pending for adjudication. However, it is noteworthy that there is no stay on this order by the Hon’ble P&H High Court till date. Thus, at present, the order dated 20.02.2015 is occupying the field of law.

18. Thereafter again, this Hon’ble Commission in its order dated 09.08.2021 passed in HERC PRO NO. 48 of 2020 held that it is obligatory on the part of developer (License Holder) to get the electrification plan approved from DISCOM as per ultimate load requirement and deposit the requisite bank guarantee for development of electrical infrastructure for the licensed area before release of electrical connection for which compliance is required to be made by developer. Thus, it is submitted that time and again this Hon’ble Commission has taken cognizance of the issue of builder inadequacy by rightly exercising its powers under the Act as well as as the regulations in force. Hence, the issue of jurisdiction as agitated by the Respondent has not merit.
19. It is pertinent to mention that the order dated 20.02.2015 passed by this Hon’ble Commission has while deciding the issue settled the principle regarding the obligation of the builder to cure the inadequacy in their projects. Therefore, the said order is not an order in persona but an order in rem which is applicable for all developers who have till date failed to cure inadequacies in electrical infrastructures of their colonies. The issue of inadequacies has time and again been brought before the commission in PRO 21 and 23 of 2013, PRO 68 of 2020, PRO 55 of 2022, etc. In pursuance to the power given to Distribution Licensee under Regulation 4.1 of the 2016 Regulations, commission has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.
20. It is submitted that the Respondent has already admitted in its reply dated 22.05.2023 at Paragraph No. 1-2 that the Respondent is working towards electrification infrastructure. It is evident from the pleadings of the Respondent that it has acted towards curing inadequacy in electrical infrastructure and at this stage, Respondent is estopped from alleging that it is not the obligation of Respondent.

7. Proceedings

- 1.** The case was heard on 13.12.2023, as scheduled, in the court room of the Commission. The counsel for the respondent submitted that the process for removing the inadequacies has been initiated by the respondent developer. In this regard, it was submitted that with the issuance of license in the year 2008, the electrification scheme of the respondent has been envisaged with creation of 33 Kv substation, having load of 25 MVA and the same was approved by the office of the Petitioner on the approved plan. The answering Respondent has accordingly allotted the work for supply, erection, commissioning, and testing of 33Kv sub – station to M/s Global Engineers on 24.03.2012 for an approx. cost of Rs. 61.7 lakhs. The answering Respondent has purchased 3 transformers from Crompton Greaves Ltd.
- 2.** The Respondent has further submitted that the Town and Country Planning, vide memo dated 07.03.2019, had granted approval for revising the sanctioned lay out plan for licensed area situated at Sector 47 and 50, Gurugram, however, the residents of the locality raised an objection to the change of lay out plan by submitting a representation to the office of District Town Planner.
- 3.** Due to objection being raised by the residents of the locality, the work of installation of 33 Kv sub – station has got halted and the moment final approval for revising the existing site plan qua the 33 Kv sub – station, is granted the said substation shall be commissioned on urgent basis.
- 4.** Sh. Samir Malik, counsel for the Petitioner, submitted that the Respondent has till date, not cured these inadequacies, nor have they deposited the cost or furnished Bank Guarantee to the Petitioner to cure it. Due to the persistent inadequacies, the substation has become overloaded as it is unable to cater to the demands of the consumers in the subject project. There are frequent outages due to system constraints and the consumers are suffering just because their developer did not fulfil the commitment to provide adequate electrical infrastructure. All these issues are within the knowledge of the Respondent but an inadequate response has further aggravated the woes of the residents of these sites. He further submitted that It is an admitted fact that subsequent to the issuance of the license in 2008 and consequent revision in the Electrification Scheme, the Respondent Developer was obligated to create a 33KV Sub-station (for which the Respondent had accordingly allotted the work in 2012 itself, however the same has not been completed till date, allegedly on account of the matter being pending before the office of Town and Country Planning.
- 5.** During the hearing on 13.12.2023, Sh. Malik further added that the development charges as collected by the Petitioner on account of the inadequate electrical infrastructure for Malibu Town amount to Rs. 710.61 Lakhs. Accordingly, the said amount is being utilized for establishing new electrical infrastructure and also to maintain the existing infrastructure (by inter alia using new HT and LT cables along with new allied materials).
- 6.** In this regard, it is further stated that DHBVN had placed a Work Order No. 26/GA-14/EOI-24/G-2/Sohna/2022-23 in favour of M/s Laxmi Electrical Contractor and Engineers, FBD vide its letter dated 08.12.2022 for supply and erection of material,

testing and commissioning required for carrying out the work for creation of additional electrical infrastructure in “Malibu town” under (OP) Sohna Road Sub Division, DHBVN Gurugram.

8. Commission’s Order

- 1.** Having perused the details of inadequacies as furnished by the Petitioner vide its pleadings, it is clear that even after the above-mentioned expenditure incurred by DHBVN, inadequacy of more than Rs. 7 Crores remains.
- 2.** At this juncture, it becomes apposite to state that merely because the inadequacy has been partially cured by DHBVN (from the development charges collected from the consumers), the same does not absolve the Respondent Developer to create adequate electrical infrastructure in the concerned area. The said contention is fortified by the order dated 02.02.2022 passed by this Hon’ble Commission in PRO 55 of 2021, wherein this Hon’ble Commission had directed the Petitioner to refund the development charges to the consumers as and when the Respondent Developer either creates the requisite electrical infrastructure or submits a Bank Guarantee of the said amount.
- 3.** After going through written as well as oral averments made by both the parties and record placed on the file, the commission observes that since the developer has initiated the process of removing inadequacies, no action u/s 142 is required to be initiated. However, the petition is disposed off with following directions to the Respondents:
 - a. The remaining inadequacies (as established by the Petitioner in its pleadings) shall be cured by the Respondent within 6 months;
 - b. The monthly progress report will be submitted to the petitioner as well as to the Commission; and
 - c. Requisite Bank Guarantee shall be furnished by the Respondent to the Petitioner within 30 days, after duly adjusting the expenditure already incurred by the former on purchase of 33/11 KV transformers along with allied equipment available at site. The details of the same shall be jointly worked out by a committee of concerned Executive Engineer OP and authorized representative of respondent developer within 15 days of issue of order.
- 4.** The petitioner DHBVN will be at liberty to approach the Commission in case the developer doesn’t fulfil its obligation in the time bound manner.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 29/02/2024.

Date: 29/02/2024
Place: Panchkula

(Naresh Sardana)
Member