

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

HERC/Petition No. 21 of 2025

IA No. 12 of 2025

Date of Hearing	:	03.06.2025
Date of Order	:	04.07.2025

In the Matter of

Petition under Sections 86(1)(e) and (f) of the Electricity Act, 2003 read with Regulation 22 and 69-71 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, challenging the cancellation of final connectivity by Haryana Vidyut Prasaran Nigam Ltd. on arbitrary and illegal grounds and the wrongful insistence by Dakshin Haryana Bijli Vitran Nigam Ltd. seeking determination of captive status of the Petitioner's 50 MW Solar power project at 132/33 kV HVPNL Adampur Substation, Hisar for purposes of connectivity.

Petitioner

1. M/s. AVAADA Green HN Project Pvt. Ltd.

Respondents

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

Present on behalf of the Petitioner

1. Mr. Sakya Chaudhari, Advocate
2. Mr. Chandan Kumar, Advocate

Present on behalf of the Respondents

1. Mr. Raheel Kohli, Advocate
2. Mr. Vijay, AE, HVPNL

Quorum

**Shri Nand Lal Sharma
Shri Mukesh Garg**

**Chairman
Member**

ORDER

Brief background of the case

1. The present petition has been filed by AVAADA Green HN Project Pvt. Ltd. with Haryana Vidyut Prasaran Nigam Ltd (HVPNL) and Dakshin Haryana Bijli Vitran Nigam Ltd (DHBVNL) as the respondents, seeking to quash the letters dated 06.03.2024, 05.03.2025 and 27.11.2024 vide which in-principle feasibility and final connectivity granted to the petitioner by the respondent No.1, has been cancelled. The petitioner has further prayed to hold that the determination of captive status of a generating plant is not relevant for the purpose of grant of connectivity to the Petitioner's Project.
2. The petitioner has submitted as under:-
 - 2.1 That the petitioner has approached this Commission under Sections 86(1)(e) and (f) of the Electricity Act, 2003 read with Regulation 22 and 69-71 of the Haryana

Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, challenging the cancellation of final connectivity by HVPNL (R-1) on arbitrary and illegal grounds and the wrongful insistence by DHBVNL (R-2) seeking determination of captive status of the Petitioner's 50 MW Solar power project at 132/33 kV HVPNL Adampur Substation, Hisar for purposes of connectivity.

- 2.2 That the Petitioner, AVAADA Green HN Project Pvt. Ltd., is engaged in the generation of solar power. AVAADA Energy, through its subsidiary, i.e. the Petitioner/ AVAADA Green HN Project Pvt. Ltd., has undertaken establishment of a 50 MW Solar power project ("Project") located in Village: Adampur, Taluka: Hisar, District: Hisar and connected to 132/33 kV HVPNL Adampur Substation, Hisar.
- 2.3 That the Respondent No. 1, Haryana Vidyut Prasaran Nigam Ltd. ("HVPNL" / "Respondent No. 1"), is a transmission company registered under the Companies Act, 1956.
- 2.4 That the Respondent No. 2, Dakshin Haryana Bijli Vitran Nigam Ltd. ("DHBVNL" / "Respondent No. 2"), is a distribution company responsible for the distribution and retail supply of electricity in the south zone of Haryana comprising Hisar, Fatehabad, Bhiwani, Sirsa, Faridabad, Gurugram-I, Gurugram-II, Palwal, Rewari, Jind, and Narnaul circles.
- 2.5 That for the purposes of setting up its Project, on 23.08.2018, the Petitioner submitted its application for grant of long-term open access for its project for connectivity at 132 kV Substation Adampur to Respondent No. 1. The power was to be sold through open access to their party, captive user or group captive user.
- 2.6 That the petitioner also submitted a letter of undertaking dated 31.01.2019 as an interim measure for the grant of connectivity towards captive use.
- 2.7 That the connectivity application was processed by Respondent No. 1, and on 06.05.2019, Respondent No. 1 granted the in-principle feasibility for connectivity vide its Office Memo No. Ch-10/ISB-535/Vol.-III.
- 2.8 That since the Project was not being granted final connectivity, on 12.02.2021, the Petitioner requested Respondent No. 1 for issuance of final connectivity for the 50 MW Solar power project to be connected at 132/33 kV HVPNL Adampur Substation, Hisar. The Petitioner also expressed its willingness to sell power from the above project with 10% battery storage solution to Haryana Power Purchase Centre ("HPPC") / state distribution companies ("DISCOMs") under a cost-plus tariff mechanism to be determined by this Hon'ble Commission.
- 2.9 That on 16.09.2021, Respondent No. 1, vide its letter bearing Memo No. Ch-106/ISB-624, granted final connectivity approval to the Petitioner's 50 MW Solar power plant at 132 kV Substation Adampur at 132 kV voltage level. As a condition for

such grant, the consent to the Petitioner's proposal to sell power to the Discoms was to be confirmed by Respondent No.2.

- 2.10 That on 23.08.2022, the Chief Engineer of Haryana Power Purchase committee which is responsible for procurement of power for the state discoms, issued a letter bearing Memo No. Ch-19/HPPC/SE/C&R-I/LTP-III/Avaada-Adampur rejecting the Petitioner's offer for the sale of power. Consequently, the Petitioner, vide its letter bearing Reference No. AEPL/HPPC-Haryana/Solar-50 MW/23-24/02 dated 13.02.2024 requested Respondent No. 1 to consider its connectivity application under the captive mechanism.
- 2.11 That Respondent No. 1, vide letter dated 06.03.2024 bearing Memo No. Ch-149/ISB-624, unilaterally cancelled the Petitioner's final connectivity for its 50 MW solar power project, at 132 kV voltage level to the 132 kV Substation at Adampur. The stated rationale for such cancellation was the alleged non-compliance with the terms and conditions of final connectivity, namely, the sale of power from the Project to be ascertained by the HPPC/ DISCOMs. Nonetheless, Respondent No.1 indicated that the in-principle feasibility dated 06.05.2019 would continue to be in force. Furthermore, Respondent No. 1 directed the Petitioner to submit the requisite documents establishing the captive status of the project to the Chief Engineer (Commercial), DHBVNL/ Respondent No. 1, Hisar, under the procedure dated 01.04.2021 failing which its original application and in-principle feasibility approval would be subject to rejection or cancellation.
- 2.12 That DHBVNL/ Respondent No.2 has issued multiple letters/ communications to the Petitioner on 22.03.2024, 01.04.2024, and 14.06.2024, requiring submission of documents/ information related to the verification of captive status.
- 2.13 That Respondent No. 2, vide its letter dated 22.11.2024, informed the Petitioner that it has scheduled a meeting under the chairmanship of CE/Commercial, DHBVNL for checking and ascertaining the captive status of the Petitioner's application in respect of its 50 MW solar power plant to be setup in 132 kV Substation Adampur at 132 kV voltage level.
- 2.14 That the Petitioner, vide its letter dated 26.11.2024, responded to the aforementioned letter reiterating its position that the captive status of its 50 MW Solar power project is to be verified only at the end of the financial year or at the commissioning stage, in terms of the Act and the Electricity Rules, 2005 ("the Rules"). However, the final connectivity has not been restituted and the Respondent No.2 has repeatedly been seeking the captive status of the Project even at the connectivity stage.
- 2.15 That on 27.11.2024, HVPNL/ Respondent No.1 issued a letter bearing Memo No. Ch-166/ISB-624, stating that despite repeated requests and communications, the

Petitioner failed to submit the requisite documents for verification of its captive status. In this regard, a final notice of seven (7) days was issued, cautioning that non-submission of the necessary documents within the stipulated timeframe would result in cancellation without any further notice.

- 2.16 That on 03.12.2024, the Petitioner wrote a letter to Respondent No. 2 reiterating that the determination of captive status at this stage was contrary to the Electricity Rules.
- 2.17 That on 05.12.2024, during a meeting between Respondent No. 2 and the Petitioner, it was concluded that since both Respondent No. 2 and the Petitioner have contradictory views on enabling regulations for captive status determination, the Petitioner shall approach this Hon'ble Commission to seek clarification on the stages for the ascertainment of captive status.
- 2.18 That on 05.03.2025, the Respondent No.1 has issued a letter whereby the application for connectivity by the Petitioner's application for connectivity and the in-principle feasibility has been intimated as cancelled.
- 2.19 That the cancellation of the final connectivity by the Respondent No.1 and the repeated insistence on captive status by the Respondents for connectivity of the Project is blatantly illegal and contrary to the express provisions of the Electricity Act / Electricity Rules and against the settled principles of law.
- 2.20 That Regulation 3(6) of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012 defines connectivity as "*the state of getting connected to the intra-state transmission and/ or distribution system*". Further, Regulation 5 provides for eligibility for connectivity and converses "*A consumer or a person seeking connectivity for a load of 10 MW and above or a generating station or a captive generating plant having installed capacity of 10 MW and above shall be eligible to obtain connectivity at 33 kV or above. A consumer or a person seeking connectivity for a load of less than 10 MW or a generating station or a captive generating plant having installed capacity of less than 10 MW shall be eligible to obtain connectivity at 33 kV or below*".
- 2.21 That Regulation 6 provides the procedure for grant of connectivity. There is no provision of cancellation of connectivity once the same has been provided. While sub-clause (b) of Regulation 6(5) empowers the nodal agency to reject the application, the same has to be done within 45 days from the receipt of the application and on the grounds that either the application was not as per the regulations or that grant of connectivity is not technically feasible. Further, before rejecting the application and opportunity of hearing has to be given to the application. The relevant extracts of Regulation 6 read as under:

“6. Procedure for grant of connectivity. - (1) Nodal agency for grant of connectivity shall be the STU and application for grant of connectivity shall be submitted to the nodal agency in the form and manner prescribed in the detailed procedure.

....

(5) The nodal agency, within forty five (45) days, from the receipt of an application complete in all respects and after considering all suggestions and comments received from other agencies involved in the intra-State transmission system and or distribution system and State Load Despatch Centre, shall:

accept the application with such modification or such conditions as may be stipulated by other agencies which are not inconsistent with these regulations,

reject the application, if such application is not in accordance with the provisions of these regulations or grant of connectivity is not technically feasible, for reasons to be recorded in writing. However, before rejecting an application, opportunity of hearing shall be given to the applicant. In case the applicant does not avail the opportunity within the specified time period, the application shall be rejected forthwith.”

It is pertinent to mention that there is no provision under the Regulations which provides for cancellation of connectivity.

- 2.22 That the relevant provisions of the Act and the Rules, which pertain to the definitions of ‘Captive Generating Plant,’ ‘Generating Company,’ ‘Generating Station,’ captive generation, and requirements for a Captive Generating Plant, are extracted below for ease of reference:

Relevant Provisions of the Electricity Act, 2003:

“Section 2(8): “Captive generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

Section 2(28): “generating company” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;

Section 2 (30): “Generating station” or “station” means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by waterpower, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station.

Section 9: Captive Generation-

(1) *Notwithstanding anything contained in this Act, a person may construct, maintain or operate captive generating plant and dedicated transmission lines:*

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company:

Provided further that no license shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made there under and to any consumer subject to the regulations made under sub-section (2) of Section 42.

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

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

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

Section 86. (Functions of State Commission): --- (1) *The State Commission shall discharge the following functions, namely: -*

...

(e) *promote co-generation and 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 licensee;”*

Relevant Provisions of the Electricity Rules, 2005:

“3. Requirements of Captive Generating Plant.- (1) *No power plant shall qualify as a ‘captive generating plant’ under section 9 read with clause (8) of section 2 of the Act unless-*

(a) *in case of a power plant-*

(i) *not less than twenty-six per cent of the ownership is held by the captive user(s); and*

(ii) not less than fifty-one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the cooperative society;

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty-six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty-one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent.

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (ies) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including –

Explanation:-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) The equity shares to be held by the captive user(s) in the generating station shall not be less than twenty-six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration.-In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty-six percent proportionate to Unit A of 50 MW) and not less than fifty-one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in subclauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

(3) The captive status of such generating plants, where captive generating plant and its captive user(s) are located in more than one state, shall be verified by the

Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government.

Explanation: - (1) For the purpose of this rule. –

(a) *“Annual Basis” shall be determined based on a financial year;*

(b) *“captive user” shall mean the end user of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly:*

Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System: Provided further that the consumption by a subsidiary company as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also be admissible as captive consumption by the captive user.”;

(c) *“Ownership” in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases, ownership shall mean proprietary interest and control over the generating station or power plant;*

(d) *“Special Purpose Vehicle” shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.”*

(Emphasis Supplied)

- 2.23 That the Rules explicitly provides that the captive status of a generating plant shall be determined on an annual basis. Section 9 of the Act grants the right to establish and operate a Captive Generating Plant, subject to compliance with the conditions prescribed under the Rules.
- 2.24 That Rule 3(1)(a) of the Rules mandates that a power plant shall qualify as a Captive Generating Plant only if not less than 26% of its ownership is held by the captive user(s) and not less than 51% of the electricity generated is consumed for captive use. Moreover, Rule 3(3) stipulates that the captive status of generating plants, where the Captive Generating Plant and its captive users are located in more than one state, shall be verified by the Central Electricity Authority (“CEA”) as per the procedure issued by the CEA with the approval of the Central Government. In this regard, the Rules provide an explicit definition of “Annual Basis,” clarifying that compliance with captive consumption requirements shall be assessed based on a financial year.
- 2.25 That the determination of captive status is statutorily required to be conducted on an annual basis, aligned with the financial year, as explicitly provided under the Rules.

Any deviation from this established framework is contrary to the legislative intent and settled principles governing captive power generation. Any regulations made by this Hon'ble Commission has to be necessarily consistent with the Act and the rules framed thereunder. It is most respectfully submitted that any procedure for connectivity issued by the Respondents or HAREDA cannot override the specific provisions of the Act and the Electricity Rules.

- 2.26 That Hon'ble Appellate Tribunal for Electricity ("APTEL") vide its Order dated 20.09.2021 passed in *Greenyana Solar Private Limited v. Haryana Electricity Regulatory Commission & Ors.*, Appeal No. 164 of 2020, categorically held:

"The criteria of 'captive status' is exclusively and exhaustively covered by the Electricity Act, 2003 and Rule 3 of the Electricity Rules, 2005 and no policy or guidelines can add or relax such conditions in relation to captive status."

- 2.27 That the draft procedure for verification of captive status of generating plants, issued by the CEA on 01.11.2023, stipulates specific requirements to be met by Captive Generating Plants and their captive users. Paragraph 6.5 of the said procedure mandates that, at all times during a given year, not less than 26% of the ownership with voting rights in the generating plant/ station or the units identified for captive use, as the case may be, shall be held by the Captive Users, who must also collectively consume not less than 51% of the electricity generated on an annual basis. The relevant extract is reproduced below:

"The CGP and its Captive users shall ensure that at any point of time in a year, not less than 26% of the ownership with voting rights of the generating plant/station or the units identified for captive use, as the case may be, is held by the Captive Users and they consume not less than 51% of the electricity generated on an annual basis."

- 2.28 That the connectivity of a generating plant is related to the physical connection of the plant to the grid. It has nothing to do with the nature of supply to be made from the generating plant. Supply of electricity will commence only on commissioning of the plant. It is at that stage that the captive status of the plant in relation to ownership and consumption that would be relevant. Furthermore, the captive status is required to be determined by the concerned authority on an annual basis. Therefore, the ownership of the plant is not relevant at the stage of connectivity. Any insistence by the Respondents for the satisfaction of captive status for the grant of connectivity is squarely contrary to and in violation of the provisions of the Act and the Rules.

- 2.29 That even if the Project does not have a captive shareholder and is identified as a generating station simpliciter, there is no basis in law to cancel the connectivity already granted to the Project. The non-confirmation by the Discom to buy power from the Petitioner cannot be a ground to cancel connectivity as the Petitioner as a

generator, is entitled to connectivity to the grid to be able to supply to any other person of its choice.

- 2.30 That the Respondents are bound by law and the applicable regulatory framework governing the sector. The Hon'ble Supreme Court, in *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111, held:

"It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under a statute are only creatures of statute and must act within the four corners thereof."

- 2.31 That the following prayers have been made:-

- a. Admit the present Petition.
- b. Declare that the purported cancellation of Petitioner's application, in-principle feasibility and final connectivity granted to the Petitioner by the Respondent No.1 vide letters dated 06.03.2024 and 05.03.2025 and purported cancellation of in-principle feasibility vide letter dated 27.11.2024 to be bad in law being in violation of the Electricity Act, 2003 and the Electricity Rules, 2005 and accordingly quash the letters dated 06.03.2024, 05.03.2025 and 27.11.2024;
- c. Direct the Respondents to restore the Petitioner's application for connectivity, in-principle feasibility and final connectivity granted to the Petitioner forthwith;
- d. Declare that the determination of captive status of a generating plant is not relevant for the purpose of grant of connectivity to the Petitioner's Project and restrain the Respondents from raising such requisitions for the purpose of connectivity of the Petitioner's Project;
- e. Direct the Respondents not to take any coercive steps on account of non-furnishing of details of captive status of the Petitioner's generating plant at the stage of grant of connectivity;
- f. Pass appropriate orders directing the Respondents to reinstate the final connectivity of the Petitioner's Project.
- g. Direct the Respondents to refrain from any further action prejudicing the Petitioner's rights pending the final determination of captive status.
- h. Condone any inadvertent omissions / errors / shortcomings and permit the Petitioner to add / change / modify / alter this filing and make further submissions as may be required at a future date.
- i. Pass any other order(s)/ relief(s) that this Hon'ble Commission may deem fit.

Proceedings of the Case

3. The case was initially heard on 07.05.2025. The Commission, vide its Interim Order dated 08.05.2025, allowed the respondents to file their reply and the petitioner was allowed to file its rejoinder on the same. An interim direction to the respondents was also issued to maintain the status quo in respect of the sub-station from which the project of the petitioner was granted connectivity, till the disposal of the present petition
4. Reply filed by Respondent (HVPNL):-
- In response to the interim order of the Commission dated 08.05.2025, HVPNL submitted its reply dated 19.05.2025, submitting as under:-
- 4.1 That the Respondent No.1 craves leave to set out the chronology of events, as the facts brought before this Hon'ble Commission by the Petitioner are grossly inadequate and misleading:-

Date	Events
23.08.2018	The Petitioner submitted an application to the Respondent No.1 for grant of long-term open access (" LTOA Application ") for its 50 MW solar power project located at Adampur, Hisar, Haryana (" Project "). Vide this application, the Petitioner sought connectivity to the Adampur Grid Substation at 132 kV level. Pertinently, the LTOA Application did not specify whether the Project would be a captive power plant or not. Moreover, the beneficiaries and their allocation of power was also not provided in this application.
31.01.2019	The Petitioner, after submission of its LTOA Application, issued letter of even date to the Respondent No.1, requesting Respondent No.1 to consider the LTOA Application of the Petitioner as captive power, and accordingly grant approval. However, this undertaking was given as an 'interim measure'.
06.05.2019	Respondent No.1 granted its in-principle feasibility (" In-Principle Feasibility ") to the Petitioner for its Project. The In-principle Feasibility set out several terms and conditions to be complied with by the Petitioner, amongst which the following are noteworthy in the present case: <ul style="list-style-type: none">• That the Petitioner shall adhere to the clarifications given by HAREDA vide letter dated 18.04.2019 (emailed to Petitioner vide email dated 23.04.2019 by the Respondent No.1), with regard to ascertaining captive status of the Project while providing feasibility/ connectivity to solar projects.• That the Petitioner will fulfil all the terms and conditions of the Electricity Rules, 2005 ("Electricity Rules") and Electricity Act, 2003 ("Electricity Act") as required for captive generation plants, <u>along with submission of required documents before final connectivity.</u>• The final connectivity would be issued after fulfilment of terms and conditions, and submission of requisite documents as stipulated under HVPNL guidelines, and registration of the Project from HAREDA.
15.07.2019	The Project was registered from HAREDA with certain conditions (" HAREDA Registration "). The said registration clearly stipulated that the <u>status of captive generation of the Project shall be ascertained by the power utilities at the time of financial closure of the Project.</u> It is also pertinent to highlight that the HAREDA Registration records that the Project was to be developed as a captive power plant.
15.09.2020	In spite of registering the Project as a captive power plant, the Petitioner failed to submit the requisite documents to ascertain the captive status of the

	<p>Project, even after issuance of multiple reminders by the Respondents. Thereafter, on 15.09.2020, the Petitioner issued a letter to the Respondent No.1, stating that it now intended to sell the power from the Project to HPPC/ Haryana DISCOMS, at a cost-plus tariff to be determined by this Hon'ble Commission under Section 62 of the Electricity Act.</p> <p>It is thus clear that the Petitioner failed to comply with the terms and conditions set out in the In-Principle Feasibility and the HAREDA Registration qua submission of documents for ascertaining captive status, and in order to avoid liability for the same the Petitioner decided to sell power from the Project to HPPC/ Haryana DISCOMS.</p>
12.02.2021	Petitioner issued a letter to the Respondent No.1 reiterating its interest in sale of power from the project to HPPC/ Haryana DISCOMS, and requesting for issuance of final connectivity on this basis.
01.04.2021	Respondent No.1 issued a 'Procedure for dealing pending solar applications seeking grid connectivity of Solar Power Plants/ Parks from HVPNL / DISCOMs Substations' (" HVPNL Procedure "), which was duly approved by this Hon'ble Commission on 15.04.2021.
16.09.2021	Respondent No.1 granted final connectivity to the Petitioner (" Final Connectivity "), <u>on the basis of the submission made by the Petitioner regarding sale of power to HPPC/ Haryana DISCOMS.</u>
23.08.2022	HPPC issued an email to the Petitioner, stating that the offer of the Petitioner for sale of power from the project with ceiling tariff of Rs.3.89 per unit was considered by the SCPP, Govt. of Haryana, but upon deliberations the said offer was rejected.
13.02.2024	That after a lapse of more than two years since the rejection of offer of sale by HPPC, the Petitioner issued a letter to the Respondent No.1, stating that since the capex has increased substantially, the tariff provided for sale of power to DISCOMS is not attracting the minimum return expectations. Therefore, the Petitioner once again changed the status of the Project, and requested the Respondent No.1 to consider and issue necessary directions for the Project to be under captive mechanism.
06.03.2024	<p>Since the Petitioner failed to fulfill the terms and conditions set out in the Final Connectivity qua sale of power to DISCOMS, the Respondent No.1, vide letter of even date, cancelled the Final Connectivity granted to the Petitioner, as per the HERC Procedure. However, it was clarified that the In-Principle Feasibility granted to the Petitioner would remain in force.</p> <p>Moreover, in spite of the failure of the Petitioner to comply with the terms and conditions as stipulated, and the constant changes being made to the status of the Project, the Respondent No.1 once again considered the request of the Petitioner to allow the Project under captive mechanism, and asked the Petitioner to submit the requisite documents providing the captive status of the Project to DHBVN. It was further specified that failure to submit the said documents would lead to rejection/ cancellation of the LTOA Application/ In-Principle Feasibility as per the HVPNL Procedure.</p>
22.03.2024 01.04.2024 14.06.2024	<p>DHBVN issued a letter to the Petitioner seeking requisite documents for ascertaining the captive status of the Project.</p> <p>Since the Petitioner did not provide the said documents, DHBVN issued reminder letters dated 01.04.2024 and 14.06.2024, seeking documents from the Petitioner.</p>
22.11.2024	<p>That even after a lapse of more than 9 months since the issuance of request dated 13.02.2024 by the Petitioner for its Project to be considered under captive mechanism, the Petitioner had failed to submit the requisite documents.</p> <p>The Respondent No.1 thus issued letter dated 22.11.2024 to the Petitioner, stating that a meeting was to be held on 26.11.2024 regarding submission of requisite documents for determination of captive status of the Project.</p>
26.11.2024	In response thereto, the Petitioner issued letter of even date, stating that it would be unable to attend the meeting scheduled for 26.11.2024 'due to unavoidable prior commitments'. It was further stated in the said letter that the Petitioner was not obligated to provide documents for determination of

	captive status of the Project at this stage, as this was against the Electricity Rules. The Petitioner contended that as per the Electricity Act and the Electricity Rules, captive status is to be demonstrated and reviewed at the end of the financial year and at the commissioning stage. The Petitioner only provided a vague assurance to provide all necessary documentation, and failed to adhere to the extant regulations and provisions which clearly stipulate that documents setting out captive status of a project are to be provided at the time of provision of final connectivity.
27.11.2024	Because of continuous and consistent violations of the extant guidelines and procedures by the Petitioner, the Respondent No.1 was constrained to issue a final notice to the Petitioner, stating that even after a lapse of more than 8 months, the Petitioner had failed to submit the requisite documents for determining the captive status of the Project. In view of the same, the Petitioner was given final notice for supplying the documents qua captive status of the Project within 7 days, failing which the LTOA Application and In-Principle Feasibility shall be cancelled without further notice as per applicable regulations/ procedure.
03.12.2024	The Petitioner issued letter of even date to the Respondent No.1, reiterating that the request for documents/ determination of captive status is not as per Electricity Act and Electricity Rules. The Petitioner also sought for an extension of time of 3 months to comply with the requirement as set out in the Notice, and for the cancellation process to be temporarily halted.
05.03.2025	Even after seeking an extension of time of 3 months, the Petitioner failed to comply with the requirements set out in the Notice. Thus, vide letter dated 05.03.2025, the Respondent No.1 cancelled the LTOA Application and In-Principle Feasibility, as per applicable guidelines/ procedure.

- 4.2 That the Petitioner has sought to develop the Project in the State of Haryana, thus governed by the Haryana Solar Policy, 2016 (and subsequent amendments) ("**Solar Policy**"). Therefore, the Petitioner's application would necessarily be tested against and processed according to the Solar Policy, and necessary guidelines/ clarifications issued in this regard. The Solar Policy and the HAREDA Guidelines dated 18.03.2019 along with clarification dated 18.04.2019 (collectively "**HAREDA Guidelines**") clearly stipulate restrictions in the shareholding pattern of the project developer, from the date of application till one year of execution of the project. The said stipulations have been put into place with the significant objective of preventing the project developers from profiteering by availing the benefits provided and then exiting the project before or after taking all the permissions including execution of connectivity agreement. The restrictions also aim to prevent trading of permissions/ sanctions and benefits that applicants may obtain under the Solar Policy. The Petitioner's submission that ownership of plant is not relevant at the stage of connectivity is thus illogical and incorrect.
- 4.3 That the Petitioner has sought registration under HAREDA and made an application to this effect, clearly stating that the Project is to be developed as a captive power plant, the Petitioner is thus bound to comply with the terms and conditions set out in the HAREDA Registration. In the present facts and circumstances, even though the Petitioner has availed all the benefits under the Solar Policy, it is claiming that the

procedures/ conditions set out under the said policies/ guidelines would not apply to the Petitioner. This is against settled provisions of law. It is trite law that exemptions/ benefits provided under a policy/ notification cannot be availed without fulfilling the terms and conditions/ qualifications as set out in the said policy/ notification.

- 4.4 That the terms and conditions regarding providing documents with regard to the captive status of the Project have been clearly set out from the very outset i.e., in the Solar Policy, In-Principle Feasibility and the HAREDA Registration. The Petitioner never objected to these terms and conditions at the time of applying for setting up the Project under the Solar Policy, or when accepting the In-Principle Feasibility and HAREDA Registration. The Petitioner is now thus estopped from contending that it is not required to comply with the terms and conditions of the Solar Policy and HAREDA Guidelines.
- 4.5 That it is also the case of the Petitioner that the Solar Policy and HAREDA Guidelines are contrary to the provisions of the Electricity Act and Electricity Rules. The said averment is denied as being baseless. It is submitted that the provisions of the Solar Policy and HAREDA Guidelines have been upheld by this Hon'ble Commission, and also been reaffirmed in concurrent findings returned by the Hon'ble Appellate Tribunal for Electricity.
- 4.6 That the cancellation of the Final connectivity granted to the Petitioner by the Respondent No.1 has been carried as per law. The Respondent No.1, in its letter dated 06.03.2024, provided clear reasons for cancellation of the Final Connectivity. The Final Connectivity was accorded to the Petitioner on the condition of sale of power from the Project to the DISCOMS. However, after an inordinate period of time, the Petitioner had once again requested Respondent No.1 to consider the Project under captive mechanism. Accordingly, following the HVPNL Procedure (duly approved by this Hon'ble Commission) Respondent No.1 cancelled the final connectivity. Further the Respondent No.1 had, while cancelling the Final Approval granted to the Petitioner, also clarified that the In-Principle Feasibility will remain in force. The Petitioner was also granted yet another opportunity to provide the relevant documents for ascertaining captive status of the Project, as stipulated under the HAREDA Guidelines and Solar Policy, but to no avail. The Petitioner has consistently failed to provide any documents with regard to the captive status of the Project.
- 4.7 That the Petitioner's averment that captive status is to be determined on an annual basis is denied as being incorrect and based on an erroneous interpretation of the Electricity Rules and the Electricity Act. It is settled law, as seen in a catena of judgments, that the minimum threshold of 26% ownership, as stipulated under Rule

3(i) of the Electricity Rules, **is to be met and satisfied throughout the year, and not at the end of the financial year alone**. As such, Respondent No.1 seeking determination of captive status of the Petitioner is completely legal and valid. Even otherwise, the Solar Policy prescribes a lock-in period on the shareholding pattern of the project developer for a period of one-year post completion of the project. Thus, if a project developer who has applied for permission to set up his project under captive mechanism does not identify captive users and structure its shareholding at the very outset, the said project would not qualify as being a captive project as per Rule 3 of the Electricity Rules. In such a scenario, the entire process of granting benefits and permissions and connectivity would be futile.

- 4.8 That the Petitioner has not brought the entire LTOA Application on record, because in response to Point No.8.XIII of the application which refers to whether the project is captive power plant or not, the Petitioner answered as 'to be finalised'. Therefore, at the time of applying for LTOA on 23.08.2018, the Petitioner had not yet finalized whether the Project would be under captive mechanism or not. It was only on 31.01.2019 that the Petitioner requested Respondent No.1 to consider the LTOA Application of the Petitioner as captive power, and accordingly grant approval. However, this undertaking was given as an 'interim measure'. **The Petitioner thus took advantage of the Solar Policy and gained seniority in the list of applicants for grant of LTOA without there being any captive users**. Thereafter, the In-Principle Feasibility was granted on 06.05.2019, which clearly stated that the Petitioner shall adhere to the clarifications given by HAREDA vide letter dated 18.04.2019 (emailed to Petitioner vide email dated 23.04.2019 by the Respondent No.1), with regard to ascertaining captive status of the Project while providing feasibility/ connectivity to solar projects. The Petitioner was thus well aware at this stage that as per HAREDA Guidelines, the Petitioner would have to provide details regarding captive status of the Project at the time of grant of connectivity itself.
- 4.9 That the Petitioner is concealing material facts from this Hon'ble Commission, with a view to misrepresent the facts and circumstances of the present dispute. The Petitioner is attempting to portray that the Respondent No.1 delayed in granting final connectivity to the Petitioner. The said averment is denied as being completely false. Subsequent to the Petitioner giving an undertaking for setting up the Project as captive plant, the Respondents continuously sought the requisite documents from the Petitioner, with regard to ascertaining captive status of the Project. However, the Petitioner itself delayed the process of grant of final connectivity by failing to submit the requisite documents. Thereafter, vide letters dated 15.09.2020 and 12.02.2021, the Petitioner once again requested for change in the status of the

Project, and expressed its willingness to sell power from the Project to HPPC/ DISCOMS. On the basis of this request, the Respondent No.1 proceeded to grant Final Connectivity to the Petitioner on 16.09.2021. However, the Petitioner was unable to provide a competitive tariff to HPPC, as a result of which vide letter dated 23.08.2022, HPPC rejected the offer of the Petitioner to procure power at tariff of Rs.3.89 per unit.

- 4.10 That the Petitioner once again took a back seat for a period of 2 years since the rejection of offer of sale by HPPC, and on 13.02.2024, once again requested Respondent No.1 to consider the Project under captive mechanism. It is evident from the afore stated facts that the Petitioner was not at all serious about developing the Project, and was merely biding time, while squatting on the scarce capacity available at the Adampur Substation. This *mala fide* conduct of the Petitioner was also detrimental to other solar power developers, who were possibly being denied connectivity on account of the squatting of capacity by the Petitioner.
- 4.11 That reliance on Regulation 6(5) of the HERC (Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations 2012 ("**HERC Connectivity Regulations**") is misplaced in as much as the said regulation provides for cancellation of application of grant of connectivity, before it has been accorded. In the present case, the Final Connectivity has been cancelled since the Petitioner failed to comply with the terms and conditions set out therein. The cancellation of Final Connectivity and In-Principle Feasibility has been carried out in terms of the HVPNL Procedure and HERC Procedure.
5. Rejoinder filed by the petitioner:-
The petitioner filed its rejoinder dated 02.06.2025 to the reply filed by the respondent (HVPNL), submitting as under:-
- 5.1 That the assertion made in the reply that the Petitioner's Long-Term Open Access ("LTOA") application dated 23.08.2018 did not indicate whether the Project was proposed to be a captive power plant is factually incorrect and misleading. The LTOA application dated 23.08.2018, expressly stated that the Project was intended to supply power to Third Party / Captive / Group Captive Consumers. In any event, the Petitioner, vide its letter dated 31.01.2019, requested that the application be considered under the captive mechanism.
- 5.2 That HVPNL's reliance on the Petitioner's letter dated 15.09.2020 as a voluntary change in the Project's status is equally misplaced. The said communication was issued pursuant to deliberations in a Coordination committee meeting convened to

break an impasse involving several project developers. Given the huge investment undertaken by the Petitioner in the Project, it was mooted in the meeting to explore sale of power generated from the Project to Haryana Power Purchase Centre ("HPPC") / Haryana Discoms. Therefore, the proposal to supply power to HPPC / Haryana Discoms was a good-faith effort by the Petitioner to support the State's energy procurement and safeguard its investment. However, the subsequent rejection of the proposal by HPPC, without assigning any reasons, compelled the Petitioner to revert to the original captive model.

- 5.3 That the reliance placed by HVPNL on the HVPNL Procedure dated 01.04.2021 to justify cancellation of Final Connectivity is wholly misconceived. Clause 1.1 of the said Procedure expressly states that it is framed in accordance with the HERC Connectivity Regulations. Regulation 6(5) of the HERC Connectivity Regulations allows the nodal agency to reject a connectivity application only within 45 days of its receipt and only on limited grounds. There is no enabling provision either in the HERC Connectivity Regulations or in the HVPNL Procedure conferring upon HVPNL the authority to cancel an already granted connectivity, much less unilaterally and without affording an opportunity of hearing. Connectivity is a substantial right of the generator that cannot be cancelled without following a due process.
- 5.4 That HVPNL has erroneously submitted that the Petitioner's Project is governed by the Haryana Solar Policy, 2016 ("Solar Policy"). Such contention is denied on facts. The Petitioner had not applied under the Solar Policy. The said assertion is expressly contradicted by HVPNL's own In-Principle Feasibility dated 06.05.2019 and Final Connectivity dated 16.09.2021, which states that no waiver / concession under Solar Policy shall be applicable to the Project. Even HVPNL had proceeded on the basis that waivers and benefits available under the Solar Policy is not applicable to the Petitioner. In this background, HVPNL cannot seek to rely upon the provisions of Solar Policy to justify cancellation of connectivity or to impose additional conditions on the Petitioner.
- 5.5 That the Respondents' repeated insistence on documentary proof of captive status at the connectivity stage is contrary to the express provisions of Rule 3 of the Electricity Rules, which mandates that captive status is to be determined "on an annual basis", i.e., with reference to the financial year. It is submitted that such determination can only occur at the end of the financial year, once the relevant power consumption and shareholding criteria is computed to assess whether more than 51% of the power generated has been consumed for captive use. This computation, by its very nature, presupposes actual power flow, which in turn is

contingent upon generation, an activity that cannot commence unless connectivity has first been granted. Accordingly, the requirement to ascertain captive status arises only upon the commencement of power supply from the generating plant, and not at the preliminary stage of connectivity. Para 9.4 of the CEA's "*Procedure for Verification of Captive Status of such generating plant, where captive generating plant and its captive user(s) are located in more than one state*", issued in January 2025 ("CEA Procedure"), further clarifies that in the case of new projects, the Commercial Operation Date ("COD") shall be treated as the start date of the financial year for determining captive status. It is submitted that any insistence on prior determination is without legal basis and contrary to the express provisions of law.

- 5.6 That regarding lock-in period restriction under Solar Policy, it is submitted that since the Petitioner has not availed any benefit / concession / waiver under the Solar Policy, the restrictions under the Solar Policy cannot be imposed upon the Petitioner. In this regard, the Petitioner seeks to refer to and rely upon the contents of the captioned Petition and preceding paragraphs of this Rejoinder, which are not being repeated herein for the sake of brevity.

6. Additional affidavit filed by the Respondent No. 1:-

The respondent no. 1 filed its additional affidavit dated 23.06.2025, pursuant to the hearing held on 10.06.2025, submitting as under:-

- 6.1 That during the course of hearing, the Petitioner's had primarily contended that *It was not required to demonstrate its captive status at the stage of connectivity, and the same was required to be demonstrated once the plant was commissioned. Thus, HVPNL's action regarding cancellation of the connectivity, (guided by Petitioner's inability to demonstrate captive status of the solar power plant) is bad in law.* In support of his contention, the Petitioner's counsel placed reliance on the following:-

- A. Petitioner had not applied under the Haryana Solar Policy, 2016. In addition, reliance was placed on clause (v) of In-principle Feasibility dated 06.05.2019 and clause (vi) of Final connectivity dated 16.09.2021, in alleging that no waiver/concession under the Solar Policy shall be applicable to the Project. Pertinently, the said submission qua non-applicability of the Solar Policy was made was made to evade the decision of this Hon'ble Commission in Case No. HERC/PRO – 23 of 2020 tiled M/s Greenyana Solar Private Limited Vs. Haryana Vidyut Prasaran Nigam Limited and Ors. ("Greenyana Judgement").

- B. By merely registering the project with Haryana Renewable Energy Development Agency ("HAREDA"), the Petitioner is not bound by the HAREDA Guidelines, especially the condition specified in the HAREDA registration qua ascertainment of the captive status of the solar power plant by Discom at the connectivity stage, as the same is contrary to Rule 3 of the Electricity Rules.
- C. There is no enabling provision in the HVPNL Procedure, conferring upon HVPNL the authority to cancel an already granted connectivity.
- D. Greenyana Judgement (wherein this Hon'ble Commission has held that a solar power plant must demonstrate its captive status at the time of seeking connectivity) and judgement of the Hon'ble Appellate Tribunal for Electricity dated 20.09.2021 (Appeal No. 164 of 2020) upholding the Greenyana Judgment, stands overruled by the Judgement of the Hon'ble Supreme Court in the case of Dakshin Gujarat Vij Company Limited Vs. Gayatri Shakti Paper and Board Limited ("Dakshin Gujarat Judgement")

A. Response to Petitioner's contention as mentioned in A above:-

- 6.2 That in response to the Petitioner's contention that it has not applied to the HVPNL for connectivity under the Haryana Solar Policy, attention of this Hon'ble Commission was drawn to Petitioner's application dated 24.04.2019 addressed to HAREDA seeking registration of its project ("Application to HAREDA"). In the Application to HAREDA, the Petitioner has categorically mentioned that its application dated 23.08.2018 to HVPNL for grant of connectivity for its solar project to the Adampur Substation has been made as per Haryana Solar Policy. For ease of reference, the relevant portion of the Application to HAREDA is reproduced below:

"Reference:-

1. *Our application for Feasibility Study vide AGHNPL/HVPNL/OpenAccess/2018-19/-3 dated 23rd Aug, 2018 for Solar PV Power Project to be connected at Adampur Substation as per Haryana Solar Power Policy No. 19/4/2016-5 dated 14th March 2016.*
2.
3.

Dear Sir,

We, Avaada Green HNProject Limited, submitted application vide reference number given above for the approval of solar project for selling power

through third party open access under provision given in Haryana Solar Policy-2016 notified vide No. 19/4/2016-5 power dated 14th March, 2016 with further amended vide Ref No. 19/7/2019-5 P dated 8th Mar 2019 by HAREDA.

(Emphasis Supplied)

- 6.3 That the Petitioner has misrepresented to this Hon'ble Commission that it has not applied under the Haryana Solar Policy. For ease of reference, the relevant portion of the Petitioner rejoinder is reproduced below:

*"7. That HVPNL has erroneously submitted that the Petitioner's Project is governed by the Haryana Solar Policy, 2016 ("**Solar Policy**"). Such contention is denied on facts. **The Petitioner had not applied under the Solar Policy.**"*

- 6.4 That the above stated action of the Petitioner (i.e., misrepresenting that it has not applied under the Haryana Solar Policy) is a classic example of a supersession of facts and approaching the court with unclean hands. It has been settled in a catena of judgements that a person who approaches the Court for granting relief, equitable or otherwise, is under a solemn obligation to candidly and correctly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. The Petitioner owes a duty to the court to bring out all the facts and desist from concealing/suppressing any material fact. Therefore, on this ground alone this Hon'ble Commission may be pleased to dismiss the present petition.

- 6.5 That the reliance was placed by the Petitioner's Counsel on clause (v) of In-principle Feasibility dated 06.05.2019 and clause (vi) of Final connectivity dated 16.09.2021 to allege non-applicability of the Haryana Solar Policy to the project. For ease of reference, clause (v) of the In-principle Feasibility dated 06.05.2019 (which is identical to clause (vi) of Final connectivity dated 16.09.2021) is reproduced below:

*"v) All the terms & Condition as prevalent in the HERC Open Access Regulation, 2012 (Regulation No. HERC/25/2012) and HERC RE Regulation (HERC/40/2018) with its amendment issued from time to time shall be applicable to applicant with the terms and conditions conveyed in the final guidelines regarding connectivity. **However, no waiver/concession as undertaken by you and as amended in Haryana Solar Policy vide amendment dated 08.03.2019 shall be applicable.**"*

(Emphasis Supplied)

In this regard, R-1 has submitted that vide amendment dated 08.03.2019 only clause 4.3 of the Haryana Solar Policy was amended. Accordingly, in terms of the above reproduced clause only the concession associated with the clause 4.3 (as amended vide amendment dated 08.03.2019) was made non-applicable to the Petitioner. Pertinently, the Petitioner's entitlement to the other benefits provided by

the Haryana Solar Policy under Chapter – IV (such as price preference, banking, exemption from environment clearance, exemption from Forest Department clearance, Stamp Duty exemption) remained unimpacted.

- 6.6 That in light of the above submission, it is submitted that the Greenyana Judgement (*wherein this Hon'ble Commission has held that a solar power plant must demonstrate its captive status at the time of seeking connectivity*) is applicable in the present case.
- 6.7 That the ratio of Greenyana Judgement was reaffirmed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 164 of 2020 vide judgement dated 20.09.2021 ("APTEL Judgement").

B. Response to Petitioner's contention as mentioned in B & C above.

- 6.8 That the Petitioner is precluded from suggesting that, **(a)** by merely registering the project with Haryana Renewable Energy Development Agency ("**HAREDA**"), the Petitioner is not bound by the HAREDA Guidelines, and **(b)** there is no enabling provision in the HVPNL Procedure, conferring upon HVPNL the authority to cancel an already granted connectivity. In this regard, attention of this Hon'ble Commission was drawn to the following events/facts/documents:-

- **14.03.2016** - Solar Policy was introduced by the State of Haryana, which *inter-alia* prescribed that "*The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project*" (please see clause 4.16 of the Haryana Solar Policy).
- **23.08.2018** – Petitioner applied to HVPNL for grant of connectivity for its solar project to the Adampur Substation in terms of as per Haryana Solar Policy.
- **08.03.2019** - Guidelines for Approval of solar power projects by HAREDA was issued which intra-alia prescribed that registration criteria i.e., **(a)** Haryana Solar Power Policy, 2016 with amendments from time to time shall be applicable (Clause 14 of HAREDA guidelines), and **(b)** No change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till execution of the Project without the approval of the government (Clause 18 of HAREDA guidelines).

- **18.04.2019** – HAREDA issued clarification re-iterating that “*no change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till execution of the Project*”.
- **24.04. 2019** – Petitioner applied to HAREDA for registration of its project.
- **06.05.2019** - HVPNL granted In-principle Feasibility to the Petitioner for its project *inter-alia* subject to ascertainment captive status while granting connectivity. For ease of reference, the relevant excerpt of the In-principle Feasibility is reproduced below:

“xii) The clarification given by HAREDA vide letter dated 18.04.2019 which were email to you on dated 23.04.2019 shall be taken into consideration, to ascertain captive status, while providing feasibility/connectivity to solar power projects and shall be adhered by you.”

xxii) The final connectivity shall be issued after fulfilment of terms & condition & submission of documents as stipulated in final guidelines of HVPNL & registration of the project from HAREDA”.

(Emphasis Supplied)

The Petitioner neither challenged the above reproduced condition nor showcased any demur.

- **15.07.2019** – HAREDA registered Petitioner’s project for captive generation with an explicit condition that “*The status of captive generation solar power plant shall be ascertained by Power Utilities at the time of financial closer of the solar power projects*”. **It is pertinent to mention that the Petitioner neither challenged the above reproduced condition nor showcased any demur.**
- **12.02.2021** - As the Petitioner failed to demonstrate its captive status as per the conditions set out in the In-principle Feasibility dated 06.05.2019 and HAREDA registration dated 15.07.2019, the Petitioner expressed its intention to sell the power from the solar power plant to HPPC/Haryana Distribution Companies, at a cost plus tariff to be determined by this Hon’ble Commission.
- **15.04.2021** – This Hon’ble Commission approved the HVPNL Procedure for grant of connectivity to the captive solar plants.
- **16.09.2021** – HVPNL granted final connectivity to the Petitioner to sell the power to HPPC/ Haryana Discoms. However, it was clarified that Petitioner offer to sell the power shall be ascertained by HPPC/Discoms. The relevant excerpt of final connectivity is reproduced below:

“i. Consent given by M/s Avaada Green HN Ltd. Vide Ref. AEPL/HVPNL-Haryana/Soalr-50 MW/20-21/02 dated 12.02.2021 for sale of power from 50 MW Solar Project to HPPC/ Discom shall be ascertained by HPPC/Discoms.”

- **23.08.2022** – HPPC rejected Petitioner’s offer to sell power from its solar project.
- **13.02.2024** – After a substantial delay from the date of HPPC rejection letter, Petitioner requested HVPNL that its connectivity request be treated under captive mechanism.
- **06.03.2024** – Since the Petitioner failed to fulfill the terms and conditions set out in the Final Connectivity qua sale of power to DISCOMS, the Respondent No.1, cancelled the Final Connectivity granted to the Petitioner, as per the HERC Procedure. However, it was clarified that the In-principle Feasibility granted to the Petitioner would remain in force.
- **05.03.2025** – As, the Petitioner failed to demonstrate the captive status of its project as required by In-principle Feasibility dated 06.05.2019, HAREDA Guidelines, HAREDA registration dated 15.07.2019 and HVPNL Procedure (despite numerous opportunities granted by HVPNL), HVPNL cancelled Petitioner’s application dated 23.08.2018 and In-principle Feasibility dated 06.05.2019 in term of clause 9.5 of HVPNL Procedure and also accorded reasoning regarding the said cancellation.

6.9 That in light of the above-mentioned events, it is submitted as under:

- I. After having applied for setting up the project under the Haryana Solar Policy and after having registered with HAREDA for the same purpose, the Petitioner is estopped from contending that it is not required to satisfy the conditions prescribed in the Haryana Solar Policy and HAREDA guidelines. This position has also been upheld by this Hon’ble Commission in Greenyana Judgement, relevant portion of which, is reproduced below:

“42. Further, this matter can be looked at from another perspective also that after having applied for setting up the project under the Solar Policy and after having registered with HAREDA for the same purpose and after obtaining in-principle feasibility and final approval, the Petitioner is estopped from contending that it is not required to satisfy the conditions mentioned in the Solar Policy read with HAREDA guidelines/clarification and the aforesaid approvals.”

- II. Paragraph (xii) of the in-principle feasibility issued to the Petitioner dated 06.05.2019 specifically states that “the clarification given by HAREDA vide letter dated 18.04.2019 which was emailed to you on dated 23.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility/connectivity to solar power projects and shall be adhered by you. It is utmost relevant to mention that the Petitioner was well aware and very well conversant with the Solar Policy, HAREDA’s Guidelines dated 08.03.2019 and clarification dated 18.04.2019. In fact, the above para (xii) specifically brought these clarification and Guidelines into the attention of the Petitioner. However, the Petitioner, without demur, proceeded ahead and chose not to challenge these conditions at the relevant time. Thus, after duly participating in the process of attaining connectivity, the Petitioner is precluded in law to contend that it is not required to demonstrate the captive status of its project.
- III. Proviso to Regulation 6 (1) of the HERC Open access Regulation, 2012 provides that “till such time the detailed procedure prepared by the coordination committee is approved by the Commission, the application for grant of connectivity shall be processed by the nodal agency in accordance with the existing procedure”. It is submitted that while the Petitioner’s application for connectivity was pending (on account of reasons attributable to the Petitioner), the HVPNL Procedure for grant of connectivity was approved by this Hon’ble Commission. Thereafter, numerous opportunities were granted to the Petitioner to demonstrate the captive status of its project, however on account of its failure to showcase the required captive status, HVPNL rightly cancelled Petitioner’s application dated 23.08.2018 and In-principle Feasibility dated 06.05.2019 in term of clause 9.5 of HVPNL Procedure and also accorded reasoning regarding the said cancellation. Additionally, it is pertinent to mention that the Petitioner has categorically admitted at paragraph 14 of its rejoinder that it applied to HAREDA in compliance of clause 6(d) of HVPNL Procedure. Therefore, Petitioner is precluded from raising concern qua applicability of the HVPNL Procedure. For ease of reference, the relevant portion of paragraph 14 of the rejoinder is reproduced below:

“... It is further submitted that the registration of the Petitioner’s Project with HAREDA on 15.07.2019 was carried out in compliance with Clause 6(d) of the HVPNL Procedure, which mandates that an application seeking grant of

connectivity for a renewable energy project must submit proof of registration with HAREDA”.

- IV. That ascertainment of the captive status of the solar power plant by Discom at the connectivity stage, is not contrary to the to Rule 3 of the Electricity Rules.

C. Response to Petitioner’s contention as mentioned in D above.

- 6.10 That the Dakshin Gujarat Judgement is not applicable in the present facts and circumstances of the matter as it does not adjudicate the issue of ascertainment of captive status of a solar power plant by Discom as a pre-requisite for granting connectivity. Therefore, Dakshin Gujarat Judgement has been incorrectly relied upon by the Petitioner. Rather, Greenyana Judgement and the APTEL Judgement (which had confirmed the ascertainment of captive status of a solar power plant by Discom before granting connectivity) is squarely applicable in the present case.

Commission’s Analysis and Order

7. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by them. The sum and substance of the present petition before this Commission is the cancellation of in-principle feasibility and final connectivity granted to the petitioner by the respondent No.1 on account of non-submission by the petitioner of the proof of minimum 26% captive ownership in the project. In order to examine the same, the Commission has framed the following issues for consideration and decision in the matter:-

Issue No. 1: Whether the ‘Procedure for grant of connectivity in Transmission/Distribution System’ approved by the Commission under Regulation 6 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), is a mandatory provision?

Issue No. 2: Whether the Haryana Solar Policy, 2016 read with HAREDA’s guidelines/clarifications, are applicable to the petitioner’s solar power project?

Issue No. 3: Whether the condition of verification of shareholding for determining the captive status as prescribed under the Haryana Solar Policy, 2016 read with HAREDA’s guidelines/clarifications and ‘Procedure for grant of connectivity in Transmission/Distribution System’, are in contravention of the Electricity Act, 2003 and Electricity Rules, 2005?

Issue No. 4: Whether the Petitioner is in breach of the terms and conditions imposed in the Solar policy read with the HAREDA registration/guidelines and In-Principle Feasibility/Final Connectivity granted by HVPNL?

After hearing the learned counsels for the parties and going through the record of the appeal, the findings of the Commission on the issues framed above, are as under:-

6.1 Issue No. 1: Whether the 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission under Regulation 6 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), is a mandatory provision?

The Commission has closely examined the said Regulation as well as the rival contention on the same. The Commission observes that all the provisions of the Regulations notified by the Commission in its legislative capacity, have the force of law behind it. Accordingly, meaning/interpretation of Regulation clause no. 6 of HERC OA Regulations along with the 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission on 15.04.2021, is plain & simple and the same by no stretch of imagination is open to more than one interpretation, which may require interference of the Commission or any court of competent jurisdiction to choose the interpretation which represents the true intent of the said Regulation. Hence, the effect of the same has to be necessarily given to it irrespective of the consequences.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the requirement under 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission under Regulation 6 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), is mandatory and binding.

6.2 Issue No. 2: Whether the Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarifications, are applicable to the petitioner's solar power project?

At the outset, it would be relevant to point out that there is no dispute about the factum that the Petitioner applied for permissions/approvals for setting up of a captive solar plant and register itself with HAREDA, under Haryana Solar Policy, 2016. It is the contention of the petitioner that provisions of Haryana Solar Policy,

2016 are not applicable to it since it has not availed any benefits under the said Policy.

The '*Procedure for grant of connectivity in Transmission/Distribution System*' approved by the Commission on 15.04.2021, also mandates registration of the solar project by HAREDA.

Therefore, the Commission has carefully examined Haryana Solar Power Policy, 2016 and its subsequent amendments, guidelines issued by HAREDA.

It is a matter of record that Haryana Solar Policy, 2016 ("Solar Policy") granted certain benefits to developers of Ground mounted and Roof Top Solar Power Projects including price preference, exemption of electricity duty, electricity taxes & cess, all incentives available to an industry under Industrial Policy, banking of electricity, exemption from land use approval, EDC, scrutiny fee, exemption from environment clearance and clearance from forest, exemption from stamp duty for lease/purchase of lands and commercial utilization of unutilized space of the project etc. Originally, the Policy granted these benefits to those developers, which would sell their electricity to Discoms. These Discoms would use the power so purchased towards meeting their RPO obligations. Later, by 2nd amendment to the Policy, these benefits were extended to solar captive power plants and to solar power plants set up for third party sale.

Para 4.16 of the Solar Policy provides a restriction on the transfer of shareholding of the promoter in the Company developing the solar power project till one year after execution thereof. This para 4.16 of the Solar Policy is extracted below:-

"4.16 Minimum Equity to be held by the Promoter: The project developer may be individual/company/firm/group of companies or a joint venture/consortium of maximum 4 partners having minimum 51% share holding of leading partner. The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the Company, along with the bid document, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of their project. This shall not be applicable to Solar Power Projects developed by public limited companies. Thereafter, any change may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be. Further, only new plant and machinery shall be allowed under this policy".

Further, HAREDA also in its guidelines dated 08.03.2019 and clarification dated 18.04.2019 on procedure/guidelines for approval of MW scale solar power projects and final guidelines for providing connectivity to solar power plant, provided that no

change in the shareholding equal to 26% or more in the Company developing the project shall be permitted from the date of submitting the project till the execution of the Project without approval of the Govt.

The counsel for the respondents has correctly argued that this provision has been made to prevent trading of permissions/sanctions that an applicant may indulge under the Solar Policy and registrations granted thereunder.

An objection has been raised by the Petitioner regarding applicability of HAREDA's Guidelines dated 08.03.2019 read with clarification thereof dated 18.04.2019. The Petitioner has argued that HAREDA's guidelines dated 08.03.2019 are not applicable to them since the same only apply to those developers who have submitted their application before 13.02.2019 to HAREDA to avail the benefits specified in the Haryana Solar Policy, 2016 and the Petitioner had submitted its application only thereafter i.e. on 24.04.2019. The Guidelines dated 08.03.2019 read as follows:-

"Guidelines for
Approval of Solar Power Projects by
Haryana Renewable Energy Development Agency (HAREDA)
(New & Renewable Energy Department Haryana)

It is for the information to all the Solar Project Developers who have submitted solar projects proposals for approval before 13.02.2019 to Haryana Renewable Energy Development Agency (HAREDA) for registration of projects for proving the exemptions as per Haryana Solar Policy 2016.

Now it has been decided by the Council of Ministers, Haryana in its meetings held on 13.02.2019 & 08.03.2019 that Wheeling and Transmission Charges will be exempted for ten years from the time of commissioning for all Captive Solar Power Projects which have submitted applications to HAREDA /or registration of project, purchased land or have taken land on lease for thirty years and have bought equipment & machinery or invested at least Rs. One Crore per MW for purchase of equipment & machinery for setting up of such Captive Solar Power Projects till 13th February, 2019.

In view of the decision of the Council of Ministers, Haryana, the solar power projects with following criteria will be approved by the Haryana Renewable Energy Development Agency (HAREDA) for availing exemptions provided under Haryana Solar Policy 2016:

-----"

Bare reading of the above-mentioned Guidelines dt. 8.03.2019 make it abundantly clear that the same are applicable to Solar Power developers in general and not restricted to the 13 applicants as claimed by the petitioner. It is only that one of the paras conveys extra benefits/concession in the form of exemption from payment of wheeling and transmission charges for ten years from the date of their commissioning to those developers who had submitted their application before 13.02.2019 and met certain additional criteria laid therein. The third para of the said Guidelines further substantiates there is no such restriction on applicability. If the intention had been to restrict the operation of these Guidelines only to those developers who had applied before 13.02.2019, then the third para of the said Guidelines would have specifically so stated. The Guidelines mentioned in third para nowhere restrict operation thereof. Moreover, the petitioner was one of the applicants who had submitted its application before the cut-off date i.e. 23.08.2018; therefore, the Guidelines dated 8.03.19 are applicable to it on that ground alone.

The letter of the petitioner dated 24.04.2019 filed with HAREDA requesting for registration of Captive Solar Project contains the following references:-

“

Subject: Request for Registration for Captive Solar Project with HAREDA vide HVPNL Memo No. Ch-103/ISB/535/Loose file dated 23rd April, 2019

Reference:-

- 1. Our application for Feasibility Study vide AGHNPL /HVPNL /OpenAccess/ 2018-19/03, dated 23rd Aug, 2018 for Solar PV Power Project to be connected at Adampur Substation as per Haryana Solar Power Policy No. 19/4/2016-5 dated 14th March, 2016.*
- 2. Submission of DPR vide AGHNPL/HVPNL/OpenAccess/2018-19/04 dtd 23rd October, 2018 with respect to Memo No DNRE/2018/3098-3101 dated 9th October, 2018 be connected at Adampur.*
- 3. Submission of Undertaking vide AGHNPL/HVPNL/OpenAccess/2018-19/UL/11 dtd 31 January, 2019.”*

(Emphasis supplied)

Further, the petitioner has categorically mentioned that its application dated 23.08.2018 is being filed with HVPNL for grant of connectivity for its solar project to the Adampur Substation, as per Haryana Solar Policy. The relevant portion of the Application to HAREDA is reproduced below:

“Reference:-

4. Our application for Feasibility Study vide AGHNPL/HVPNL/OpenAccess/2018-19/-3 dated 23rd Aug, 2018 for Solar PV Power Project to be connected at Adampur Substation as per Haryana Solar Power Policy No. 19/4/2016-5 dated 14th March 2016.

5.

6.

Dear Sir,

We, Avaada Green HNProject Limited, submitted application vide reference number given above for the approval of solar project for selling power through third party open access under provision given in Haryana Solar Policy-2016 notified vide No. 19/4/2016-5 power dated 14th March, 2016 with further amended vide Ref No. 19/7/2019-5 P dated 8th Mar 2019 by HAREDA.

(Emphasis Supplied)

The Petitioner has further contended that HAREDA itself in its clarification dated 18.04.2019, has clarified that the said HAREDA Guidelines are only applicable to the 13 nos. of projects approved and registered by HAREDA on 08.03.2019. The Petitioner is not one among those 13 projects. The Petitioner placed reliance on the following part of the said clarification:

"In this regard it is clarified that 13 nos. of projects approved & registered by HAREDA on 08.03.2019 under amended Haryana Solar Power Policy 2016 are to be dealt as per the guidelines dated 8.3.2019. Rest of the projects are to be dealt as per the provisions as laid down in the Solar Policy. Further, the projects set up in the Solar Parks are to be dealt as per the conditions mentioned in the NOC issued by HAREDA for setting up of private solar parks from time to time."

In this regard, the Commission has also referred to the clarification given by HAREDA in its reply to the query at s.no. 2 of the ibid clarification dated 18.04.2019. Relevant portion of the said clarification is reproduced as under:-

*"In the matter of guidelines issued on 08.03.2019 by HAREDA may be referred wherein it is mentioned that **no change in the shareholding equal to 26% or more** in the Company developing the project shall be permitted from the date of submitting the project till execution of the Project without approval of the Govt. **The above referred guidelines are applicable on the projects approved by HAREDA for providing waivers as per amended Haryana Solar Power Policy-***

2016 and not applicable on other solar projects even set up in the approved solar parks.

Further, as per clause 4.16 of Haryana Solar Power Policy-2016, the project developer may be individual/ company/ firm/ group of companies or a Joint venture/Consortium of maximum 4 partners having minimum 51% share holding of leading partner.

The grid connected solar project developer(s) shall provide the information about the Promoters and their shareholding in the company, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. This shall not be applicable to the Solar Power Projects developed by the public limited companies. Thereafter, any change may be undertaken only with information to New & Renewable Energy Department/HAREDA or HPPC, as the case may be.”

(Emphasis supplied)

Thus, HAREDA has clarified that the restriction on change in 26% shareholding are applicable on the projects approved by HAREDA for providing waivers; however, further provisions are uniformly applicable to all project developers which provides that solar power project developer (s) shall provide the information about the Promoters and their shareholding in the company, indicating the leading shareholder and no change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project.

Again it is a matter of record that the letter of registration of Solar Power Projects issued by HAREDA, vide memo no. NRE-HAREDA/2019/6575 dated 15.07.2019, prescribed the condition that “7. *The status of captive generation solar power plant shall be ascertained by Power Utilities at the time of financial closure of the solar power project.*”

In this regard, it is pertinent to note that the Regulation clause no. 6 of HERC OA Regulations along with the ‘Procedure for grant of connectivity in Transmission/Distribution System’ approved by the Commission on 15.04.2021 provides that the achievement of financial closure of the solar power project is the pre-condition to the grant of final connectivity. Thus, it is imperative to ascertain the status of captive generation solar power plant qua the shareholding before the grant of connectivity.

Further, the in-principle feasibility issued to the Petitioner dated 06.05.2019 specifically provides as under:-

“

xii) the clarifications given by HAREDA vide letter dated 18.04.2019 which were emailed to you on dated 23.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility / connectivity to solar power projects and shall be adhered by you.

xiv) To fulfill all the terms & conditions of Electricity Rules, 2005 as required for Captive Generation plants and its amendments from time to time and Electricity Act, 2003 along with submission of required documents before final connectivity.”

The conjoint reading the above clarification with the actual provisions of the Guidelines as mentioned above and also reply to the query at S. No. 2 of the ibid clarification, conditions imposed while registering of the project by HAREDA, in-principle feasibility issued to the Petitioner dated 06.05.2019, makes it abundantly clear that the Guidelines uniformly apply to all project developers.

The Petitioner did not challenge this particular condition either in this petition or otherwise. The Petitioner was well aware and very well conversant with the Solar Policy, HAREDA's Guidelines dated 08.03.2019 and clarification dated 18.04.2019. In fact, the above para (xii) specifically brought these clarification and guidelines into the attention of the Petitioner. However, the Petitioner proceeded ahead and obtained final connectivity. But, now after obtaining the final connectivity, the Petitioner is contending that the said Guidelines and the clarification did not apply to him. Considering the well settled legal position in regard to such approbation and reprobation arising out of the maxim *qui approbat non reprobat*, it is not open for the Petitioner to make such contentions.

Therefore, the insistence of the DISCOMS to satisfy the requirements of demonstrating 26% shareholding of captive consumers as prescribed in para 4.16 of the solar policy and lock in of the shareholding of the lead shareholder prescribed in Guidelines dated 08.03.2019 and other such conditions before signing the connection agreement is correctly borne out of the aforesaid provisions of the Haryana Solar Policy and the guidelines issued by HAREDA/HVPNL and is correct in law. The same are applicable to the Petitioner and cannot be allowed these provisions to be ignored.

In view of the above discussion, the Commission answers this issue in affirmative i.e. the Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarifications, are applicable to the petitioner's solar power project.

6.3 Issue No. 3: Whether the condition of verification of shareholding for determining the captive status as prescribed under the Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarifications and 'Procedure for grant of connectivity in Transmission/Distribution System', are in contravention of the Electricity Act, 2003 and Electricity Rules, 2005?

The sum and substance of the HAREDA's guidelines/clarifications and 'Procedure for grant of connectivity in Transmission/Distribution System', relevant in the present petition is the condition of 26% shareholding of captive consumers. The same has been dealt in detail in the preceding paras of this order.

The petitioner has vehemently argued that the mandate given in the Rule 3(1)(a) of the Electricity Rules, 2005 that a power plant shall qualify as a Captive Generating Plant only if not less than 26% of its ownership is held by the captive user(s) and not less than 51% of the electricity generated is consumed for captive use, shall be tested on an annual basis.

In this regard, the Commission considered it appropriate to examine the provisions of Rule 3(1)(a) of the Electricity Rules, 2005, as reproduced hereunder:-

"3. Requirements of Captive Generating Plant. -

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant -

(i) not less than twenty six percent of the ownership is held by the captive user(s),
and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the co-operative society:

Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(Emphasis Supplied)

From the examination of Rule 3(1)(a) of the Electricity Rules, 2005, it is apparent that it is the 51% consumption i.e. the condition no. ii which is to be determined on an annual basis; however, the condition no. i regarding 25% ownership by captive user (s) has to be complied throughout the year.

It is emanating from the Petitioner's LTOA application for connectivity dated 23.08.2018 that it initially applied for setting up of a solar power plant without specifying whether the plant shall be an IPP or a captive power plant category. It is not in dispute that the Petitioner intended to avail benefits of the Solar Policy and might have availed these benefits provided therein viz. exemption from land use approval, external development charges, scrutiny fee and infrastructure development charges, exemption of environment clearance, exemption of the clearance from forest department, 100% exemption from payment of fee and stamp duty charges for registration of rent/lease deed for the land etc.

Accordingly, the Petitioner's application is required to be tested against and processed according to the said solar policy and guidelines/clarifications issued in this regard. We are of the opinion that adjudging captive status of the Petitioner's power plant for the purposes of availing exemptions from CSS/AS shall have to be done in the manner prescribed under Rule 3 of the Electricity Rules, 2005. However, the Respondents are well within their rights to assess the lock in status of shareholding of lead shareholder as well as identification of proposed captive user(s) for the purpose of ascertaining compliance with inter alia the Solar Policy and Guidelines dated 08.03.2019.

It is important to bear in mind the above dichotomy for the purposes dealing with the issue mentioned above.

The respondents have pointed out that all of the aforesaid provisions were incorporated by reference, specifically requires such developers including the petitioner to comply with all obligations set-out in the letter dated 06.05.2019 of in-principle approval.

The conditions set out in the Solar policy read with guidelines issued by HAREDA and discern the conditions governing registration by HAREDA, guidelines and grant of approvals for in-principle feasibility are to be seen in the context of the solar developers being eligible to avail benefits of the Solar Policy as against statutory benefits granted under the Electricity Act, 2003 read with the Electricity Rules. If a developer would satisfy these conditions, only then it will be eligible for the benefits and complete the process commenced for the purpose which culminate at the grant of final connectivity and execution of connection agreement.

The Commission further agrees with the Respondents on the settled principle of law that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible. Therefore, the Petitioner is bound to comply with mandate of the Solar

Policy read with the aforesaid guidelines of HAREDA, HVPNL, in principle feasibility and final connectivity granted by HVPNL.

The Petitioner seems to have clearly confused the distinction and seeks to apply the same test for availing benefits/exemptions/registration under the Solar Policy as well as Electricity Act, 2003. This Commission cannot permit the Petitioner to do so as there is no conflict between the Solar Policy and the Electricity Act, 2003. The Solar Policy extends different/distinct rather additional benefits to captive solar power generators, which the State Government is legally competent to do, and the Electricity Act, 2003 has extended entirely different set of benefits for captive solar plants, including the Petitioner. Therefore, the Solar Policy read with HAREDA guidelines/clarifications are well within the limits of law to prescribe additional qualifications/conditions and procedure for processing applications like that of the petitioner which is limited to the identification of captive user (s) and lock in of shareholding of lead shareholder.

Having discussed as above, we are of the opinion that the Petitioner is required to satisfy all of the conditions including restrictions on transfer of its shareholding and demonstration of captive status to the extent of condition no. i of Rule 3 (1)(a) the Electricity Rules, 2005 i.e. 26% ownership is held by captive user (s). Thus, it is necessary for the Petitioner to satisfy prescribed qualification requirements of being captive – to the extent of its shareholding pattern and identification of captive users before final connectivity. Discoms have correctly argued that such qualification requirements were made to ensure that artificial structures merely for availing benefits of the solar policy are not created. This would also ensure captive solar power plants are in fact set-up for self-use as against commercial generation of electricity and no trading in benefits of the solar policy and permissions/sanctions issued are commercially traded within the lock in period prescribed in para 4.16 of the Solar Policy and HAREDA's guidelines dated 08.03.2019.

Further, this matter can be looked at from another perspective also that after having applied for setting up the project under the Solar Policy and after having registered with HAREDA and after obtaining in-principle feasibility and final approval, the Petitioner is estopped from contending that it is not required to satisfy the conditions mentioned in the Solar Policy read with HAREDA guidelines/clarification and the aforesaid approvals. The Solar Policy has prescribed identification of captive user (s) and a lock in period of one year post completion of the project on lead shareholder of a developer Company. Thus, if a developer, who has applied for permissions to set up a plant under captive category does not identify captive users

and accordingly does not structure its shareholding pattern at the outset, such project would not qualify for a captive status even under the method prescribed in Rule 3(1)(a) (i) of the Electricity Rules, 2005. If such a situation arises, the entire exercise of granting permissions and connectivity would be rendered otiose. Thus, the Petitioner from this perspective also is required to demonstrate its shareholding pattern specifically its shareholding of proposed captive users. This is a pre-requisite for the aforementioned reasons.

In view of the above discussion, the Commission answers this issue in negative i.e. the condition of verification of shareholding for determining the captive status as prescribed under the Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarifications and 'Procedure for grant of connectivity in Transmission/Distribution System', are not in contravention of the Electricity Act, 2003 and Electricity Rules, 2005.

6.4 Issue No. 4: Whether the Petitioner is in breach of the terms and conditions imposed in the Solar policy read with the HAREDA registration/guidelines and In-Principle Feasibility/Final Connectivity granted by HVPNL?

The Commission observes that the power project of the petitioner was granted 'In-Principle Feasibility' on 06.05.2019, as 'captive power project', setting out several terms and conditions to be complied with by the petitioner, which are in accordance with the 'Procedure for grant of connectivity in Transmission/Distribution System' forming part of the Regulation clause no. 6 of HERC OA Regulations. The conditions relevant in the present case are set out as under:-

“.....

xii) the clarifications given by HAREDA vide letter dated 18.04.2019 which were emailed to you on dated 23.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility / connectivity to solar power projects and shall be adhered by you.

xiv) To fulfill all the terms & conditions of Electricity Rules, 2005 as required for Captive Generation plants and its amendments from time to time and Electricity Act, 2003 along with submission of required documents before final connectivity.”

(Emphasis supplied)

Further, HAREDA in its clarification dated 18.04.2019 has specified that although the condition of lock in period of shareholding equal to 26% or more is applicable only to solar power projects approved by HAREDA for providing waivers as per Haryana Solar Power Policy, 2016. It further provides that the grid connected solar

project developer (s) shall provide the information about the Promoters and their shareholding in the company, indicating the leading shareholder. No change in the leading shareholder, developing the Solar Power Project, shall be permitted from the date of submitting the application and till one year of execution of the project. case may be.

Again it is a matter of record that the letter of registration of Solar Power Projects issued by HAREDA, vide memo no. NRE-HAREDA/2019/6575 dated 15.07.2019, prescribed the condition that “7. *The status of captive generation solar power plant shall be ascertained by Power Utilities at the time of financial closure of the solar power project.*”

The ‘Procedure for grant of connectivity in Transmission/Distribution System’ forming part of the Regulation clause no. 6 of HERC OA Regulations, provides as under:-

“HARYANA VIDYUT PRASARAN NIGAM LIMITED

Procedure for making application for grant of connectivity in Transmission/Distribution System

“3. Nodal Agency

....

3.2 For generation project based on renewable energy sources, in the 1st instance, the New & Renewable Energy Department, being nodal agency, shall register the projects as per applicable HERC Regulations. The applicant, while submitting the application for connectivity shall mentioned the registration no. in the application along with attachment of registration certificate

3.3 Since the project will be registered with HAREDA, being Nodal agency for renewable energy sources, the report confirming the captive status of the project at the time of registration of the project shall be provided along with the application to the Nodal agency along with copy to DISCOMs for ascertaining captive status by the respective DISCOM. However, nodal agency shall be responsible to ensure compliance of the conditions of solar policy.”

(Emphasis supplied)

“5.5 Processing of applications of generating plants or captive generating plant based on renewable Energy Sources:-

....

B. Stage-II Final Connectivity:

g) After issuance of stage-I technical feasibility, the applicant has to submit following documents within 90 days along with application as per Annexure-F.

....

ii) Achievement of financial closure (with copy of sanction letter and CA certification). Sanction letter from Financial institution / Lead Lender to be submitted as proof of financial closure

(Emphasis supplied)

Thus, as per the approved procedure forming part of the regulations of the Commission, the renewable power project was required to be registered with HAREDA. Further, before the grant of final connectivity, the project was required to achieve financial closure and in the letter of registration of Solar Power Projects issued by HAREDA, there was a condition that the status of captive generation solar power plant shall be ascertained by Power Utilities at the time of financial closure of the solar power project.

(Emphasis supplied)

The Commission has already decided in the preceding paras of this order that 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission under Regulation 6 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), the conditions mentioned in pursuant thereto in the 'In-Principle connectivity' so granted as well as the condition of verification of shareholding for determining the captive status as prescribed under the Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarifications, is mandatory and binding and the same are not in contravention of the Electricity Act, 2003 and Electricity Rules, 2005.

In the present case, 'In-Principle connectivity' as well as registration with HAREDA was granted on 06.05.2019 and 15.07.2019, respectively as 'captive power project', which required submission of documents in proof of captive owners to the extent of 26%. However, the petitioner, vide its letters dated 15.09.2020 and 12.02.2021, chose to change its status from 'captive power project' to 'sale of power to Discoms' and avoided the submission of requisite documents in proof of captive ownership to the extent of 26%. Accordingly, final connectivity was granted on 16.09.2021, with the condition that the connectivity agreement shall be signed within 30 days of issue of final connectivity and the evacuation system of 132 KV was to be completed within 12 months. However, the petitioner could not execute PPA with Discoms/

HPPC and HPPC vide its letter dated 23.8.2022 informed the petitioner that its offer to sell power to Discoms, has been rejected. However, the petitioner revived the issue, vide its letter dated 13.02.2024 i.e. after a lapse of more than two years since the rejection of offer of sale by HPPC, stating that the option of 'sale of power to DISCOMS' is not attractive and requested to change the status of the project to 'captive power project'.

Therefore, the Discoms have correctly sent requisition list to the Petitioner on 22.03.2024 and 01.04.2024 to ascertain compliance of the conditions prescribed in the 'Connectivity Procedure', letter of 'In-Principle Connectivity', 'HAREDA registration', Solar Policy as well as HAREDA'S Guidelines. However, the Petitioner did not provide the complete details. Non-provision of requisite information has impaired the entire process and assessment of Petitioner's compliance with these conditions. Accordingly, the respondent no. 1 cancelled the final connectivity granted to the petitioner, keeping the 'In-Principle Feasibility', in force. However, the petitioner did not provide the requisite documents of shareholding of the power project even in response to respondent's letters dated 14.06.2024 and 22.11.2024. The petitioner even sought extension of 3 months, vide its letter dated 03.12.2024 to the final notice of Respondent No. 1 dated 27.11.2024 regarding cancellation of 'In-Principle Feasibility'. Accordingly, the respondent no. 1 cancelled 'In-Principle Feasibility', vide its letter dated 05.03.2025.

We are of the opinion that the petitioner is bound to comply with the provisions of the solar policy and guidelines issued thereunder i.e. the information about the promoters and their shareholding in the company in compliance of the conditions mentioned in the above documents. The issuance of the physical connectivity and execution of the connection agreement, as emanating from the in-principle feasibility and final connectivity is subject to compliance of all such conditions. We are of the opinion that the issuance of 'in principle feasibility' and 'final connectivity' granted to the petitioner is to be read in conjunction with the conditions contained therein along with Solar Policy, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines as well as HAREDA's registration. They can't be read and understood in isolation with each other in the facts and circumstances of the present case. Thus, grant of final connectivity is nothing but an intrinsic part of the regime triggered by the Petitioner by electing to set-up its power plant. It can be seen from another perspective i.e. if the 'in-principle feasibility' and 'final connectivity' is directed to be allowed without insisting on conditions imposed therein in accordance with the Solar Policy, HAREDA's guidelines dated 08.03.2019 and HVPNL's Guidelines, then the very

purpose of framing of the Solar Policy would get frustrated. This becomes all the more relevant in the present context, when the respondents are tasked with the responsibility to see compliance of para 4.16 and captive status i.e. lock in of shareholding of lead shareholder and identification of captive user (s) emanating from HAREDA's Guidelines dated 08.03.2019.

In view of the above analysis, the Commission is of the view that the Petitioner has to comply with the terms and conditions of various approvals/Policy/Guidelines and satisfy the DISCOMs on the issue of captive status of the project. The terms and conditions of the approvals/Policy/Guidelines are sacrosanct and are to be adhered to by the Petitioner before grant of 'final connectivity' and has to demonstrate that all such conditions are followed. The Solar Policy, guidelines issued by HAREDA as well as HVPNL and the 'In-Principle Feasibility' granted by HVPNL, as well as the registration of the Project by HAREDA cannot be read disjunctively. They are to be read conjunctively the effect of which is that for captive solar developers, the conditions specified therein have to be fulfilled.

The Commission observes that the Petitioner was not at all serious about developing the Project and has awoken after a lapse of more than 2 years from the date of grant of 'final connectivity' while blocking the transmission capacity available at the Adampur Substation, depriving other applicants/solar power developers of their right to connectivity.

The Commission has also taken note of the decision of Hon'ble APTEL dated 20.09.2021, in the similar matter, in case no. Appeal No. 164 of 2020 (M/s. Greenyana Solar Private Limited vs. Haryana Electricity Regulatory Commission & Ors.), reproduced hereunder:-

274. We agree with the view of the State Commission that the Appellant has to comply with the terms and conditions of various approvals/Policy/Guidelines and satisfy the DISCOMs on the issue of captive status of the project in line with the terms and conditions of various provisions of approvals/Policy/Guidelines.

The terms and conditions of the approvals/Policy/Guidelines are sacrosanct and are to be adhered to by the Appellant before signing of connection agreement and has to demonstrate that all such conditions are followed. The Solar Policy, guidelines issued by HAREDA as well as HVPNL, the LTOA application made by generator, In-Principle Feasibility and Final Connectivity granted by HVPNL, as well as the registration of the Project by HAREDA cannot be read disjunctively. They are to be read conjunctively the effect of which is that for captive solar developers entry point into the Solar Policy is the LTOA application and the final point is grant of the physical connectivity and execution of the connection agreement.

275. We agree with the finding of the State Commission that the Appellant is in breach of the terms and conditions of the Solar policy read with the HAREDA registration/guidelines and the approvals by HVPNL as discussed in the preceding paragraphs. Thus, no directions for execution of connection agreement can be passed. The prayers made by the Appellant in this regard are accordingly rejected."

Accordingly, in the instant case, based on the documents produced on record, the Commission answers this issue in affirmative i.e. the petitioner is in breach of the terms and conditions imposed in the Solar policy read with the HAREDA registration/guidelines and In-Principle Feasibility/Final Connectivity granted by HVPNL.

Conclusion:-

Having answered the above issues, the Commission is of the considered view that 'Procedure for grant of connectivity in Transmission/Distribution System' approved by the Commission under Regulation 6 of HERC (Terms & Conditions for grant of connectivity and open access for intra-State transmission and distribution system) Regulations, 2012 (HERC OA Regulation), Haryana Solar Policy, 2016 read with HAREDA's guidelines/clarification, regarding the condition of verification of shareholding for determining the captive status of the petitioner by the Respondents, being mandatory in nature and not in contravention of Electricity Act, 2003 and rules framed thereunder, has not been strictly followed and complied with. Thus, no directions for restoration of 'in-principle feasibility' and 'final connectivity' granted to the petitioner, can be passed. The prayers made by the petitioner in this regard are accordingly rejected.

8. The present petition along with IA filed in the matter, is disposed of in terms of the above order.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 04.07.2025.

Date: 04.07.2025
Place: Panchkula

(Mukesh Garg)
Member

(Nand Lal Sharma)
Chairman