

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT
PANCHKULA**

Case No. HERC/Petition No. 44 of 2022

Date of Hearing : 10/04/2024

Date of Order : 07/05/2024

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 Sheetal International Pvt. Ltd. Mayfield Project, Sector-50, Mayfield
Garden, Gurugram through its Managing Director.

Present

On behalf of the Petitioner

1. Sh. Shaida Dass, Advocate
2. Sh. Tarsem Rana, Associate

On behalf of the Respondent

1. Ms. Meher Nagpal, Advocate
2. Sh. Ajay Shukla
3. Sh. Rajiv Singhal

QUORUM

**Shri Nand Lal Sharma, Chairman
Shri Naresh Sardana, Member
Shri Mukesh Garg, Member**

ORDER

1. The Petitioner above named, most respectfully submit as under:

SECTION I: CONSPECTUS OF THE PETITION.

A. Introduction.

1.1 The Petitioner is a State-owned Distribution Company and registered under the Companies Act, 1956, formed under corporatization / restructuring of erstwhile Haryana State Electricity Board (HSEB) and are responsible for the distribution and retail supply of electricity in the South Zone of the State of Haryana. The Petitioner amongst other general consumers of Haryana also cater to the areas developed by the Respondent Developers/Builders in southern part of the State of Haryana.

A.1. Sales Circular no. D-21/2020 – Embargo on Release of New Connections.

1.2 The Petitioner is constrained to file this petition and seek urgent relief(s) mentioned in the succeeding paragraphs 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 Petitioner faced with the conundrum of inadequate electrical infrastructure within said projects/areas, issued a Sales Circular no. D-21/2020 dated 07.09.2020 *inter alia* putting embargo on release of new connections.

1.3 The individual residents/applicants agitated their grievances before various platforms i.e. District Administration, Public Representative (s) and other grievance redressal forums including National Human Rights Commission as well as PM/CM Office. The issue had been highlighted in various newspapers.

A.2. PRO-55 of 2021 Filed by Petitioner before the Hon'ble Commission agitating the same issue

1.4 Prior to the filing of the present petition, the Petitioner had agitated this issue in PRO-55 of 2021 before the Hon'ble Commission in which all the Delinquent Developers were made parties. Vide order dated 02.02.2022, 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.

1.5 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.

1.6 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.

1.7 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.

1.8 Hence, the present Petition is being filed in compliance of the order dated 18.05.2022 passed by the Hon'ble Commission.

A.3. Relief(s)

1.9 Thus, the Petitioner is approaching this Hon'ble Commission with this petition *inter alia* for grant/issuance of:-

- (a) Permit the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 65 to 67 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.
- (b) Directions to the Respondent to, forthwith:-
 - (i) cure inadequacies within the above named Projects; 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.

A.4. Formula for Computation of Development Charge(s).

1.10 The Petitioner has computed the above Development Charge(s) using the following formula:-

$$\begin{array}{l} \text{Development} \\ \text{Charge} \\ \text{(in rupees per KW} \\ \text{per applicant/} \\ \text{consumer)} \end{array} = \begin{array}{l} [\text{Cost of inadequacies of the Project (2019) , total} \\ \text{ultimate load of prospective applicants in the} \\ \text{Project}] \times \text{ultimate load or applied load (which ever} \\ \text{higher) of individual applicant/consumer.} \end{array}$$

(* Govt. Taxes / Duties, as applicable will also be levied on the above development charges)

1.11 Applying the above formula, proposed Project wise Development Charge(s) computed for the deficient projects having multi point/ individual connections is annexed. These proposed charges would be applicable up to 31.03.2023 and would be enhanced by 10% every financial year thereafter. The new applicants of domestic category may 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. 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 inadequacy of infrastructure exist viz-a-viz the ultimate load requirements.

B. Background.

B.1. The Conundrum of Inadequate Electrical Infrastructure.

1.12 Many of the Developers/ Builders/ Delinquent Developers including the Respondent developers, that have developed projects within the Petitioner's license area, failed to install adequate electrical infrastructure to cater to the load as per the applicable load norms. This situation exists even after sale of units/premises in these projects/colonies.

All of the areas/ projects which constitute the subject matter of this Petition, which suffers from inadequate electrical infrastructure are hereinafter collectively referred to as "Projects".

1.13 The Petitioner has repeatedly called upon the Respondent Developers to install / complete the necessary and required electrical infrastructure and cure deficiencies / inadequacies. Despite thereof, they have completely failed to take any measures / necessary steps to cure deficiencies / inadequacies in their electrical infrastructure.

1.14 After sale of plots / dwelling units in the Projects, these areas are being currently maintained by concerned RWA / local residents.

B.2. Judicial Proceedings and Precedents on Inadequacy of Electrical Infrastructure.

1.15 In the aforesaid context, it is noteworthy that directions have been passed by this Hon'ble Commission to Ansal Build Well to cure the inadequacies in its Order dated 20.02.2015 passed in Case No. *HERC/PRO- 21 & 23 of 2013* titled as *Ansal Build Well v. DHBVN & Ors.* Despite this, Ansal Build Well has failed to install adequate electrical infrastructure. Ansal Build Well has challenged the said Order dated 20.02.2015 before the Hon'ble High Court of Punjab and Haryana in CWP No.6460/2015 and 6452/2015, which is pending adjudication. However, no stay has been granted by the Hon'ble High Court on the said Order.

1.16 Another writ petition CWP No.22637/2014, *Sheetal International Pvt. Ltd. V. DHBVN & Ors.* is also pending adjudication before the Hon'ble High Court *inter alia* on the issue of inadequacies.

1.17 A similar issue was agitated before the Hon'ble High Court in *Sanjeev Vohra v. Director General Town and Country Planning and Ors.*, CWP No.25276/2016, wherein directions have been issued to DTCP to recover the costs from the colonizer and to deposit it with the Petitioner.

1.18 Recently, this Hon'ble Commission in its Order dated 09.08.2021 passed in *Anandvilas 81 Resident Welfare Association v. DHBVNL*, *HERC/PRO-48/2020* 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 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. The petitioner society falls within the licensed area of M/s Country Wide developers and approval of beneficial interest by DTCP does not absolve them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers for which the case is pending for adjudication (i.e. Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana.”

B.3. Consequence of Inadequate Electrical Infrastructure in Projects.

1.19 Lack of adequate electrical infrastructure has caused serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under:

- (a) On one hand, under applicable provisions of the Electricity Act, 2003 read with the Duty to Supply Regulations and Supply Code, the Petitioner, in law, neither release new connections to the buyers of such premises nor sanction additional load to existing consumers owning such premises on account of existing deficiencies in installed electrical infrastructure.
- (b) On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure.

Thus, the Petitioner cannot in law take over such deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity.

C. Legal and Regulatory Framework on the Issue.

C.1. Electricity Act, 2003

1.20 Section 46 of the Electricity Act, 2003, empowers the State Commission 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 electric plant are defined in Section 2 (20) and (22) of the Electricity Act, 2003.

C.2. Duty to Supply Regulations.

1.21 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.

1.22 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.

1.23 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.

C.3. Supply Code.

1.24 Further, in context of recovery of charges by a licensee, Section 50 of the Electricity Act, 2003 requires that the State Commission shall specify an electricity supply code to provide for recovery of these charges. Pursuant thereto, this Hon'ble Commission has framed the Supply Code. Provisions

similar to what have been discussed in the preceding paragraphs, as contained in Duty to Supply Regulations exist in Supply Code.

1.25 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.

C.4. Builder's Agreement with DTCP.

1.26 Further, as elaborated in the succeeding paras the obligation of the builder/ developer to carry out the electrification work in his area also forms part of the Builder's agreement with DTCP.

C.5. Single Point Regulations

1.27 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.

C.6. The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules").

1.28 M/s Ansal Buildwell have not submitted final Completion Certificate under Rule 16 of 1976 Rules. In fact, none of them have approached DHBVN for issuance of No Objection required for obtaining final Completion Certificate. In this context, it is noteworthy that:-

(a) Grant of 'completion certificate' to a developer by the DTCP under the 1975 Act signifies that the development of infrastructure works, including development/installation of electrical infrastructure has been completed by such developer as per the terms of the licence and the agreement entered into with DTCP, and as per the approved plans by the designated authorities.

(b) 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.

(c) After completion of all works in a colony and grant of completion certificate by the DTCP, obligation of distribution licensee arises under

the Duty to Supply Regulations to take over the electrical infrastructure in the area to maintain the same.

- (d) 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.
- (e) However, if electrical infrastructure in an area is incomplete due to non-completion of work by its developer as per the prevalent load norms, the system cannot be taken over by DHBVN. Thus, consequences of such non-completion of work shall have to be borne by the concerned Respondent and/or the concerned consumers/applicants, more so because no completion certificate has been granted by DTCP.

1.29 Some of these Developers have though taken and submitted part completion certificate, this does not absolve such Developer from obtaining final Completion Certificate and its obligation to complete the required electrical infrastructure to cater to the ultimate load of the area developed as per the applicable Load Norms.

D. Conclusion.

1.30 Thus, the cost of installing adequate electrical infrastructure to cater the ultimate load, shall have to be borne by:-

- (a) the Respondent, who has failed to erect adequate electrical infrastructure; and/or
- (b) the consumers/applicant within the area(s) developed by the Respondents.

SECTION II: FACTUAL MATRIX – M/S SHEETAL INTERNATIONAL PVT. LTD.

1.31 On 07.06.2013, the Petitioner issued a notice bearing memo no.1194 calling upon Sheetal International Pvt. Ltd. ("Sheetal") to furnish cost or bank guarantee on account of inadequate electrical infrastructure in Sheetal'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.

1.32 On 24.12.2015, Director General, Town and Country Planning, Haryana, Chandigarh also issued a notice vide Endst. No.25618 to Sheetal's demanding cost of deficient electrical infrastructure having inadequacy amounting to Rs. 85.63 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.

A list of Sheetal's projects, which suffered from inadequate electrical infrastructure is annexed.

1.33 It is worthwhile to mention here that the demands of curing the inadequacy/BG in lieu thereof as mentioned in the notices issued by DHBVN in 2013 and by the DTCP in 2015 as per the foregoing paragraphs is based on the cost of inadequacy prevailing at that time. However, a Committee of Nigam's officers was constituted in 2019 to reassess the cost of inadequacies due to revision in load norms in 2017 as per Sale Circular D-16/2017 and

accordingly the benefit of reduction in load norms has been extended to the aforesaid developers. Moreover, some of the developers have installed/created partial infrastructure in the intervening period. Due to these reasons, the costs of inadequacy have been reduced from 976.75 crores in 2013 to 317.96 crores in 2019 relating to 16 no. Builders.

- 1.34 Thus, immediate, and urgent directions are necessary to be issued by this Hon'ble Commission, to resolve this acute problem of existing deficient electrical infrastructure in the interests of all stake holders. Accordingly, this petition is being filed before this Hon'ble Commission.
- 1.35 It is submitted that the Respondent developer, for the reasons mentioned in the succeeding paragraphs are liable to cure these deficiencies.

SECTION III: LEGAL AND REGULATORY FRAMEWORK.

E. Obligation on Respondent Developers and Consumers to install adequate Electrical Infrastructure.

- 1.36 Developers are obliged in law as well as contractually (see bilateral agreement between DTCP and the concerned Developer) to install such electrical infrastructure as may be adequate to cater the 'ultimate load' within the area developed by them. However, most of these Developers despite repeated persistence by DHBVN have failed to cure the inadequacies. If these Delinquent Developers do not install such adequate electrical infrastructure, the cost thereof shall have to be borne by the consumers within the Projects developed by such developers. This position is emanating from interaction of the following laws:-
- i. The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules");
 - ii. Electricity Act, 2003;
 - iii. Duty to Supply Regulations;
 - iv. Supply Code; and
 - v. Single Point Supply Regulations.

E.1. 1975 Act and 1976 Rules.

- 1.37 Respondent has submitted final Completion Certificate under Rule 16 of 1976 Rules. In fact, none of them have approached DHBVN for issuance of No Objection required for obtaining final Completion Certificate. In this context, it is noteworthy that:-
- (a) Grant of 'completion certificate' to a developer by the DTCP under the 1975 Act signifies that the development of infrastructure works, including development/installation of electrical infrastructure has been completed by such developer as per the terms of the licence and the agreement entered into with DTCP, and as per the approved plans by the designated authorities.
 - (b) 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 thereunder has not been discharged.

- (c) After completion of all works in a colony and grant of completion certificate by the DTCP, obligation of distribution licensee arises under the Duty to Supply Regulations to take over the electrical infrastructure in the area to maintain the same.
 - (d) 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.
 - (e) However, if electrical infrastructure in an area is incomplete due to non-completion of work by its developer as per the prevalent load norms, the system cannot be taken over by DHBVN. Thus, consequences of such non-completion of work shall have to be borne by the Respondent, more so because no completion certificate has been granted by DTCP.
 - (f) Under 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 is made. Thus, if the infrastructure required as per the peak load requirement of an area is inadequate and DHBVN releases new connections and provide electricity, provisions of the Electricity Act, 2003 and underlying objective thereof shall be rendered otiose.
- 1.38 Although some of these Developers have taken and submitted part completion certificate, but this does not absolve the concerned Developer from obtaining final Completion Certificate and its obligation to complete the required electrical infrastructure to cater to the ultimate load of the area developed as per the applicable Load Norms.

E.2 Benefit of Revision in Load Norms.

- 1.39 In the meantime, Load Norms have been revised from to time and accordingly inadequacies in electrical infrastructure installed by these Delinquent Developers in their projects have been assessed. Benefits of revised Load Norms have been consistently given to these Developers. Thus, the assessed cost of curing these inadequacies has come down from Rs.976.75 Crores (in 2013) to Rs.317.96 Crores in (2019).

E.3. Judicial Precedents.

- 1.40 The above approach adopted by DHBVN has found resonance in HERC's Order dated 20.02.2015 passed in Case No. *HERC/PRO- 21 & 23 of 2013* titled as *Ansal Build Well v. DHBVN &Ors.* HERC, while passing the said Order framed a specific issue - "*Whether the electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if during the course of development by the developer/agency, the norms of calculating ultimate load are revised?*". While answering this

issue, HERC *inter alia* analysed the provisions of Electricity Act, 2003, and HERC (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2005 as well as the license granted by DTCP held that:-

“the developer is required to install the electrical infrastructure determined as per electrical layout plan approved by the Distribution Licensee in accordance with the applicable load norms during the course of development of the colony/Group Housing Societies/residential/non-residential areas as per terms and conditions of the licence(s) granted by the Director, Town and Country Planning, Haryana and Agreement entered there under as well as the provision of the Single Point Supply Regulations, 2013.”

1.41 Ansal Build Well challenged the said Order dated 20.02.2015 before the Hon'ble High Court of Punjab and Haryana in CWP No.6460/2015 and 6452/2015, which are pending adjudication. However, no stay has been granted by the Hon'ble High Court on the said Order.

1.42 Pertinently, 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.

1.43 A similar issue was agitated before the Hon'ble High Court in Sanjeev Vohra v. Director General Town and Country Planning and Ors., CWP No.25276/2016. The Hon'ble High Court on 23.09.2019 disposed of the said writ petition with following directions:-

“ 7. For the above reasons, the petition is partially allowed and the direction is issued to the Respondent No.2 and 3, whichever of them owes the responsibility to inform the Director General, Town and Country Planning, Haryana in writing to recover the costs from the colonizer and to deposit it with the Nigam's in terms of the agreement dated 29.03.2007. The Power Nigam's will inform Respondent No.1/Director General, Town & Country Planning, Haryana by letter in writing of its decision within 15 days and thereafter, competent authority i.e. the Respondent No.1 will take a final decision as enjoined by law within next one month sorting out the dispute and immediately thereafter convey the same to the colonizer and the petitioner. ”

1.44 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. HERC by its Order dated 09.08.2021 disposed of this petition and held that:-

“6.2 .. Commission, upon hearing the parties at length in the matter, observes that as per the mandate of the relevant Regulations in vogue 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. The petitioner society falls within the licensed area of M/s Country Wide developers and approval of beneficial interest

by DTCP does not absolve them from creation of inadequate infrastructure and deposit of the requisite bank guarantee by M/s Countrywide developers for which the case is pending for adjudication (i.e. Civil writ Petition no. 15141 of 2019) before the Hon'ble High Court of Punjab and Haryana.”

1.45 In context of grant of electricity connection in areas where there exist electrical inadequacies this Hon'ble Commission in Case No. HERC/PRO-68/2020, Confederation of Real Estate Developers Association of India – Haryana (Credai-HR) v. DHBVNL held as under:

“8. The Commission has carefully examined the contents of the petition, submissions made, arguments placed before the commission during the hearings. The Commission observes that the provisions of the sales circulars which are in contravention of the provisions of the Regulations causing undue hurdle and oppress the right of any genuine consumers should not be the part of any guideline/sales circulars issued by the Licensee, on the other hand the Act/Regulations also cast duty upon the Licensee to ensure the adequate infrastructure and services to consumer at reasonable cost is provided and to take appropriate measures to deal with defaulting developer/consumer to ensure the recovery of legitimate dues/inadequacy if any in past from such defaulter. A list of 36 developers of only one circle i.e. OP Circle Sonapat submitted by the Respondents, reflecting continuous defaults made by the Developers/ Builders/ Colonizers for the creation of the requisite infrastructure, reveals that the electrical infrastructure had not been created even after the lapse of several years; even the temporary connection which is essentially meant for the limited purpose of undertaking the construction activities has also been used to provide the supply of electricity to regular connections on inhabitants. If the temporary connection is allowed without processing/approved electrification plan, the developer may not be obligated to lay down any electrification infrastructure as seen in the past since the Developers are not coming to create infrastructure even the lapse of 10 to 14 years. Keeping in view of the judgment of Hon'ble Bombay High Court mentioned in para No. 3 above, the electricity connection should not be released to any developer/ colonizer or subsidiary or sister concern/ partnership firm thereof against whom there are outstanding dues to discourage dodgy practices by allowing developer to form a different corporate entity with similar shareholding/ management and get away with the legitimate payment of dues, despite the fact that the usual person behind both the legal entities would be the same. Therefore, the Commission is of considered opinion that the ibid five challenged clauses of the above said Circulars have been added by the Respondents as deterrent with the intent to curtail the defaults by the Developers in the interest of consumers, and to ensure that adequate electrical infrastructure is laid down and time limit so fixed is essential to be implemented to have quality of supply to the residents of the township developed by the Developer. As such Commission finds no merit in the petition.”

E.4. Electricity Act, 2003

1.46 For the purpose of the present analysis, provisions under Section 43. (Duty to supply on request), Section 45. (Power to recover charges) of the Electricity Act, 2003 are relevant.

- 1.47 Section 46 of the Electricity Act, 2003 empowers State Commission 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.
- 1.48 Section 2 (20) of the Electricity Act, 2003 defines electric line to mean “*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;”*
- 1.49 Section 2 (22) of the Electricity Act, 2003 defines electrical plant to mean “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;”
- 1.50 Pursuant to the above and in exercise of its powers under Section 181 of the Electricity Act, 2003, HERC framed Supply Code and Duty to Supply Regulations.
- E.5. Duty to Supply Regulations.
- 1.51 In exercise of powers conferred under sub-section 2 (t, v) of section 181 read with sections 43, 46 & 47 of the Electricity Act, 2003, HERC notified the Duty to Supply Regulations, 2016, as amended from time to time, to enable a Distribution Licensee to recover the expenditure under Regulation 4.
- 1.52 Regulation 4.1 of the aforesaid regulations empowers DHBVNL to recover expenditure referred to in Section 46 of the Electricity Act, 2003.
- 1.53 The other relevant provisions of the Supply Regulations i.e. *POWER TO RECOVER EXPENDITURE* are also applicable.
- 1.54 The Regulation 4.12.2 was inserted into Duty to Supply Regulations, 2016 by way of an amendment notified on 19.03.2020.
- E.6. Supply Code.
- 1.55 In exercise of the powers conferred by Section 50 and clause (x) of sub-section (2) of Section 181 of the Electricity Act, 2003 and all other powers enabling it in this behalf, the HERC notified the Electricity Supply Code Regulations, 2014 to deal with the procedure for connection, disconnection, reconnection, assessment of load, changes in existing connections including load modifications, change of name and change of tariff category.
- E.7. Single Point Supply Regulations
- 1.56 Second proviso to Regulation 6.1. (a) of 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.

E.8. Bilateral Agreement between Director General, Town and Country Planning, Haryana, (DTCP) and Builders.

1.57 Pertinently 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.

1.58 Thus, it emanates that the obligation of the builder/ developer to carry out the electrification work in his area also forms part of the Builder's agreement with DTCP.

1.59 However, despite issuance of several demand notices time and again as stated in the preceding paragraphs, the Respondent failed to install adequate electrical infrastructure, thus as violated the aforesaid provisions of the Electricity Act, 2003 read with the regulations above mentioned as well as the their Agreement with DTCP.

F. Liability to bear the Cost of Curing the Inadequacies is of both Developer and Applicants of New Connections/Additional Load etc.

1.60 It emanates from the above regulations that liability to bear cost of extending the distribution system etc. shall be borne by either the builder, who developed a project and/or applicants/consumer(s) within such projects.

Section IV: Need of the Hour to Provide Urgent Relief in light of Notifications issued by the EPCA

1.61 Lack of adequate electrical infrastructure has caused serious prejudice to the Petitioner as well as buyers of the premises in Projects, as under:-

(a) 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.

(b) On the other hand, existing consumers of these premises suffer on account of lack of a robust and reliable electrical infrastructure.

Thus, the Petitioner cannot in law take over such deficient infrastructure for maintenance, adversely affecting the quality and reliability of the supply of electricity.

1.62 Although, the Hon'ble 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.

1.63 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. In this context, the following facts are noteworthy:

- (a) Environment Pollution (Prevention and Control) Authority for National Capital Region (“EPCA”) issued Notification No. EPCA-R/2019/L-42 dated 09.10.2019 that banned use of DG Sets last year with effect from 12.10.2019. The said notification was issued by the EPCA considering drop in air quality in the NCR during winters (“2019 Notification”).
- (b) In 2020, EPCA had again issued Notification No. EPCA-R/2020/L-38 dated 08.10.2020 banning use of DG Sets in Faridabad and Gurugram with effect from 15.10.2020 (“2020 Notification”).
- (c) The Secretary to Govt. of Haryana, Department of Environment and Climate Change, vide its Memo No. 1/2021 dated 02.12.2021 has inter-alia enforced a complete ban on the operation of all DG sets in NCR districts of Haryana including Gurugram due to which difficulty is being faced by the residents in these area in constructing their houses/residing in already constructed house due to non-availability of electricity connections/power supply.

1.64 As mentioned above, though some directions/orders have been passed by this Hon'ble Commission as well as the Hon'ble High Court, the issue of inadequacies in electrical infrastructure has remained unresolved. Considering this aspect of the matter also, addressing the issue of continuing inadequacies in the electrical infrastructure especially in Gurugram, is critical and require urgent and immediate attention.

1.65 Thus, the Petitioner has filed this Petition with *bona fides* and in the interest of justice for kind consideration of this Hon'ble Commission.

Section V. The Development Charges

1.66 The Petitioner has computed the above Development Charge(s) using the following formula:-

$$\begin{array}{l} \text{Development} \\ \text{Charge} \\ \text{(in rupees per KW} \\ \text{per applicant/} \\ \text{consumer)} \end{array} = \frac{[\text{Cost of inadequacies of the Project (2019) , total} \\ \text{ultimate load of prospective applicants in the} \\ \text{Project}] \times \text{ultimate load or applied load (which ever} \\ \text{higher) of individual applicant/ consumer.}}{\text{ultimate load of prospective applicants in the} \\ \text{Project}}$$

(* Govt. Taxes / Duties, as applicable will also be levied on the above development charges)

1.67 Applying the above formula, proposed Project wise Development Charge(s) computed for the deficient projects having multi point/ individual connections have already been annexed hereto and marked as Annexure P-3. It is submitted that 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.

- 1.68 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.

Prayer

- 1.69 In view of the above, it is most respectfully prayed that this Hon'ble Commission may be pleased to:-

- (a) Permit the Petitioner to recover 'Development Charge(s)' as per Annexure P-3 and para 65 to 67 of this petition and in terms of HERC Order dated 02.02.2022 passed in PRO No. 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 Delinquent Developers 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, or any other manner as this Hon'ble Commission may deem fit and proper.
- (b) Issue directions to the Delinquent Developers to, forthwith:-
 - (i) cure inadequacies within the above named Projects; 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) equivalent to 1.5 times 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.
- (d) Grant ad-interim/interim permission to the Petitioner in terms of the clause (b) above during pendency of this Petition.
- (e) Impose appropriate penalty under Section 142 read with Section 146 of the Electricity Act, 2003 on the Respondent and punish each of the persons in-charge of Respondent's affairs with appropriate imprisonment and/or fine under Section 146 of the Electricity Act, 2003, as this Hon'ble Commission may deem fit; and
- (f) Pass any other order or order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of this case.

2. The case was heard on 07/09/2022. Ms. Meher Nagpal, counsel appearing for the respondent, requested for granting two weeks' time to file the reply in the matter as they have not received the copy of the petition. 3. The Commission expresses its displeasure that the petitioner DHBVN has not timely supplied the copy of petition to the respondent as directed in its interim order dated 13.07.2022, in PRO-55 of 2021. The Commission has taken a serious note of the same.
3. The case was heard on 29/09/2022. Ms. Nitika Sharma, counsel appearing for the respondent, requested for a short time to file reply in the matter, as the reply

could not be submitted due to an inadvertent error in noting the date of hearing. The Commission acceding to her request directs the respondent to file its reply within two weeks with an advance copy to the petitioner. The petitioner shall file the rejoinder, if any, within one week thereafter.

4. The case was heard on 10/11/2022. Ms. Meher Nagpal, counsel for the respondent, sought additional time to file the reply, as there are some discrepancies with respect to the facts, to be clarified by their client/ developer. The counsel for the petitioner did not raise any objection to the same. Acceding to her request, the Commission grants three weeks' time to the respondent to file the reply with an advance copy to the petitioner. Further, the petitioner may file rejoinder, if any, within two weeks thereafter.
5. The case was heard on 19/01/2023. Sh. Aashish Chopra, counsel for respondent prays for adjournment on the ground that he has to appear on 08.02.2023 in a similar matter and accordingly, the present matter be listed on 08.02.2023, the same is allowed. The counsel for respondent has further submitted that in the meanwhile the reply in the instant matter will be filed. Accordingly, the respondent is allowed to file reply within a week with an advance copy to the petitioner. The petitioner is granted one week thereafter to file rejoinder, if any.
6. The case was heard on 08/02/2023. Sh. Aashish Chopra, counsel appearing for the respondent, requested for two weeks' time to file reply. The counsel for the petitioner also requested for two weeks' time to file a rejoinder thereafter. The Commission acceding to his request, allows respondent to file the reply within two weeks with an advance copy to the petitioner. Further, the petitioner may file rejoinder, if any, within two weeks thereafter.
7. The respondent vide its reply dated 13/03/2023 submitted that:
 - 7.1 That at the outset, the Respondent humbly submits that the petition filed by the Petitioner, besides being unsustainable in the eyes of law, is misconceived, erroneous, misplaced, vague, unsubstantiated and based on surmises and conjectures.
 - 7.2 That vide the present petition, Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'DHBVNL'/ 'Petitioner') has, *inter alia*, sought permission from this Ld. Commission to recover 'Development Charge(s)' as per Annexure P/3, and paragraphs 67 to 69 of the Petition, and in terms of Order dated 02.02.2022 passed by this Ld. Commission in PRO No.55 of 2021, from each of the prospective Applicants seeking new connections, and consumers seeking grant of additional load or no objection (situated within the Projects), subject to adjustment/refund on curing deficiencies by the Respondent Developer or payment of cost thereof (in any manner mentioned in paragraph 9(b)), 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.
 - 7.3 That the relief as claimed by the Petitioner besides being unsustainable in the eyes of law, is misconceived and misplaced. It appears that by the relief claimed, the Petitioner is seeking review/modification of order dated 02.02.2022, which eminently is an *ad interim* order, inasmuch as though the permission to recover 'Development Charge(s)' from each of the prospective applicant(s) seeking new connection, and consumer seeking grant of additional load or no objection, as being claimed by the Petitioner, has been granted, the same was by way of interim and in any case, was not made subject to adjustment/refund on curing alleged deficiency by the Respondents or payment of cost thereof, as is now sought to be claimed by the Petitioner. Thus, the entire edifice for seeking the relief, which appears to be an *ad interim* order dated 02.02.2022, that too now taken to have been passed in the present petition itself, is misconceived and

misplaced. Evidently, the said order, which is merely an *ad interim* order, had been passed without even delving into the issue of maintainability of the petition itself, amongst other issues. Thus, the entire foundation of claiming the relief by the Petitioner is illegal and misconceived.

- 7.4 That without prejudice to the aforementioned, it is submitted that the Petition has been filed under Sections 43, 46 and 50 of the Electricity Act, 2003, (hereinafter referred to as '2003 Act'), Regulations 8 and 9 of 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 (hereinafter referred to as '2016 Regulations') and Regulation 16 of the Haryana Electricity Regulatory Commission Duty Electricity Supply Code Regulations, 2014 (hereinafter referred to as 'Supply Code') read with Sections 142 and 146 of the 2003 Act. Reference and reliance upon the provisions, as aforementioned, is misconceived and misplaced. The Petition cannot be said to be maintainable under any of the provisions, as aforementioned, of the 2003 Act; 2016 Regulations; and the Supply Code, much less under any other provision of the 2003 Act; 2016 Regulations; or the Supply Code. Even otherwise, the Petition does not fall within the contours of jurisdiction of this Ld. Commission much less as delineated under Section 86 of the 2003 Act, and even on this count, the Petition cannot be said to be maintainable.

Section 43 of the 2003 Act, relates to duty of the distribution licensee to give supply of electricity on request by an owner or occupier of any premises. Whereas Section 46 of the 2003 Act empowers this Ld. Commission to authorize a distribution licensee, through Regulations, to charge from a person requiring supply of electricity, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. Further, Section 50 of the 2003 Act merely enables this Ld. Commission to specify an Electricity Supply Code and to provide for various matters therein.

The Petitioner has further referred and relied on Regulations 8 and 9 of 2016 Regulations and Regulation 16 of the Supply Code which are the 'Removal of Difficulty' clauses. However, it is pertinent to state that the Petitioner had nowhere distinctly pointed out difficulty in the implementation of the 2016 Regulations and Supply Code. The 'Removal of Difficulty' clause, as worded in the 2016 Regulations and the Supply Code, has a precondition regarding the existence of difficulty. If this condition is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Moreover, the difficulty contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act. The Ld. Commission can exercise its power under the said clause only to the extent it is necessary for applying or giving effect to the 2003 Act and no further. Thus, not only the Petitioner has not made out the difficulty in imposition of the 2016 Regulations and the Supply Code but also the Ld. Commission cannot, in derogation to the 2003 Act, invoke its power under the said Regulations/Supply Code because of want of subject matter jurisdiction. The exercise of powers by the Ld. Commission in respect to the said Regulations/Supply Code would be in derogation to the provisions of the 2003 Act. Further, it is submitted that no provision either of 2003 Act or of the 2016 Regulations or of the Supply Code has been shown much less stated to have been violated by the Respondent.

Further, Section 142 of the 2003 Act is also not attracted to the facts of the present case as there is no non-compliance or contravention of any of the provisions of the 2003 Act or the rules or regulations or any direction issued by the Ld. Commission, which has been specifically attributed to the Respondent.

Furthermore, the petition, being bereft of material particulars cannot be said to be tenable and is liable to be dismissed.

The Petitioner has further erroneously sought to invoke jurisdiction of the Ld. Commission under Section 146 of the 2003 Act. However, it is pertinent to shed light on the fact that the Petitioner nowhere identifies any order or directions of the Ld. Commission of which there has been willful non-compliance by the Respondent which is the sine qua non of putting the said section in action. This plea of the Petitioner is vague and unfounded. As such, even Section 146 of the 2003 Act is not attracted towards the factual matrix of the present matter thereby the Petition deserves to be dismissed at the very threshold.

Evidently, the aforementioned Sections and/or Regulations cannot be said to be attractive and in no manner would clothe this Ld. Commission with any jurisdiction to entertain the petition much less the same to be maintained/continued, and as such the same deserves to be dismissed.

- 7.5 That further without prejudice to the aforementioned, the Petition, as has been filed by the Petitioner, cannot be said to be even in compliance of order dated 18.05.2022 (reproduced in paragraph No.7 of the Petition), which concededly requires *the Petitioner to file separate petitions regarding inadequacy of infrastructure in respect of each developer with all the relevant details/facts*. Further, the said direction came to be passed in wake of the submissions that in the event this Ld. Commission could adjudicate upon the issue raised, then the alleged inadequacy of each builder/Respondent is required to be assessed individually. Accordingly, the said directions were issued since the alleged inadequacy of each builder/Respondent was required to be assessed individually *as per the norms and regulations occupying the field at relevant time*. A perusal of the petition would show that not only the petition is conspicuously silent as regards the relevant details/facts regarding the alleged inadequacy of infrastructure, but does not even make a mention of the norms/regulations which could be said to be occupying field at the relevant time. Thus, in the absence of particulars/details that would be material, it would be hazardous to embark on the adjudication of the said issue sought to be raised by the Petitioner. As such, on this ground as well the Petition is liable to be dismissed.
- 7.6 That the entire exercise sought to be taken by the Petitioner in filing the Petition and claiming the relief, as has been made therein, appears to be merely a ruse to abdicate its statutory/legal obligations or responsibilities, as provided in the 2003 Act, which *inter alia*, is to provide for transmission, distribution, maintenance, and augmentation of the electric supply.
- 7.7 That it may be pertinent to mention that the 2003 Act has been enacted by the Legislature with the object to *inter alia, consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, and for matters connected therewith or incidental thereto*.
- 7.8 That the 2003 Act *inter alia*, casts certain duties/obligations upon 'Transmitting Licensees', which is Haryana Vidyut Prasaran Nigam Limited ('HVPNL') and also upon the 'Distribution Licensees', which are the DHBVN i.e. the Petitioner and Uttar Haryana Bijli Vitran Nigam Limited ('UHBVN'), both being Government of Haryana Undertakings. The former is under an obligation to transmit electricity whereas the latter licensees are engaged in distribution of power in Haryana. The categorical duties cast upon the respective licensees are to facilitate and promote transmitting, wheeling and interconnection arrangement within the State of Haryana and also to transmit and

supply/distribute electricity by economical and efficient utilization of electricity and further to develop and maintain the efficient, coordinated and economical distribution system in its area of supply. It is apparent from the perusal of the provisions mentioned above that the entire responsibility to transmit, distribute, augment, and erect Sub-Stations has been cast upon the transmission & distribution licensees.

- 7.9 That apparently 2003 Act is a complete Act in itself for generation, distribution and transmitting of electricity including the matters connected therewith or incidental thereto. Under the provisions of the said Statute, this Ld. Commission has been setup, for the purpose of determining the tariff for generation, transmission, distribution and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State. This Ld. Commission also promotes generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence.
- 7.10 That it is relevant to submit that this Ld. Commission, in exercise of its power under the 2003 Act and Haryana Electricity Reform Act, 1997 (hereinafter referred to as the '1997 Act'), passes orders yearly, for approval of Aggregate Revenue Requirements ('ARR') for Transmission business and State Load Dispatch Centre ('SLDC') and Transmission Tariff and SLDC charges. This Ld. Commission, while exercising powers vested in it under Section 62 of 2003 Act and Section 26 of Haryana Electricity Reforms Act, 1997, passes an order, determining the ARR, for a period of one year and takes into consideration the petition filed by HVPNL, the response of HVPNL to various queries of the Commission, the objections/comments of the distribution licensees i.e. UHBVNL and DHBVNL. This Ld. Commission also takes into account the capital expenditure (also referred to as CAPEX) incurred not only for the purpose of commissioning and transmitting the electricity, but also for its distribution, which includes the erection/installation of various Sub-Stations in the respective area of supply by licensees and also towards the augmentation of Existing Sub-Stations. Evidently, it is sole obligation of DHBVNL, to not only provide upgradation of distribution infrastructure including the installation of transformers, feeders, etc. for the purpose of providing electricity to consumers, but also erect/install Sub-Stations, which includes even augmentation of existing Sub-Stations in case of increase in load for electricity. For the said purpose, the consumers are charged Electricity Charges/tariffs, which are determined accordingly by this Ld. Commission in its order.
- 7.11 That from the reading of the provisions of the 2003 Act, coupled with the orders passed by this Ld. Commission for approving ARR, it transpires that the distribution licensees have large amount of money at their disposal, which is collected in form of tariff from the consumers, to carryout transmission, maintenance, and upgradation of the electricity. However, the DISCOMS including the DHBVNL, Petitioner herein, have not been able to augment much less provide infrastructure for existing as well as increasing requirement of electricity. They have not only failed to perform their obligations, but have even altogether discarded their obligations by choosing not to erect/install the Electric Sub-Station, amongst other obligation.
- 7.12 That under Section 14 of the 2003 Act, this Ld. Commission had granted license to the DHBVNL for carrying on the business of Distribution and Retail Supply of electrical energy within the Area of Supply. As per condition no.7, the duties of the DHBVNL have been enumerated as *inter alia*, to plan, develop and maintain an efficient, co-ordinated and economical distribution system in its

authorised area and supply electricity in accordance with the provisions of the 2003 Act, provide open access to its Distribution System to any person as required under Section 42(2) of the 2003 Act and receive wheeling charges and / or surcharge, additional surcharge as specified by this Ld. Commission from time to time, perform the duty to supply on request as required under Section 43 of the 2003 Act, and always endeavour to supply adequate power of appropriate quality to consumers. Apparently, the DHBVNL is even in gross violation of the terms of the license, which it had been granted under the provisions of the 2003 Act.

- 7.13 That even though the Concerned Authority has failed to fulfill its legal and statutory obligations in terms of the 2003 Act, the residents, to whom electricity connections have been released have continued to pay Electricity Charges. It is pertinent to state that various agencies of the State of Haryana have been collecting exorbitant amounts from the residents/occupants/citizens and keeping in view the surge in demand for electrical loads, it is the obligation of the Electrical Distribution Authorities like the DHBVNL alone, to undertake the augmentation of electrical infrastructure in various colonies of Gurgaon including that of the Petitioner, which obligation they have blatantly violated. On the other hand, the Answering Respondent, at no point in time, could be said to be in violation of the terms and conditions of the licence granted to it under the provisions of the 1975 Act and/or the statutory agreement.
- 7.14 That as the Petitioner has raised issues which are beyond the scope and jurisdiction of the Ld. Commission as circumscribed within the provisions of the 2003 Act and even lacks any material particulars, the petition is not liable for any indulgence much less as prayed for by the Petitioner.
- 7.15 That the reliefs sought by the Petitioner in the Petition cannot be adjudicated much less be granted by the Ld. Commission, being out of the scope of the 2003 Act which defines and circumscribes the powers of the Ld. Commission. The Petition deserves to be dismissed in at the very outset, being vague and arbitrary.
- 7.16 That without prejudice to the submission that this Ld. Commission cannot be said to have jurisdiction to decide the issues as sought to be raised in the petition, it is submitted that the relief sought by the Petitioner seeking a direction to recover 'development charges' appears to be on basis of a self-serving formula derived for calculating the 'development charges', as has been mentioned in the paragraph 10 of the petition, though the same is sans an statutory or legal basis. This would be further without prejudice to the submission that recovery of any charges much less referring to and/or terming the same as 'development charges' would be erroneous and misconceived.

Further, the Petitioner has sought Development Charges by way of the captioned Petition on the ground of alleged deficiencies in electrical infrastructure, which is arbitrary, vague and erroneous. Under the provision of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as '1975 Act') and the Haryana Development and Regulations of Urban Areas Rules, 1976 (hereinafter referred to as '1976 Rules'), levy of External Development Charges (hereinafter referred to as the 'EDC') has been circumscribed. The Petitioner by praying for Development Charges and by referring to the Bilateral Agreement between Director, Town and Country Planning ('DTCP') and Builders in the captioned petition has sought enforcement of alleged obligations under the 1975 Act and the 1976 Rules which is beyond the subject matter jurisdiction, delineated in Section 86 of the 2003 Act, of the Ld. Commission.

- 7.17 That it is submitted that perusal of Section 2 (g) of 1975 Act shows that it is the obligation of the Government of Haryana to carry out external development

works, which include *electrical works* and *erection of grid Sub-Stations*. For the purpose of execution of external development works, the Government of Haryana charges EDC. An official communication issued by the Director General Town and Country Planning dated 02.01.2009, would further corroborate the contention of the Answering Respondent that EDC includes cost of construction of Electric Sub-Stations. A perusal of the said letter confirms that while calculating EDC to be collected from the colonizers of Sonipat, Gurgaon and Panipat, the EDC charges include cost towards construction of Electric Sub-Station upto 66 KV. Besides the fact that the consumers are already paying tariff for the electricity consumption and augmentation, the Government through its Town and Country Planning Department, has also been saddling the residents of colonies, for which licence(s) has/have been granted under the 1975 Act, with EDC.

- 7.18 That the Director Town and Country Planning, Haryana had granted to Sheetal International Pvt. Ltd., and 20 other Companies, Licenses bearing Nos. 53-60 of 1994 dated 31.12.1994; 9-24 of 1995 dated 20.11.1995; 98 of 2008 dated 12.05.2008 and 8 of 2009 dated 17.05.2009, under the provisions of 1975 Act and 1976 Rules for developing a Residential Plotted Colony over an area admeasuring 327.763 acres situated at villages Wazirabad and Bindapur, Sectors 47, 50, 51, 52 and 57, Gurugram.
- 7.19 That all 21 Companies had entered into a Joint Development Agreement executed on 05.08.1996 coupled with two addendums, respectively executed in the years 2000 and 2009. After execution of Joint Development Agreement, some of the companies out of 21 Companies had got merged by virtue of order(s) passed by Hon'ble Delhi High Court and accordingly the licenses, as aforementioned, stood in the names of only five entities, namely Sheetal International Pvt. Ltd., the Answering Respondent; New India City Developers Pvt. Ltd.; SS Group Pvt. Ltd. (formerly known as North Star Apartments Pvt. Ltd.); Ajay Impex Pvt. Ltd., and Satsudha Investments Pvt. Ltd. Pursuant to aforementioned Licenses, the Licensees had proceeded to develop a Residential Plotted Colony, named 'Mayfield Garden' (hereinafter referred to as 'Project') which is spread over an area admeasuring 327.763 acres.
- 7.20 That the Respondent herein and the associate companies, as aforementioned, may be collectively referred to as the 'Answering Respondent' in the present reply, unless the context otherwise so admit. This is without prejudice to the submission that the petition is liable to be dismissed on account of non-joinder of necessary and proper parties.
- 7.21 That the Electrification Scheme/Plan of the Project was approved by the Petitioner vide Memo No. CH-2 WO/E-77/GGN-98-99 dated 01.02.1999, wherein total Transformer Capacity of 11.64 MVA (indoor type 11/0.4 KV) was approved against the sanctioned/ultimate load of 8.64 MVA through 11 KV supply from proposed 66/11 KV sub-station in Sector-56, Gurugram as per load norms framed vide Memo No. 370/OSD/C dated 21.10.1993
- 7.22 That th Petitioner revised the load norms by change of diversity factor from 0.25 to 0.50 and asked to submit the revised Scheme of Project vide Memo Number 5824/25 dated 10.06.2004 and Memo No.6886/89 dated 19.07.2004. The Petitioner again revised the Electric load norms vide Sale Circular No. D-31/2004 dated 18.09.2004. Thereafter, Petitioner asked Respondent to submit various details and documents to access the ultimate load requirement of the said Project in consonance with the load norms which yet again stood revised vide Memo No. CH-36 dated 23.12.2005. The Petitioner therefore, issued guidelines for providing Electric System in colony/multi-storeyed building vide PD&C Instruction No.8 of 2006 dated 17.07.2006 and asked Respondent, vide

- Memo No. CH/182/tpm-53 dated 20.07.2006, to furnish details and related documents to access the ultimate load requirement of the said Project.
- 7.23 That the Petitioner had further released only partial load of 800 KW vide Memo No. 110/DOP-1 dated 03.05.2005 which was followed by Memo No.15/WO-E-77/4470 dated 10.01.2007 wherein, a partial load of 2.5 MVA on 11 KV supply from 66/11 KV sub-station in Sector-56/A, Gurugram was released further. A partial load of 2.8 MVA (2.5 MVA already released + 2.8 MVA = 5.30 MVA) on 11 KV supply was further released on temporary basis till the commissioning/construction of proposed 66 KV sub-station in Sector-50, Gurugram, as per the then PD&C Instruction No. 8 of 2006 dated 17.07.2006 and directed the Respondent to submit the revised Electrification Plan in accordance with Memo No.5824/25 dated 10.06.2004, Annexure R/3.
- 7.24 That the Respondent was constrained to comply with the revised load norms, and had to obtain revised electrification scheme on total land area measuring 327.773 acres, which was communicated vide Memo No. Ch-87/WO/E-77/GGN dated 19.03.2010, wherein total Transformer Capacity of 41.89 MVA (indoor type 11/0.4 KV) was approved against the sanctioned/ultimate load of 36.50 MVA through 66 KV supply from proposed 220/66 KV sub-station of DHBVNL with condition to construct 66 KV sub-station by the Respondent at his own land and cost. It is pertinent to state here that the Petitioner had issued Sale Circular No. D-15/2010 wherein the Petitioner, with reference to their PD&C instruction No. 8 of 2006 dated 17.07.2006 qua the revised load norms, had decided the issue of required additional expenditure to meet with the inadequacy in the Electric Infrastructure cost as per revised load norms in respect of area developed by Colonizer where Electricity Plan were got approved before the issue of ibid instructions on the old load norms, and decided that the same will be shared in the ratio of 75:25: between the colonizer, that is the Respondent) and the Petitioner}. Subsequently, on the basis of the above said Circular, Petitioner asked Respondent to deposit an amount Rs. 6.26 Crore that comes out to be 75% of total cost of the alleged inadequacy of Rs.8.35 Crore, as conveyed vide Memo No. CH-167/Drg/Project load dated 12.01.2011.
- 7.25 That it is worthwhile to mention here that the Petitioner had yet again revised the Load norms by reducing the diversity factor from 0.6 to 0.4 for Residential, vide Sale Circular No. D-9/2014 dated 21.01.2014; Sale Circular No.D-16/2017 dated 12.04.2017; and D-26/2019 dated 10.07.2019. Pertinently, in the Sale Circular Nos.D-9/2014 and D-16/2017, the Petitioner has re-iterated that the cost sharing arrangement regarding the inadequacy in the Electric Infrastructure cost would be shared in the ratio of 75:25 between the colonizer, that is, the Respondent herein and the Petitioner, as was decided in the Sale Circular No.D-15/2010.
- 7.26 That it is worthwhile to mention here that the Petitioner had filed Petition No. 55 of 2021 before this Hon'ble Commission with request to issue a direction against 13 Number of Colonizers including the Respondent to deposit an amount of Rs. 11.97 Crore on account of alleged inadequacy of internal and external electrification infrastructure work on the basis of Annexure P-31, annexed with the said Petition. The said Petition was disposed off vide order dated 18.05.2022 with direction Petitioner to file separate petitions regarding inadequacy infrastructure in respect of each of the Developer with all the relevant details.
- 7.27 That the Respondent got the information under RTI from Petitioner, vide Memo No. 1772/RTI-815/SU GGN dated 17.05.2022, in respect of Annexure-P-31 annexed with Petition No.55 of 2021, wherein the Petitioner has informed that as per the latest revised load norms, the ultimate demand load of the Project becomes 22.195 MVA with the provision of Transformer Capacity of 27.744

MVA through 33 KV supply from proposed 220/66/33 KV sub-station with obligation to construct 33 KV sub-station by Respondent. The Petitioner further informed that out of said requirement of 27.744 MVA, the Respondent have already installed the transformer of 25.800 MVA capacity with 11 KV external feeder line and internal adequacy in terms of distribution network is only 1.94 MVA. In the reply dated 17.05.2022, received under RTI, the Petitioner also informed the breakup of above said Demand of Rs. 11.97 Crore as per following details:

S. No.	Description	Quantum of inadequacy in quantity	Quantum of inadequacy in Rupees {Cr.}
I.	Internal inadequacy in terms of distribution network @ Rs. 70.93 lacs per MVA	1.94 MVA	1.3760
II	External inadequacy		
II{A}	GIS-33/11kv Sub-Station @ Rs.408.36 lacs per 25 MVA	2x12.5=25 MVA	4.0836
II{B}	33 KV line underground @ Rs. 53.63 lacs per KM	3.50 KM	1.8770
III	Share cost of feeding end Sub-station @ 14.25 lacs per MVA	22.20 MVA	4.6299
	Total		11.9666

7.28 That the Petitioner had raised the Demand Note dated 05.07.2022 (said Demand) with request to the Respondent to deposit the amount of Rs. 11.97 Crore, as mentioned in the Annexure P-31 of Petitioner No. 55 of 2021, before this Hon'ble Commission and the Petitioner has also filed the present Petition in purported compliance of order dated 18.05.2022 passed by this Hon'ble Commission in Petition No. 55 of 2021 with request in Para 70 {b} of Petition with following relief;

(i) cure inadequacies within the above named projects, or

(ii) pay a sum of money either:-

- 1) In case deposit equivalent to the cost of curing the aforesaid inadequacies, or
- 2) By way of Bank Guarantee{s} equivalent to 1.5 times 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

7.29 That it is succinctly submitted that the demand of Rs.11.97 crore raised by the Petitioner in regard to the alleged internal, external inadequacy in the infrastructure and share cost of feeding end Sub-station of the above said Project, is baseless, vague and without application of mind. The Petitioner while raising such unfounded demands has not taken into consideration the cost sharing arrangement regarding the inadequacy in the Electric Infrastructure cost which was to be incurred in the ratio of 75:25 between the colonizer, that is, the Respondent herein, and the Petitioner, as stated in the Sale Circulars bearing Nos. D-15/2010, D-9/2014 and D-16/2017. Moreover, the Petitioner while raising the Demand Notice dated 12.01.2011 amongst other demand notices, has not taken into account payment of Rs.1.477 Crore by the Respondent towards share cost.

- a) The the Demand Notice also having the apparent mistake in calculation of Share cost of feeding end Sub-station as mentioned in the Sr. No.III of cost break up provided in the RTI reply dated 17.05.2022. As per calculation of Petitioner, the share cost of feeding end Sub-station is shown Rs. 4.6299 Crore (14.25 Lacs X 22.20 MVA), whereas as per Calculation, the correct calculated amount comes out to be Rs. 3.1635 Crores (14.25 Lacs X 22.20 MVA). As such, it is apposite to state here that besides raising illegal demands, Petitioner has erred in calculating the amount due towards the share cost of feeding end sub-station cost by an amount of Rs. 1.46 Crore.
- 7.30 That without prejudice, after considering the sharing arrangement of 75:25; the calculation error; and the amount already deposited by the Respondent to the Petitioner, the alleged demand of Rs. 11.97 crores becomes Rs. 5.3661 Crore, which could be said to be the demand made by the Respondent as per the details.
- 7.31 That further, it is relevant to state here that the Respondent had handed over an immovable Property, i.e. land admeasuring 4665 sq. mtr., that is, 5579 sq. yds duly approved by the DTCP in approved plan for construction of 66 KV sub-station to SC{TS} HVPN, Gurugram through Estate officer-II, HUDA, Sector-56, Gurugram, vide Letter dated 26.05.2010, and SC{TS} HVPN, Gurugram, vide its acknowledgment bearing endorsement No. 6067 dated 26.05.2010 has taken over the Possession of said Land.
- 7.32 That as per revised Sale Circular No. D-14/2018 dated 27.03.2018, the requirement of land for construction of 33 KV sub-station is only 1250 sq. yds meaning thereby that the Petitioner has land admeasuring 4329 sq. yds in excess to the land required for construction of sub station, which is equivalent to market value of Rs. 46.75 Crore (4329 sq. yds.x 60000 circle rate x 1.8 times). As per the minutes of meeting held on 21.01.2019, the office of DRO, Gurugram, in view of Sale Circular No. D-28 of 2018 vide which committee, comprising of SE-operation, SC Civil and concerned revenue authority, was constituted to decide the market value of land for construction of 33 KV sub-station.
- 7.33 That without prejudice, Respondent has no objection if Petitioner adjusts the corrected demand of Rs.5.3661/- crore as shown/calculated in Annexure R/15 from the market value of of excess land having market value of Rs. 46.75 Crore transferred to Petitioner by Respondent and refund the excess amount of Rs.41.3839 Crore (46.75 minus 5.3661). In the alternative, Petitioner may hand over the excess land measuring 3831.84 sq. yds. out of total area of 5579 sq. yds to the Respondent. However, the Respondent reserves it right to claim the same from Petitioner. The Respondent has already complied with all the formalities and works and no work remains to be performed by the Respondent. It is the Petitioner who is responsible for incomplete work as the Respondent has already deposited the excess amount which include the entire cost of curing the inadequacy by way of handing over land duly approved by DTCP as prayed in the Petition by the Petitioner. As such, the Present Petition is not maintainable and liable to dismissed with following directions:-
- a) to refund the excess amount of Rs. 41.3839 Crore or handed over back the excess land measuring 3831.84 sq. yds. out of total area of 5579 sq. yds to the Respondent; and
 - b) issue the No dues Certificate to the respondent for the Project.
- 7.34 That the aforementioned submissions are without prejudice not only to the other submissions made in the present reply, but also to the rights and contentions of Respondent in *CWP No. 22637 of 2014; 'Sheetal International Pvt. Ltd. vs. Dakshin Haryana Bijli Vitran Nigam Limited and Ors.'* which is pending before the Hon'ble Punjab and Haryana High Court and wherein it has, *inter*

alia, sought setting aside of Sale Circular No.D-9/2014 dated 27.01.2014 which provides Cost Sharing Arrangement between Power Utilities and the Developers, *inter alia*, for erection of new infrastructure and/or upgradation of existing ones, as the Respondent being the Developer cannot be made liable to pay the same. Not only the sharing cost arrangements have been challenged in the said writ but the Sales Circular No.D-8/2013 dated 08.03.2013 which provides for furnishing of Bank Guarantee by the Developer/Respondent in relation to Electrical Infrastructure and liability of the Developer/Respondent to install/erect the Electrical Infrastructure has also been impugned. In the said writ, there is also a challenge to the instruction no.9/2011/P&D dated 09.05.2011, since the same is sans the power of the 2003 Act, which cannot be abrogated or superseded by instructions/policies framed unilaterally and without any authority of law. Adjudication of such issues first is significant and indisposible to adjudicate upon the matter at hand.

- 7.35 That the Petitioner has evaded from its statutory obligations by not incurring the liability to install the required electrical infrastructure. Callous behavior of the Petitioner has not only caused agony to Respondent /Developer, but has left the consumers at the mercy of the Petitioner.
- 7.36 That in light of the above submissions made herein above that the Respondent cannot be saddled with additional liability, especially in he manner as has sought to be done by the Petitioner especially since the Respondent had already executed its obligations as per the then extant policy and further without prejudice expressed its willingness to take additional steps. On this count as well the present petition deserves to be dismissed.
- 7.37 That it is pertinent to submit that the issue regarding insistence by the Petitioner to make payment towards any cost much less share cost for providing electric supply including erection of grid substation as Capital Expenditure (CAPEX) incurred not only for the purpose of commissioning and transmitting the electricity but also for its distribution, which includes the erection/installation of various substations in respective area of supply by Licensee and also towards augmentation/upgradation of existing substations is taken into account by the Ld. Commission while determining and approving Aggregate Revenue Requirement ('ARR') for transmission business and State Load Dispatch Centre ('SLDC') charges and transmission tariff and SLDC charges and the issue that the cost of the same has also been taken as part of External Development Charges ('EDC') by the Town and Country Planning Department, are already subject matter of CWP-22637-2014- Sheetal International Private Limited versus DHBVN and others, pending before the Hon'ble Punjab and Haryana High Court. It is thus just and proper that any issue that overlaps the issue was pending before the Hon'ble High Court be not taken up for adjudication till the Hon'ble High Court decides the same. On this ground as well, the present petition is liable to be dismissed. Further, in the present petition a reference has been made to order dated 20.02.2015, passed by this Ld. Commission, in PRO – 21 and 23 of 2013, Ansal Buildwell Ltd. versus Dakshin Haryana Bijli Vitran Nigam Limited and others., vide which this Ld. Commission, in those cases, had, *inter alia*, held that the Developer was required to install the electrical infrastructure determined as per electrical layout plan approved by the Distribution Licensee in accordance with the applicable norms during the cost of development of the colony/group housing societies/residential/non-residential areas as per the terms and conditions of the licenses granted by the DTCP and the Agreement entered thereunder as well as the provision of Single Point Supply Regulations, 2013. The correctness of the said order is also being adjudicated by the Hon'ble High Court in CWP – 6460 of 2015 and 6452 of 2015; Ansal Buildwell Limited vs. Dakshin Haryana

Bijli Vitran Nigam Limited and others. On this ground also, the issues raised in the said writ petition cannot be raised before this Ld. Commission.

- 7.38 That a perusal of the correspondence, as aforementioned, would show that the issues and/or demand raised by the Petitioner and even by the DTCP, are illegal, misconceived and erroneous, besides being arbitrary and whimsical. Even reference to the conditions forming part of the license and/or bilateral agreement, are erroneous, misconceived and misplaced. The requirement for the Colonizer i.e. the Respondent, for which reference is being made to the clauses of the Agreement, is merely to arrange for electrical connection outside source for electrification of the Colony. Evidently, there has been no stipulation, either statutorily or contractual for setting up of any Sub-Station and/or laying down electrical infrastructure by the licensee under the 1975 Act. Rather, providing electrical works and electrical grid sub-stations has always been an obligation cast upon the State Authorities not only in terms of the 2003 Act but also keeping in view the provisions of 1975 Act, and for which requisite charges have been/are being collected either in form of payment towards the electricity bills generated to the consumer or in form of EDC.
- 7.39 That in light of the submissions made hereinabove, the Respondent cannot be saddled with additional liability especially since the Respondent had already executed its obligations as per the then extant policy, which fact does not stand disputed. Thus, it is evident that there is no obligation for the Respondent to incur any additional expenditure much less as has been stated by the Petitioner in the present petition. On this count as well the present petition deserves to be dismissed.
- 7.40 That without prejudice to the aforementioned submissions, it is submitted that in any event, no adjudication of the petition is required and/or necessitated, at this stage to say the least, especially keeping in view that the issue regarding insistence by the Petitioner to make payment towards any cost much less share cost for providing electric supply including erection of grid substation, amongst other issues, are concededly form subject matter of *Civil Writ Petition No. 22637 of 2014; Sheetal International Private Limited versus DHBVNL and others*, pending before the Hon'ble Punjab and Haryana High Court. It is thus, just and proper that any issue that overlaps the issue which is pending before the Hon'ble High Court be not taken up for adjudication till the Hon'ble High Court decides the same.

Further, in the petition under reply, a reference has been made to an order dated 20.02.2015, passed by this Ld. Commission, in *PRO-21 and 23 of 2013; Ansal Buildwell Ltd. versus Dakshin Haryana Bijli Vitran Nigam Limited and others.*, vide which this Ld. Commission, in those cases, had, *inter alia*, held that the Developer was required to install the electrical infrastructure determined as per electrical layout plan approved by the Distribution Licensee in accordance with the applicable norms as per the terms and conditions of the licenses granted by the DTCP and the Agreement entered thereunder as well as the provision of Single Point Supply Regulations, 2013. However, concededly, the correctness of the said order is also being adjudicated by the Hon'ble High Court in *Civil Writ Petition Nos.6460 of 2015 and 6452 of 2015; Ansal Buildwell Limited vs. Dakshin Haryana Bijli Vitran Nigam Limited and others*. Thus, on this ground also, the issues raised in the said writ petition and/or demand(s) made, do not require adjudication by this Ld. Commission.

PARAGRAPH-WISE REPLY:-

At the very outset, the Respondent denies each and every statement, submission and contention set forth in the Petition to the extent that the same is contrary to and/or inconsistent with the true and complete facts of the case and/or the record. The Respondent further humbly submits that the averments and

contentions, as stated in the Petition under reply, may not be taken to be deemed to have been admitted by the Respondent, save and except those which are expressly and specifically admitted and the rest may be read as travesty of facts.

Further, it is submitted that any reference, as made in the paragraphs, forming part of 'Section I' to Section 'V' of the petition, to any of the orders passed by this Ld. Commission and/or the Hon'ble High Court of Punjab and Haryana; to any of the petitions filed before Ld. Commission and/or the Hon'ble High Court of Punjab and Haryana; to any of the provisions of the 2003 Act, 2016 Regulations and/or Supply Code, to the extent they are matter of record, may not require any response. However, any averment(s) made and/or suggestion(s) sought to be given by the Petitioner, while referring to such order(s); petition(s); and provision(s) of the 2003 Act, 2016 Regulations and/or Supply Code, which may be contrary to the plea/submission of the Respondent, be taken to be erroneous and to have been denied.

Furthermore, the averments made in the Preliminary Objections/Submissions may also be read as a part of reply to each of the paragraphs, though the same may not be repeated for the sake of brevity.

SECTION I: CONSPECTUS OF THE PETITION

A. Introduction

7.1.1 The averments as made in paragraph No.1 are matter of record.

A.1. Sales Circular No.D-21/2020 – Embargo on Release of New Connections.

7.1.2 It is denied that the petition has been filed by the Petitioner to ameliorate the hardships faced by the owners/occupants of premises/units seeking new electricity connections/additional load etc. within projects/areas, where the Respondent-Developer has allegedly not installed adequate electrical infrastructure. The Respondent has already supplied the adequate electrical infrastructure and, as already stated, the petition is conspicuously silent about any details regarding the alleged insufficient infrastructure provided by the Respondent. The reason given for issuing Sales Circular No.D-21/2020 dated 07.09.2020 much less the said Sales Circular itself, is erroneous and misconceived. No embargo can be put on the release of the connections, much less in the manner it is sought to be done. The said Circular, especially to the extent it seeks to act detrimental to the interest of the Respondent, is apparently sans any authority.

7.1.3 The averments as made in paragraph No.3 are bereft of any details and as such besides being misconceived are vague. Petitioner is required to put to strict to averments made therein.

A.2 PRO-55 of 2021 filed by Petitioner before the Hon'ble Commission agitating the same issue

7.1.4 The averments as made in paragraph No.4, besides making a reference to an order dated 02.02.2022 passed in PRO-55 of 2021 filed before the Hon'ble Commission, merely reproducing the said order.

7.1.5 The averments as made in paragraph No.5 may be a matter of record, though the Petitioner may be put to strict proof thereof.

7.1.6 The averments as made in paragraph No.6 are matter of record, though the said averment had been without prejudice to the other submissions made by the Respondent. It may however be mentioned that the reference to the Developer as a 'Delinquent' is misconceived and erroneous.

7.1.7 The averments as made in paragraph No.7 are merely a reproduction of order dated 18.05.2022.

7.1.8 It is denied that the petition under reply has been filed in compliance of order dated 18.05.2022 passed by this Ld. Commission.

A.3. Relief(s)

- 7.1.9 Paragraph No.9 of the petition is a matter of record. However, the reliefs sought by the Petitioner in the present petition are not liable to be granted in light of the submissions made in the present reply.
- A.4. Formula for Computation of Development Charge(s)
- 7.1.10 The averments as made in paragraph No.10 are wrong and denied. The formula for computation of the Development Charges has no basis and is arbitrary. Averments made by way of preliminary objections and submissions be read as a part hereof also.
- 7.1.11 The averments as made in paragraph No.11 are wrong and denied. No details have been provided in Annexure P-3 and P-4, regarding the alleged inadequate electrical infrastructure much less in terms of the directions issued vide order dated 18.05.2022. The petition under reply fails to portray/clarify inadequacy of infrastructure viz-a-viz ultimate load requirements in the project(s), as had been sanctioned.
- B. Background
- B.1. The Conundrum of Inadequate Electrical Infrastructure
- 7.1.12 The averments as made in paragraph No.12 are wrong and denied. It is incorrect that the Respondent has failed to install adequate electrical infrastructure to cater to the load as per the applicable load norms. Further it is submitted that, Annexure P-5, is devoid of details of the alleged inadequacies in the electrical infrastructure, thereby rendering the petition ambiguous.
- 7.1.13 The averments as made in paragraph No.13 are wrong and denied. The Petitioner has made every attempt to abdicate from its duties/responsibilities to take requisite steps regarding development of electrical infrastructure. Rather they have raised false allegations against the Respondent and has tried to shift onus of curing deficiencies/inadequacies in electrical infrastructure onto the Respondent which is in derogation of the mandate of 2003 Act. Without prejudice to the fact that there are no inadequacies in the electrical infrastructure of the Project, it is relevant to state here that Respondent has no obligation to cure any such deficiencies/ inadequacies, alleged to be there by the Petitioner.
- 7.1.14 The averments as made in paragraph No.14 are bereft of any details and vague.
- B.2. Judicial Proceedings and Precedents on Inadequacy of Electrical Infrastructure
- 7.1.15 The averments as made in paragraph No.15 are merely reproduction of judicial pronouncements.
- 7.1.16 The averments as made in paragraph No.16 are merely reproduction of judicial pronouncements.
- 7.1.17 The averments as made in paragraph No.17 are merely reproduction of judicial pronouncements.
- 7.1.18 The averments as made in paragraph No.18 are merely reproduction of judicial pronouncements.
- B.3. Consequence of Inadequate Electrical Infrastructure in Projects
- 7.1.19 The averments as made in paragraph No.19 are denied as the same are baseless and without any details/evidence, same are made vaguely without relying on any document, thereby rendering the petition liable to be set aside.
- C. LEGAL AND REGULATORY FRAMEWORK ON THE ISSUE
- C.1. Electricity Act, 2003
- 7.1.20 The paragraph 20 is merely a reproduction of provisions of 2003 Act.
- C.2. Duty to Supply Regulations
- 7.1.21 The paragraph 21 merely iterates certain regulations of 2016 Regulations.
- 7.1.22 The paragraph 22 merely iterates certain regulations of 2016 Regulations.
- 7.1.23 The averments made in paragraph 23 are denied sternly. The Respondent is not in violation of any of the relevant rules/regulations/ provisions. Averments

made by way of preliminary objections and submissions be read as a part hereof also.

C.3. Supply Code

7.1.24 The averments made in paragraph 24 are matter of record.

7.1.25 The averments made in paragraph 25 are matter of record.

C.4. Builder's Agreement with DTCP

7.1.26 The averments made in paragraph 26 are wrong and denied. The Petitioner by referring to Builder's Agreement with DTCP has sought enforcement of alleged obligations under the 1975 Act and the 1976 Rules, which is beyond the scope of 2003 Act.

C.5. Single Point Regulations

7.1.27 The reference to and reliance upon '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' and 2016 Regulations, is misconceived and misplaced *inter alia*, keeping in view that the said Regulations, at least to the extent referred to and relied upon, are illegal, without jurisdiction and arbitrary, and as such, are not liable to be adverted to. Without prejudice, it is submitted that in the present case, there cannot be said to be any non-execution of the work as per Electrification Plan by the Respondent and as such, on this count as well, reference and reliance upon the said Regulations, would be misconceived and misplaced.

C.6. The Haryana Development and Regulation of Urban Areas Act, 1975 ("1975 Act") and the Haryana Development and Regulations of Urban Areas Rules, 1976 ("1976 Rules")

7.1.28 The averments made in paragraph 28 are not regarding the project of the Respondent and are denied for want of knowledge. At the same time, the Petitioner seeks to enforce alleged obligations under the 1975 Act and the 1976 Rules, which is beyond the scope of 2003 Act. Averments made by way of preliminary objections and submissions be read as a part hereof also.

7.1.29 The averments made in paragraph 29 are misconceived. It is submitted that on account of there being no inadequacy in electrical infrastructure of the Project, Respondent had duly applied for Occupation Certificate before DTCP and the same is pending for approval.

D. Conclusion

7.1.30 The averments made in paragraph 30 are sternly denied. The Petitioner has wrongly concluded that the cost of installing adequate electrical infrastructure is to be borne by the Respondent and/or the consumers/applicant. The conclusion besides being misconceived is in teeth of provisions of 2003 Act and orders passed by the Ld. Commission.

SECTION II: FACTUAL MATRIX – M/S SHEETAL INTERNATIONAL PVT. LTD.

7.1.31 The averments made in paragraph 31, being erroneous, are denied. Notice issued by the Petitioner was sans any authority and the same was baseless, unjustifiable, and illegal. Exorbitant demands raised by the Petitioner, in notice dated 07.06.2013 are *ex facie*, erroneous and the same are self-serving interpretation of the clauses of the License and/or Bilateral Agreements, which goes beyond the scope of jurisdiction of the Petitioner and/or this Ld. Commission, the said License and Agreement having been executed by DTCP.

7.1.32 The averments made in paragraph 32 are devoid of any merits. It is relevant to mention here that the Respondent had executed all its obligations as per the approvals/sanctions granted to it. Averments made by way of preliminary objections and submissions be read as a part hereof also. Also pertinently, DTCP has not been arrayed as a party to the present petition. It is relevant to

state here that Annexure P/12 being ambiguous does not reflect clearly the alleged inadequacy in electrical infrastructure of the Project.

- 7.1.33 The averments as made in paragraph 33 are not only misconceived and erroneous but would even show arbitrariness on part of the Petitioner. Evidently, the Petitioner has misdirected itself in stating/suggesting that there has been any inadequacy that too on the basis of the norms and/or sales circular(s) which had been taken out much subsequent to the sanctioning of the Electrification Plan for the Project of the Respondent. It would be not only illegal but also unjust and unfair to apply such norms and/or sales circular(s) or regulations which came subsequently, whereas the electrical infrastructure has been laid down as per the approval granted much prior to issuance of such norms and/or sales circular(s) or regulations. The demand much less the demand that is shown to have been reduced, is misconceived and erroneous and unsustainable.
- 7.1.34 The averments made in paragraph 34 are wrong and denied. Direction sought by the Petitioner ought not be issued by the Hon'ble Commission since the same are arbitrary and, in light of the submissions made, unsustainable.
- 7.1.35 The averments as made in paragraph 35 are wrong and denied. Neither, there are inadequacies in the electrical infrastructure of the project nor the Respondent has any obligation to cure the alleged inadequacies in light of relevant statute/legislation.

SECTION III: LEGAL AND REGULATORY FRAMEWORK

E. Obligation on Respondent Developers and Consumers to install adequate Electrical Infrastructure.

- 7.1.36 The averments made in paragraph 36 are misconceived besides being erroneous. The Petitioner, as a ruse to not carry out its obligations, has resolved to give interpretations to provisions/rules/regulations that are self-serving and self-contriving. Averments made by way of preliminary objections and submissions be read as a part hereof also.

E.1. 1975 Act and 1976 Rules

- 7.1.37 The averments made in paragraph 37 are wrong and denied. The Petitioner seeks to enforce alleged obligations under the 1975 Act and the 1976 Rules, which is beyond the scope of 2003 Act. Respondent has duly applied for grant of completion certificate which remains pending for approval. There is no requirement for seeking 'No Objection' for obtaining Final Completion Certificate under the provisions of 1975 Act and 1976 Rules. Averments made by way of preliminary objections and submissions be read as a part hereof also.
- 7.1.38 The averments made in paragraph 38 are misconceived. It is submitted that on account of there being no inadequacy in electrical infrastructure of the Project, Respondent had duly applied for Occupation Certificate before DTCP and the same is pending for approval.

E.2. Benefit of revision in Load Norms.

- 7.1.39 The averments made in paragraph 39 are wrong and denied. Respondent had carried out development of electrical infrastructure as per the approved/sanctioned plan as per the then policy and it cannot be saddled with additional liability to incur any expenditure on account of revised load norms. Averments made by way of preliminary objections and submissions be read as a part hereof also.

E.3. Judicial Precedents

- 7.1.40 Paragraph 40 to 45 are merely reproduction of orders and matter of record.

E.4. Electricity Act, 2003

- 7.1.46 Paragraph 46 to 50 are merely reproduction of orders and matter of record.

E.5. Duty to Supply Regulations.

- 7.1.51 Paragraph 51 to 54 are merely reproduction of regulations and matter of record.

E.6. Supply Code.

7.1.55 Paragraph 55 to 56 are merely reproduction of supply code and matter of record.

E.7. Single Point Supply Regulations

7.1.57 The averments made in paragraph 57 are a matter of record. Respondent had duly carried out all development works as per approvals/sanctions from the competent authority. Respondent at no time, could be said to be in violation of any statutory provisions and/or agreements.

E.8. Bilateral Agreement between Director General, Town and Country Planning, Haryana (DTCP) and Builders.

7.1.58 The averments made in paragraph 58 are wrong and denied. Respondent could not be said to be in violation of any of the conditions of the Bilateral Agreement entered into with DTCP as it has carried out development works as per the approvals/sanctions, granted by the competent authority.

7.1.59 The averments made in paragraph 59 are wrong and denied. Petitioner has abdicated from its legal responsibilities enumerated in statues/rules/regulations and has rather attempted to shift the burden of the same on the respondent, who has faltered nowhere in carrying out its obligations.

7.1.60 The averments made in paragraph 60 are sternly denied. Respondent could not be said to be in violation of any of the conditions of the Bilateral Agreement entered into with DTCP as it has carried out development works as per the approvals/sanctions, granted by the competent authority. Averments made by way of preliminary objections and submissions be read as a part hereof also.

F. Liability to bear the Cost of Curing the Inadequacies is of both Developer and Applicants of New Connections/Additional Load etc.

7.1.61 The averments made in paragraph 61 besides being erroneous are misconceived. Liability to bear cost of extending the distribution system etc. is not to be borne by the Respondent, who has duly developed the Project in coherence with approvals/sanctions granted by competent authority.

SECTION IV: NEED OF THE HOUR TO PROVIDE URGENT RELIEF IN LIGHT OF NOTIFICATIONS ISSUED BY THE EPCA.

7.1.62 The averments made in paragraph 62 are wrong and denied and the same are devoid of material particulars. Petitioner has misinterpreted provisions/rules/regulations to serve its own agendas and to escape from its statutory obligations. It is pertinent to mention here that vide order dated 13.03.2023, the Ld. Commission had permitted the petitioner to release new electricity connections/additional load to the residents.

7.1.63 The averments made in paragraph 63 are wrong and denied. Though admittedly, the Hon'ble Commission, vide its order dated 02.02.2022 had provided ad-interim relief in form of release of new connections to the applicants on voluntary payments of development charges, however, nowhere it has been noted by the Commission that the money due towards inadequacies is to be recovered from the Developers.

7.1.64 The averments made in paragraph 64 besides being vague are baseless. The issues raised in the aforesaid paragraph are irrelevant, since the same cannot be said to emanate from the Project of the Respondent.

7.1.65 The averments made in paragraph 65 are admitted to the extent that certain issues of inadequacies in electrical infrastructure have remained unresolved and the same are pending before the Hon'ble High Court, thereby no adjudication of the petition is required/necessitated at this stage.

7.1.66 In reply to paragraph 66 of the petition, it is denied that the Petitioner has filed this petition with bona fides.

SECTION V: THE DEVELOPMENT CHARGES

- 7.1.67 The averments as made in paragraph No.67 are wrong and denied. The formula for computation of the Development Charges has no basis and is arbitrary. Averments made by way of preliminary objections and submissions be read as a part hereof also.
- 7.1.68 The averments as made in paragraph No.68 are wrong and denied as the same are based upon a self-serving formula and circulars/instructions, which cannot be said to be applicable to the Project.
- 7.1.69 The averments made in paragraph No.69 are wrong and denied. There arises no situation where the Respondent is required to bear the cost of carrying out development works that ought to have been carried out by the Petitioner. The Respondent had installed adequate internal electrical infrastructure for the required load as per the sanctioned electrical plan and fully discharged its obligation. The Respondent cannot be held liable till eternity to augment the infrastructure for the subsequent increase in the requirement of load.
- 7.1.70 Paragraph No.70 is the prayer clause of the petition, which seeks reliefs that ought not to be granted in light of the submissions made in the present reply. It is respectfully submitted that the petition be dismissed, in the interest of justice.
8. The case was heard on 22/03/2023. Sh. Manuj Koushik, counsel appearing for the petitioner, requested additional two weeks' time to file the rejoinder to the reply of respondent. As no rejoinder has been filed by the petitioner as per direction vide order dated 09.02.2023, the Commission directs the petitioner to file the rejoinder within two weeks with the late filing charges of Rs. 5000/-, as per the HERC (Fee) Regulations, 2005, (6th amendment) dated 31.08.2022
9. The case was heard on 22/03/2023. Ms. Nikita Chaukse, counsel appearing for the petitioner, submitted that the rejoinder has been served through email on 01.05.2023 and the same shall be filed in the Commission with the late filing charges today itself. After hearing the parties, the Commission directs the petitioner to ensure that the copy of the rejoinder is served to the respondent today itself. Accordingly, the respondent may file their reply to the rejoinder, if any, within 15 days thereof with a copy to the petitioner.
10. The Petitioner vide its rejoinder dated 09/05/2023 submitted that:
- 10.1 The present rejoinder is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limited/Petitioner ("DHBVN"), in response to the reply filed by the M/s Ansal Buildwell/Respondent No. 1 ("Ansal Buildwell") in the above captioned petition and all the submissions are made in the alternative and without prejudice to each other.
- 10.2 It is submitted that all allegations made by the Respondent are denied in totality and the same may be treated as a denial as if it was made in seriatim. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
- 10.3 At the outset, the Petitioner denies all and singular allegations, contentions and submissions of the Respondent in the above Writ Petition which is contrary to or inconsistent with what is stated in this affidavit in reply, except those are matters of record and/or specifically admitted herein. The Petitioner is submitting an issue wise reply to the reply for the sake of brevity and convenience. The Petitioner should not be deemed to have admitted any of the allegations, contentions or submissions of the Respondent unless specifically admitted herein.
- 10.4 Briefly, the Respondent has raised the following issues in their reply:
- 1) Development Charges sought by DHBVN is a modification of order dated 02.02.2022 in PRO 55 of 2022.
 - 2) Maintainability of the Petition

- 3) Sole responsibility of DHBVN to develop electrical infrastructure
- 4) External Development Charges deposited by Respondent included cost of Infrastructure
- 5) Projects in Question

RE: Issue Wise Submission

A. Development Charges as Relief

10.5 It is submitted that the Respondent has erroneously contended that the Petitioner is seeking to review/modify the order dated 02.02.2022 passed by this Hon'ble Commission in PRO - 55 of 2021. Vide aforesaid order, this Ld. Commission had rightly granted immediate relief to distressed residents who were persistently facing hardships due to the shortcomings of delinquent developers. This Ld. Commission, in the interest of justice, permitted the Petitioner to release electricity connections/additional load on voluntary payments of 'Development Charge(s)' by consumers who bereft of it due to the grossly inadequate electrical infrastructure installed by developers.

10.6 The aforesaid contention of the Respondent is misconceived. The respondent is prima facie incorrect to aver that the relief granted to the distressed residents contend was *not* made subject to adjustment on the curing of deficiency by the developers. From a bare perusal of the aforesaid portion, it is evident that this Ld. Commission had granted the relief with the interest of the consumers in mind and made the development charges refundable subject to recovery of the costs. There is no ambiguity in the order of the Commission.

B. Maintainability of the petition

(i) Powers of the licensee and the obligation of the builder/ developer under the Act and the applicable regulations

10.7 It is submitted and reiterated that this Petition is maintainable in as much as it has been filed by the Petitioner invoking the jurisdiction of this Hon'ble Commission vide Section 43, 46 and 50 of the Electricity Act, 2003.

10.8 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.

10.9 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. 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. It is apposite to highlight that the above-mentioned provisions cast an obligation on the Distribution Licensee to supply electricity on demand *and* to recover expenditure/cost for such supply. For all or any supply that is given by the Distribution Licensee the cost of thereof is required to be recovered.

- 10.10 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. 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
- 10.11 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 Regulation.
- 10.12 It is required in law by virtue of Regulation 4.12 read with Regulation 3.10 of the Duty to Supply Regulations to bear the cost of electrical infrastructure to be installed as per electrification plan sanctioned under the Supply Code . In this regard, relevant portion of Regulation 3.10 and 4.12 of the Duty to Supply
- 10.13 The aforesaid provision of Regulation 4.12.2 was amended by HERC on 19.03.2020.
- 10.14 Regulation 4.2.3 read with Regulation 4.2.4 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 shall have to be borne by the aforesaid developers/builders.
- 10.15 It is pertinent to mention that the Haryana Development & Regulation of Urban Areas Act 1975 ("HDRUA") signifies the development of infrastructure works and also casts a duty upon the developers to complete the development/installation of electrical infrastructure as per the license and agreement with Directorate of Town and Country Planning ("DTCP"). Developers have to submit the final completion certificate under Rule 16 of the HDRUA. It is submitted that the non-grant of completion certificate by DTCP for these projects in question 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 Regulations framed thereunder as emphasised above, have not been discharged.
- 10.16 It is submitted that *only* after the completion of all works and the grant of completion certificate by DTCP, does the obligation of the Distribution Licensee (Petitioner herein) arises under the Duty to Supply Regulations to take over the electrical infrastructure in that area. In case of inadequate infrastructure, the system cannot be taken over by DHBVN.
- 10.17 Thus, it emanates from the statutory provisions mentioned above as well as the regulations framed thereunder that once a builder/developer has chosen to install electricity infrastructure on its own, it is his bounden duty in terms of the extant regulations to ensure that such infrastructure is adequately installed, and the Distribution Licensee is entitled to recover appropriate expenses directly from the Developer for all electrical works and supply of electricity.

- 10.18 Respondent contends that under the Supply Code, DHBVN is responsible to meet the demand of the general areas, through its Annual Revenue Requirements (ARR) as approved by this Hon'ble Commission. It is thus evident that if a Developer fails to fulfil its obligation of laying down adequate capacity of electrical infrastructure, and if DHBVN is made to erect the inadequate infrastructure to fulfil its obligation, the consequential financial burden of this default on part of Developer will fall upon all consumers of Haryana.
- ii. Difficulty identified to invoke "Removal of Difficulty" clause
- 10.19 It is submitted that the 2016 Regulations 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. 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.
- 10.20 Further, Regulation 16 of the Supply Code also provides a "removal of difficulty" clause.
- 10.21 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.
- 10.22 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. 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 *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.*
- 10.23 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.
- iii. Attraction of Section 142 and 146 of the Electricity Act
- 10.24 The respondent, in complete disregard of the law and the categorical orders passed by this Hon'ble Commission, contends that Section 142 and 146 of the 2003 Act cannot be attracted since there has been no non-compliance of

- directions or orders or contravention of provisions of the Act or the rules or regulations made thereunder.
- 10.25 It is submitted that the Petitioner has invoked the above said sections by keeping in mind all the provisions of the Act as well as the Regulations and orders passed by this Hon'ble Commission mentioned above.
- 10.26 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, categorically held that Ansal Buildwell is liable to cure the electrical inadequacy in the projects. 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.
- 10.27 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.
- 10.28 It is submitted that Section 142 contains the word any order and regulation, which has a wide import and it has been an admitted position that despite of order passed in 2015 by this Hon'ble Commission, Respondent has failed to comply with the said judgement. The Petitioner is only seeking the compliance of the Commission's order dated 20.02.2015 and the regulations in force, which is nothing but the levy of statutory charge in terms of extant regulations.
- 10.29 It is pertinent to mention that in the order dated 20.02.2015, this Hon'ble Commission while deciding the issue has 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.
- 10.30 In light of the precedents reproduced above, it necessary to highlight that unless stayed, an order is the law of the land. Accordingly, the Respondent cannot skirt past their obligation to develop adequate infrastructure.
- C. Applicable load norms and the Obligation arising thereunder.
- 10.31 It is submitted that initially load norms were fixed as per the declaration given by the developer and its subsequent acceptance by HSEB. However, due to rampant urbanization, the electrical infrastructure developed by their respective builders / developers started proving to be inadequate causing a lot of problems for the consumers like frequent power cuts, breakdowns, poor voltages, and ultimately putting a lot of pressures on the existing electrical transmission and distribution infrastructures of the licensee. S. 46 of the Electricity Act, 2003 authorizes a distribution licensee to charge from a person any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply of electricity in pursuance of section 43. Thus, the distribution utilities decided to revise load norms in 2004 calling upon the builders / developers to follow these norms and to create an electrical infrastructure adequate enough to cater to the electricity needs of their residents.

- 10.32 These load norms were further revised and rationalized in 2006 and were circulated by DHBVN vide instruction no. 8/2006/PD&C dated 17.07.2006. The same were further reaffirmed in 2011 by way of instructions vide Sales Circular No. 9/2011 dated 9/5/2011.
- 10.33 However, majority of the builders / developers including the Respondent herein, whose electrification plans had been approved by the DHBVN way back, did not create adequate electrical infrastructure till date, with the result that most of the substations became overloaded. Thus, even when electricity has been surplus in Haryana, DHBVN was not able to either release new connections or to make more power available to its consumers.
- 10.34 Several meetings were held between Power Department, HUDA and Town & Country Planning and Power utilities on the issue of calculation of inadequacies in electrical infrastructure on the basis of prevalent load norms. However, finally in the meeting held on 13.12.2013 under the Chairmanship of PS (Power) regarding pending issues of HUDA, HSIIDC & Power Utilities, it was decided that load norms and other factors as finalized in the review meeting will be applicable retrospectively from January, 2006. It was further decided that in future, these load norms will be revised / updated every three years in sync with update of EDC charges and will be made applicable prospectively. Consequently, a minutes of meeting (MoM) dated 20.01.2014 was prepared and circulated to all departments concerned.
- 10.35 Pursuant to the MoM dated 20.01.2014, DHBVN issued a sales Circular being D-9/2014 dated 27.01.2014 notifying the load norms which were to be applicable retrospectively w.e.f. 2006.
- 10.36 Subsequently, in the year 2017, load norms were revised by the Querist vide sales Circular no. D-16/2017 dated 12.04.2017. The said sales circular provided that *“viii) These load norms will be revised / updated every three years in sync with updating of EDC charges and will be made applicable prospectively.”*
- 10.37 Thereafter, another sales circular was issued by the DHBVN, with the approval of the State Government, being Sales Circular no. D-24/2019 dated 27.06.2019 on the issue of assessment of inadequacy cost on account of deficient/ inadequate infrastructure created/ erected by the Developers, by amending the Sales Circular no. D-16/2017. Vide the said sales circular, it was decided as under:
“in case of any reduction or increase in load norms takes place at a later date which in turn results in decrease or increase in the amount of inadequacy as compared to the previous load norms, such changes in the load norms will be applicable retrospectively in all those cases which stand sanctioned prior to such revision but where the infrastructure is yet to be created. Such retrospective changes will be applicable in those cases also where the infrastructure according to old norms has been erected partially and the remaining infrastructure is yet to come up.”
- 10.38 The inadequacy in the present case has been calculated as per the revised load norms in terms of the above mentioned Sales circular along with D-21/2020 reflected in Annexure P-1 of the Petition. At this juncture, it is pertinent to state that the Respondent herein has never challenged any of these Sales Circulars. In fact in para 28 of the reply, the respondent is admitting that they are creating the infrastructure as per the requirement of the revised norms. Therefore, the respondent is estopped from raising any contention belatedly challenging the sanctity of these sales circulars or the calculation made pursuant thereto.
- 10.39 Thus, the contention of the Respondent in para 23 that initially his load was sanctioned at 4080KV which was later arbitrarily revised at 13150.78 KV has no merit as the load has been ascertained in terms of these sales circulars. Reference herein may also be made to demand notice dated 06.09.2013 issued

by DHBVN (which has been attached in the Petition as Annexure P-10) wherein, the Petitioner had highlighted the fact that the loads which were disclosed and applied at the time of application were far lesser than the loads which have actually been developed in the respective areas of the projects.

D. External Development Charges

- 10.40 It is further submitted that the contention of the respondent that it is not responsible to cure the inadequacy of electrical infrastructure in its projects since it has paid External Development Charges (“EDC”) is patently wrong. In this context, it is pertinent to state that the Chief Administrator of Haryana Urban Development Authority (“HUDA”) and DTCP vide their respective affidavit before the Hon’ble Punjab and Haryana High Court in writ petitions filed by developers (CWP No. 22637/2014 titled as Sheetal International Pvt. Ltd. vs. DHBVN & Ors), had submitted that EDCs prior to 2009 did not include electrical infrastructure development cost. It is pertinent to note that the projects under scrutiny in the present petition were ‘developed’ before the financial year 2009. Therefore, it is clear that the complete erection of electrical infrastructure was a liability of the respective builders.
- 10.41 In this regard, Chief Engineer HUDA vide letter dated 03.11.2011 had clarified that HUDA had not charged cost of construction of Grid Sub-Station in the EDCs.
- 10.42 In this context, it is further apposite to highlight that in case of *Devdutt & Ors vs. State of Haryana & Ors* (CWP 14006 of 2013) the Hon’ble Punjab and Haryana High Court through its order dated 10.01.2014, while analysing the scheme of the Electricity Act as well as the Act of 1975, returned categorical findings that the State Government or a Local Authority (Including DHBVN, a power distribution Company) is under no statutory obligation to carry out the external development work. Further, it was held that the Act of 1975 makes it obligatory for the builder/colonizer to carry out the external development work at its own cost and that too in conformity with the development schemes of the colony land of the neighbouring areas.

E. Inadequacies in Sheetal’s Project

- 10.43 It is submitted that the Respondent’s contention that the Petitioner is bound to share the cost of the development of infrastructure is erroneous in nature. The Share Cost arrangement as previously floated by DHBVN has no bearing on the present inadequacy.
- 10.44 It is submitted that the Respondent is blatantly averring to the deposit of Rs. 1.477 Crore towards share cost without justifying the same with proof/acknowledgement of such payment.
- 10.45 In light of all the aforesaid submissions, the Respondent is liable to cure the inadequacies of this project before seeking approval for extension of load.
- 10.46 In view of the above submissions it is respectfully prayed that this Hon’ble Commission may be pleased to allow the petition

11. The case was heard on 05/07/2023. Sh. Samir Malik, counsel for the petitioner submitted that the respondent has filed a rejoinder in compliance of the direction of the Commission. Ms. Mehar Nagpal, appearing for the respondent submitted that Sh. Ashish Chopra, arguing counsel, is not available for the arguments in the matter and requested for a short adjournment. The Commission observes that, since the submissions of both the parties are complete, the matter be listed for the final arguments.

12. The petitioner DHBVN vide its affidavit dated 11/09/2023 submitted that:

- 12.1 The present affidavit is being filed on behalf of Dakshin Haryana Bijli Vitran Nigam Limited/Petitioner (“DHBVN”) to bring on record a detailed

comprehensive enumeration the inadequacies in the electrical infrastructure created by the Respondent developer.

12.2 The Petitioner craves leave of this Hon'ble Commission to read the submissions made in the Rejoinder dated 01.05.2023 as a part and parcel of these submissions as the content thereof are not repeated herein for the sake of brevity.

12.3 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 as well as standard costs of electrical infrastructure stipulated in Sales Circular No. D-42/2014 issued by the Petitioner. These load norms stipulated in Sales Circular No. D-16/2017 are determined on the basis of the size and area of the plot upon which projects are to be developed and the total load capacity thereupon required to be installed to cater to the expected demand.

12.4 It is submitted that in order to reassess the total inadequacies on account of the load norm mentioned above, a committee comprising XEN now SE (OP) Circle Palwal, XEN Smart Project, XEN Sohna now XEN Palwal and XEN S/U Gurgaon now XEN Dadri 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 27744.18 KVA. The capacity currently installed by the Respondent 25800 KVA. The details of this difference is reflected in Annexure P-11 of the Petition.

12.5 It is submitted that these inadequacies have 3 components based on which the cost is configured. The break-up of the same is reproduced below for ready reference:

Status of Inadequacy in terms of Rs. as per Sales Circular D-42/2014 for commercial				
Sl. No.	Description	Quantum of Inadequacy in MVA	Sheetal	
			Quantum of Inadequacy in Rs. (Lacs) as per D42/2014	
i.	Internal Inadequacy @Rs. 70.93 Lacs/MVA	1.94		137.60
ii.	External Inadequacy.			
A	GIS 33/11KV S/Stn. @227.23Lacs/12.5MVA and @Rs. 408.36Lacs/25MVA	2x12.5		408.36
B	11KV Line Underground @ Rs.41.96 Lacs/ KM	0		0
C	33KV Line Underground @ Rs.53.63 Lacs/ KM	3.50		187.705
iii.	Share cost of Feeding end Sub-station @14.25 per MVA	22.20		462.99
	Total			1196.66
Total Project Inadequacy.				
1	Sheetal			1196.66

As it can be seen from the table above these 3 components are:

- 1) Internal Inadequacies
- 2) External Inadequacies
- 3) Share cost of Feeding end substation

- 12.6 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 HVPN share-cost of 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 required for the same as stipulated in Memo No. 2457 issued by XEN T&S HVPN dated 11.03.2019. The cost of the underground lines is calculated as per its length.
- 12.7 It is 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.
- 12.8 It is submitted that Respondent in para 29a of its Reply had averred that there was an apparent calculation mistake under the head of Share Cost of Feeding-End substation in the demand notice issued to it. In this regard, it is submitted that although there was a typographical error, that error pertained to per MVA share cost which was inadvertently written as 14.25 per MVA instead of 20.86 per MVA. This figure of 20.86 MVA arises out of XEN T&S HVPN Memo No. 2457 dated 11.03.2019. After correcting this typographical error, the calculation of Share Cost of Feeding-End substation works out to be $(22.20 \times 20.86 \text{ MVA} = 462.99 \text{ Lakhs})$. Hence, the said rectification doesn't affect the amount of cost required to be paid by the Respondent.
- 12.9 It is submitted that Respondent in para 32 of its Reply had further averred that the land that was handed over by the Respondent to Petitioner for the creation of a 33kV sub station was given in excess. However, it is pertinent to note that the land was given based on a 66kv sub station, it was only later that 33kv sub station was stipulated. Till date they have not made any claim for the excess land, which was given to DHBVN in 2010. He's making a claim in our petition which is not permissible by law. This claim is belated in time-barred. It is the Respondent's contention that market value of the excess land ought to be adjusted in the cost towards inadequacy sought from it. In this regard, it is submitted that the land provided by Respondent has been specifically earmarked for the creation of the 33kv sub-station. Therefore, there is no scope of the adjustment of the excess land's market value with the cost of inadequacy which the Respondent is obligated to deposit. None of the Regulations or the sales circular allows for such kind of an adjustment.
- 12.10 It is further submitted that the sharing arrangement between Petitioner and Respondent in the ratio of 75:25 as averred by Respondent in para 24-25 of its Reply cannot be accorded consideration in light of the persistent conduct of the Respondent in not curing inadequacies. In this regard, it is submitted that the entire scheme/project of Respondent is part of several licenses issued by DTCP from time to time, where some of the licenses from DTCP have been issued in 2008/2008. Therefore, the provision of the Sales Circular D 16/2017 regarding the sharing ratio, is not applicable to them.

The entire scheme was not floated in one go before 2006, it was floated in piecemeal. Pertinently the first EP was approved in 1999 on 01.02.1999. Whereas the revised EP was sanctioned in 19.03.2010.

- 12.11 In light of all the aforesaid submissions, the Respondent is liable to cure the inadequacies of this project before seeking approval for extension of load.
- 12.12 In view of the above submissions it is respectfully prayed that this Hon'ble Commission may be pleased to allow the petition
13. The case was heard on 13/09/2023. Sh. Samir Malik, counsel for the petitioner submitted an affidavit with regard to the status of inadequacy and requested for placing it on record. The Commission directed to take the same on record. Sh. Ashish Chopra, counsel for the respondent, requested for some time to go through the affidavit and respond to the same. Acceding to the request of the respondent, the Commission adjourned the matter.
14. The case was heard on 25/01/2024. Sh. Japjot Singh, counsel for the respondent, requested an extension of time for the submission of a response to the petitioner's rejoinder. The Commission notes that ample opportunity was afforded to the respondent as per his request to file response to rejoinder since issuance of interim order dated 14.09.2023. After a period of 4 months, the respondent is still seeking time to file its reply. The respondent-developer is not adhering to the directives of the Commission and adopting dilly delaying tactics. Consequently, both parties are directed to be present for their final arguments on the next date. In case the respondents wish to file response to the rejoinder, they are permitted to do so, within two weeks from the date of this order with an advance copy to petitioner, subject to the payment of cost of Rs. 25,000/- for delayed submission.
15. The case was heard on 21/02/2024. Ms. Meher Nagpal, counsel for the respondent, submitted that respondents don't wish to submit any response to the rejoinder. Sh. Manuj Kaushik advocate on behalf of petitioner requested for short adjournment as the main counsel is not available for arguments. The counsel for respondent also made similar request. Acceding to request of both the parties, the Commission adjourns the matter and directs the parties to be present on next date for final arguments as pleadings stand completed.
16. The case was heard on 14/03/2024. Sh. Mahip Singh, counsel for the petitioner re-iterated the contents of the petition, rejoinder to the reply of the respondent and argued that the respondents have broadly contested the maintainability of the petition, difficulty in implementing the regulations, Power to remove difficulty and recovery of development charges. Sh. Mahip Singh further argued that all the above issues have already been addressed in the previous orders by the commission and all the petitions are maintainable, fall in the jurisdiction of the Commission and The Commission has all the powers to implement regulations and to remove difficulties, if any. Further regarding specific issues of inadequacies in the projects, he is ready to argue. Sh. Ashish Chopra advocate on behalf of respondent submitted the averments made in replies and asserted that the calculations of External and internal adequacies are not as per regulations. The cost as per present load norms works out to 5.3661Cr. against the demanded cost of 11.97Cr. He further submitted that the respondent is not liable for creating any external electrical infrastructure. The respondent has transferred land for construction of 66 kV sub-station 10 years back. Since now a 33kV substation is required to be built for which smaller land size is required. The value of the land transferred more than the requirement be adjusted against inadequacy of 5.3661Cr. Further, representation in this regard is pending before DHBVN which may be decided. The counsel for the petitioner submitted that he has no instructions on the land issue raised by the respondent-developer. As

such he has to seek directions from the client and requested for four weeks' time for the same. The Counsel for the respondent-developer raised no objection to the contention of petitioner. Acceding to the request, the Commission adjourns the matter and directs the parties to be present on next date for final arguments.

Proceedings

17. The case was heard on 10/04/2024, as scheduled, in the courtroom of the Commission.
18. Sh. Shaida Dass, counsel for the petitioner submitted that the arguments have already been advanced in the previous hearing and regarding piece of land, the same is not a part of this petition and the respondent may take up the matter with licensee on its claim for cost of the land or file a separate petition with Hon'ble Commission.
19. Ms. Meher Nagpal, advocate on behalf of respondent submitted that the cost as per present load norms works out to 5.3661Cr. The respondent has transferred land for construction of 66 kV sub-station 10 years back. Since now a 33kV substation is required to be built for which smaller land size is required. The value of the land transferred is more than the requirement and the same be adjusted against inadequacy of 5.3661Cr. The representation in this regard is still pending before DHBVN.

Commission's Analysis & Order

1. The Commission has considered the submissions made by the Petitioner in the Petition/Rejoinder, submission made in the reply filed by the Respondent and the pleadings made by both the parties and has also critically examined the entire material/information placed on the record by both the parties.
2. Based on the facts placed before the Commission, the following issues are framed:
 - 2.1 Maintainability & Jurisdiction.
 - 2.2 Inadequacies in Project.
 - 2.3 Recovery of expenditure incurred in curing inadequacies
3. The Commission examined the above issues as under:

Maintainability & Jurisdiction

 - 3.1 The 2016 Regulations empowers the Commission vide Regulation 8 to issue directions and orders as considered appropriate for implementation of these Regulations. It also empowers the Commission vide Regulation 9 to remove any difficulty which may arise in giving effect to the provisions of the Regulations as under:

"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."
 - 3.2 It is apparent from the bare perusal of Regulation 8 and 9 of 2016 Regulations, that the Commission has the jurisdiction to issue directions as well as remove difficulties for the implementation of the 2016 Regulations.
 - 3.3 Further, Regulation 16 of the Supply Code also provides a "removal of difficulty" clause:

“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.”

3.4 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 the 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.

3.5 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.”

3.6 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.

- 3.7 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:

"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/warrantee 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.”

- 3.8 The 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 as under:

“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.”

- 3.9 A bare perusal of the provisions as enumerated above would reflect that the Commission is empowered to issue appropriate orders/ directions to ensure compliance of the extant regulations.

- 3.10 The power to adjudicate the present issue also arises from a bare reading of Regulation 4.1 of 2016 Regulations referenced as under:

“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.”

- 3.11 Even otherwise, the 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.

- 3.12 Further, the 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 (“Order dated 20.02.2015”), 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, the Commission rightly exercising its jurisdiction has already adjudicated on the issue of inadequacy that extent as under:

“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.”

- 3.13 Thus, by way of the abovementioned order, the Commission has already settled the principle that it is the bounden obligation of the builders and developers to cure the inadequacy of electrical infrastructure in their projects. 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.
- 3.14 Thereafter again, the 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.

- 3.15 Hence, it is apparent that the Commission has time and again taken cognizance of the issue of builder inadequacy by rightly exercising its powers under the Act as well as the regulations in force.
- 3.16 Hence, the issue of jurisdiction as agitated by the Respondent has not merit. On the other hand, it is observed that despite such categoric findings of the Commission, the builders/developers like the present Respondent quite often fail to adhere to the Regulations as well as the Commission's directions passed in Order dated 20.02.2015. Due to this deliberate non-compliance on the part of the builders, the inadequacy in their Projects persist for years causing undue harassment to the consumers/residents in their Projects. This non-compliance clearly calls for an action within the ambit of Section 142 of the Electricity Act which empowers the Commission to penalize for contraventions of "any of its order and regulation".

"Section 142. (Punishment for non-compliance of directions by Appropriate Commission): In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

Inadequacy in Project

- 3.17 The commission observes that initially respondent-developer was requested to submit Bank Guarantee of Rs 85.32 Crs. on account of cost of inadequacy prevailing at that time in respondent developers' projects in 2013. Later on, a Committee of Nigam's officers was constituted in 2019 to reassess the cost of inadequacies due to revision in load norms in 2017 as per Sale Circular D-16/2017 and accordingly the benefit of reduction in load norms has been extended to the developers. M/s Sheetal International Pvt. Ltd. was to submit a BG of Rs.17.96 Cr. for overall inadequacies in its project. This is coherent with the findings of this Commission in its Order dated 20.02.2015 wherein it was held that electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if, during the course of development by the developer/agency, the norms of calculating ultimate load are revised. Relevant findings from the said order reads as under:

"Issue No. 2:

Whether the electrical layout plan and the electrical infrastructure approved for a colony of a developer/colonizer will require revision if, during the course of development by the developer/agency, the norms of calculating ultimate load are revised?

...

The Commission agrees with the contention of the Respondent No. 1 that the load norm primarily determines the load that would expectedly come up on the transmission and distribution system at any point of time according to which the minimum capacity of infrastructure to be created is determined in order to ensure 57

uninterrupted and quality power to the consumer. Accordingly, the load norms have been devised and are reviewed from time to time with increase in consumption pattern to ensure that the builder/developer whether private or the Government, installs adequate electrical infrastructure for the residents of the area to cater to their electricity needs and the usage pattern.

The Commission, thus, hold that the electrical layout plan and the electrical infrastructure approved for a colony can be revised if, during the course of development by the developer/agency the norms for calculating ultimate load of the colony are revised. The Commission, therefore, answers the issue no.2 in the affirmative.

- 3.18 As per details of inadequacies as per the extant load norms furnished by the Petitioner vide its pleadings, it is clear that, inadequacy of more than Rs. 11.96 Crores remains.
- 3.19 The contention of the Respondent that share cost of Rs. 1.477 crore has already been paid has not been substantiated through any document.
- 3.20 The contention of the Respondent regarding the cost sharing arrangement of ratio 75:25 between colonizer and Petitioner towards cost of inadequacy as stipulated in D-16/2017 also lacks merit. In this regard, the Commission notes that Sales Circular No. D 16/2017 – is not applicable to the Respondent considering it requires that the sectors in the Project must be floated before the year 2006 for such cost sharing to occur. However, the entire scheme/project of the Respondent is part of several licenses issued by DTCP from time to time. Some of the licenses from DTCP have been issued in the year 2008. Pertinently, as per the documents/ submissions placed on record by the parties, the first Electrification plan for the Respondent was approved in 1999 on 01.02.1999, whereas the revised Electrification plan was sanctioned in 19.03.2010. Therefore, the cost sharing arrangement as per D-16/2017 is inapplicable for Respondent's Project that has been developed in piecemeal.

Recovery of expenditure incurred in curing inadequacies

- 3.21 It is pertinent to mention that the order dated 20.02.2015 passed by the Commission has 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. The Commission, after a detailed analysis of the provisions of the Electricity Act, 2003 and the extant regulations has consequently settled a principle in various cases that developers are liable to cure the inadequacies and settle the cost with the distribution licensee.
- 3.22 In this regard it is imperative to recall that 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.

- 3.23 In supplemental to the above S. 43, the 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 below:

“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;”

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.

- 3.24 In terms of Section 46 of the Act, the 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.”

- 3.25 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.
- 3.26 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.
- 3.27 In view of the foregoing provisions of law, it is apparent that the developers are liable to cure the inadequacies and settle the cost with the distribution licensee in terms of the prevalent norms and the regulations. However, time and again the developers /colonizers shy away from their responsibilities for installation of adequate electrical infrastructure as per the norms on one pretext or other and try to seek the completion of their colonies from DTCP without discharging their responsibilities of creating/installing the electrical infrastructure completely as per load requirement of these colonies. This ultimately affects the consumers of these colonies who are being left in lurch because of the non-compliance by the Developers.
4. Having perused the details of inadequacies as furnished by the Petitioner vide its pleadings, it is clear that, inadequacy of more than Rs. 11.96 Crores remains in the Project developed by the Respondent and the Respondent is liable to cure the same in a time bound manner.
5. The issue of the area and cost of the land transferred and adjustment thereof is out of bounds of the Commission's jurisdiction as the same is nowhere concerned with Electricity Act and Regulations. Moreover, such issues also fall beyond the scope of the present petition. The respondents may approach appropriate authority (DHBVN) regarding the issue specific to piece of land.
6. 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 the Commission in PRO 55 of

2021, wherein the 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.

7. 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 failed to cure inadequacies, the petition is disposed off with following directions to the Respondents:
- a. The inadequacies (as established by the Petitioner in its pleadings) shall be cured by the Respondent within 6 months;
 - b. The monthly progress report of the work on curing of inadequacies will be submitted by the Respondent to the petitioner; and
 - c. Requite Bank Guarantee as per regulations shall be furnished by the Respondent to the Petitioner within 30 days.
 - d. In case the Builder fails to comply with the above-mentioned timeline, the Commission will be constrained to initiate proceedings under Section 142 read with Section 146 of the Electricity Act, 2003 against the defaulters and stringent action shall be taken for such wilful and repetitive non-compliance.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07/05/2024.

Date: 07/05/2024
Place: Panchkula

(Mukesh Garg)
Member

(Naresh Sardana)
Member

(Nand Lal Sharma)
Chairman