BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/PRO- 23 of 2020

Date of Hearing	**:**	**11.09.2020**
Date of Order	**:**	**24.09.2020**

In the Matter of

Petition under Section 86 (1) (e), 86 (1) (c), Section 42 and other applicable provisions of the Electricity Act, 2003 read with the relevant provisions of Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 and the Haryana Electricity Regulatory Commission (Terms and Conditions for determination of tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017.

Petitioner

M/s Greenyana Solar Private Limited.

Respondents

1. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)
3. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)
4. Haryana Power Purchase Centre, Panchkula (HPPC)

Present On behalf of the Petitioner through MS Team

1. Shri Anant K. Ganeshan, Advocate,

Present on behalf of the Respondents through MS Team

1. Shri. Sameer Malik, Advocate
2. Shri Vikas Kadiyan, Xen/HPPC

Quorum

Shri D.S. Dhesi,	**Chairman**
Shri Pravindra Singh Chauhan	**Member**
Shri Naresh Sardana	**Member**

ORDER

Brief Background of the case

1. By way of the present petition, the petitioner seeks to invoke the jurisdiction of this Commission under Sections 86(1) (e), 86 (1) (c), Section 42 Read with Electricity Act, 2003 and the relevant provisions of the Open Access Regulations, 2012 and the Renewable Energy Regulations, 2017. So invoking the jurisdiction, the petitioner has prayed for the following reliefs:

    a) *"Direct the Respondents to sign the connection agreement with the Petitioner*

    b) *Direct the respondents to grant Long Term Open Access to the petitioner as applied for and enable the petitioner to supply electricity to its captive shareholders*

c) *Hold and direct that the HVPN and distribution licenses are jointly and severally liable to compensate the petitioner for loss in generation from its generating station, till the date the respondents permit the petitioner to supply electricity to its consumers*

d) *Direct the respondents to compensate the petitioner for Rs. 3, 68, 37, 951/- computed till 30.04.2020 (Annexure K) and for further losses caused thereafter till such time the petitioner is enabled to supply electricity to its consumers*

e) *Award interest at the rate of 18% per annum on the compensation in terms of prayer (b) and (c) above, computed till the date of actual payment by the Respondents*

f) *Hold and declare that the conditions imposed in Clause (viii) of the In-Principal Approval dated 06.05.2019 and Clause (viii) of the Final Approval dated 12.09.2019 granted by HVPN in restricting the drawl of power by the consumer from the captive renewable generator is bad in law and accordingly are to be quashed;*

g) *Hold and declare that the provisions of the draft Tripartite Banking Agreement to the extent of restrictions on the quantum of renewable energy generation capacity and quantum of injection are bad in law and are non-operable;*

h) *Hold and declare that the Respondents cannot impose any condition in relation to either the capacity of the Renewable Energy based captive generator, or for drawl of power by the consumer or for the agreement to be entered into by the consumer with the captive generator or in relation to the quantum of electricity to be banked or injected by the generator;*

i) *Award costs of the present petition in favour of the Petitioner and against the Respondents; and*

j) *Pass such other further order (s) as the Hon'ble Commission may deem just in the facts of the present petition.*

FACTUAL MATRIX

2. In order to appreciate the issues at hand, it will be apposite to refer to a few dates along with the events associates with them culled from the petition, which will form the factual matrix of the present case. For convenience of reference, the dates are being mentioned hereinafter in tabulated form:

SR. NO.	DATE	EVENT
i.	05.06.2018	Petitioner applies to HVPN for connectivity for its solar plant
ii.	06.05.2019	In-principal connectivity approval granted by the HVPN with a condition restricting drawl of energy to contracted demand of the open access consumer
iii.	12.09.2019	Final connectivity Approval granted by HVPN with a condition restricting the PPA Capacity/Long Term Open Access capacity to the contracted demand of the open access consumer
iv.	13.09.2019	Petitioner seeks clarification on the said conditions incorporated in the connectivity approvals
v.	19.09.2019	HVPN clarifies that the open access consumers are prevented from entering into an agreement for drawl of energy beyond their contract demand and directs the petitioner to seek clarification from DISCOMs
vi.	14.01.2020	Petitioner applies for grant of Long Term Open Access
vii.	13.02.2020	Chief Electrical Inspector certifies plant completion and grants permission to energize the plant
viii.	14.02.2020	Petitioner claims to have been incurring losses since this date due to non-execution of Connectivity Agreement by the DISCOMs
		Present petition necessitated due to i. Non-execution of the Connectivity Agreement within 30 days from Final Connectivity Approval and ii. Non-grant of Long Term Open Access iii. Inclusion of restrictive conditions in Connectivity Approvals iv. Inclusion of condition in Draft Tripartite Banking Agreement which restricts quantum of RE generation capacity and of injection

3. To make it easy to fathom the version put forth by the respondents, a few dates culled from their respective responses are also required to be mentioned:

SR. NO.	DATE	EVENT
i.	14.03.2016	Solar Policy introduced by State of Haryana
ii.	19.05.2016/ 23.06.2017/ 18.07.2017	Addendums issued to the above policy, especially providing for exemptions and benefits for the Captive Solar Generation Plants
iii.	08.03.2019	Clause 4.3 of the Solar Policy amended to provide for exemption of Wheeling Charges, Transmission Charges for 10 years

iv.	08.03.2019	HAREDA under the RE Department issues new guidelines in line with the above for approving projects seeking exemptions
v.	19.03.2019	HVPN issues guidelines in lines with the above
vi.	10.04.2019	Clarification sought by the HVPN from HAREDA as to lock in period for change of ownership
vii.	18.04.2019	Clarification re-iterating the provision for lock in period of 1 year w.r.t. 26% of the Shareholding of the Developer of the project
viii.	06.05.2019	In-Principal feasibility approval granted with condition requiring compliance with HAREDA Guidelines
ix.	22.08.2019	HAREDA registers Petitioner's project for CAPTIVE Generation
x.	12.09.2019	Final connectivity Approval granted by HVPN with provision for periodical ascertainment of Captive Status
xi.	03.10.2019	Final Initialled Agreement submitted by petitioner
xii.	18.11.2019	Petitioner raised issue as to conditions restricting drawl of energy to contract demand
xiii.	31.12.2019	HVPN relied upon HERC Open Access Regulations to state that Open Access cannot be made available beyond contract demand
xiv.	12.03.2020	Petitioner Approached Coordination committee seeking i. Execution of Connectivity Agreement and ii. Grant of Open Access
iii.	20.05.2020	Petition filed during pendency of proceedings before Committee
iv.	04.06.2020	Upon meeting between DISCOMs and petitioner, parties called upon to file written submissions
v.	22.06.2020	Coordination Committee passed the decision asking the DISCOMs to i. Call for documents from petitioner, as necessary for ascertaining its status ii. Consider the documents submitted and to ascertain the captive status of the petitioner
vi.	08.07.2020	Petitioner called upon to submit documents
vii.	20.07.2020	Petitioner's response that documents already submitted on 03.10.2019

4. It is in this background that the petitioner has approached this Commission with the grievance that despite the generation plant being ready for generation, the required Connectivity Agreement is not being executed by the DISCOMs and Long Term Open Access has also not been granted. The respondents have countered the prayers made in the petition by submitting that the petitioner is in

default of certain compliances required under the Regulations/Guidelines issued by the appropriate authorities including the HAREDA.

5. We have perused the written submissions made by the petitioner as well as the respondents and from a reading of the same certain issues requiring the consideration of this Commission have been crystallized which shall find mention in the paragraphs succeeding the following recapitulation of the respective submissions made by the parties.

RIVAL SUBMISSIONS MADE ON BEHALF OF THE PARTIES

6. The petitioner has made the following submissions to support his claim as prayed for in the petition:

   I. That the Guidelines dated 08.03.2019 are not applicable to the petitioner's case as the same apply to the proposals submitted to HAREDA before 12.02.2019 whereas the petitioner's proposal was submitted on 20.08.2019.

   II. That the clarification issued by HAREDA shows that the guidelines dated 08.03.2019 are applicable in respect of the 13 projects referred to therein. According to the petitioner, the rest of the projects are to be dealt with according to the Solar Policy.

   III. That the leading shareholder of the petitioner's project is M/s Cleantech whose shareholding satisfies the requirement of Clause 4.16 of the Solar Policy.

   IV. That the captive status is to be ascertained by Distribution Licensee from time to time and not necessarily at the time of financial closure as has been claimed by the Respondents. Rather, as per the Electricity Act, 2003 and the Electricity Rules, the ascertainment of the captive status is to be done on annual basis and the same cannot be done in advance before the Commissioning of the project.

   Reliance is placed on the Banking Agreement circulated by the Respondents which states that Captive Status is to be established by 15th April of every year after the end of each Financial Year.

   V. That the Open Access Regulations do not provide for restriction on Open Access only up to Contract Demand; there has been no reply to the petitioner's queries dated 14.01.2020 and 09.03.2020 wherein issues were raised by the petitioner qua the stipulations made in the HVPN letter dated 31.12.2019 justifying the restrictive conditions by placing reliance on the provisions of the Open Access Regulations 2012.

VI. That the fulfillment of conditions under the policy and the consequent availability of benefits/exemptions to the developer must be dealt with independently of the issue of Connectivity of the project. Any non-fulfillment of the conditions of the Policy would render the petitioner not-entitled to the benefits thereunder. Also, the consequences of non-compliance of the Guidelines/Policy are between the Petitioner and HAREDA and the respondents cannot make it a ground for withholding the execution of the Connectivity Agreement.

VII. M/s Cleantech Solar Group (hereinafter referred to as 'M/s Cleantech') is the developer with more than 51% shareholding and on the other hand, the captive consumers are required to have only minimum 26% shareholding. Additionally, there is no restriction on the change in the shareholding of the captive consumer.

Inter alia, it is not permissible to change shareholding of the leading shareholder for a period of 1 year from the submission of application and it is so in the present case that M/s Cleantech continues to hold more than 70% of the shares since the making of the application till date.

VIII. That the respondents have failed to point out any specific requirement/obligation of which the petitioner is in default.

IX. That the benefits and exemptions referred to by the respondents arise only after the Commissioning of the Generation plant.

X. That the Respondents are confusing the Captive Status which is a statutory creation under the Act of 2003 and the provisions governing the same cannot be added to or relaxed by any Guidelines.

XI. That the Regulation 24 of the Open Access Regulations deals with the imbalance charges in relation to over drawl/under drawl as against the schedule finalized and the same has nothing to do with the Open Access to be granted within the Contract Demand.

XII. That by referring to the alleged change in shareholding which took place before the Application was submitted, the Respondents are seeking to restrict the change in shareholding even in the period preceding the application whereas such restriction can only be made applicable to the period after the date of making of application.

7. That the case made out by the petitioner has been strongly resisted by the Respondents with the DISCOMs filing a heavy brief to support their contentions justifying non-execution of the agreement and the non-grant of the Open Access to the petitioner. The grounds taken by the respondents are recapitulated as follows:

I. That the DISCOMs are required to make a preliminary ascertainment as to the status of the Solar Generating Plant and non-ascertainment of such status would have the effect of disentitling the petitioner to the connectivity sought for.

II. That the grant of Long Term Open Access can only be done subsequent to the connectivity of the Solar Plant with grid sub-station and execution of connectivity agreement. Therefore, the request for grant of Open Access even before the execution of Connectivity Agreement does not merit acceptance.

III. That the Clause 4.16 of the Policy and Clause 18 of the Guidelines prescribe a minimum shareholding of 51% for the leading shareholder/developer of the project and no change in shareholding equal to or more than 26%, whereas in the case of the petitioner, the shareholding reflects substantial change in the equity shareholding of the petitioner company which is in direct violation of the Solar Policy and subsequent Guidelines thereof.

IV. That the Solar Policy prescribed a lock in period of one year post completion of the project on shareholding pattern of the 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 captive status even under the method prescribed in Rule 3 of the Electricity Rules, 2005 at the end of the first financial year of operation. If such a situation arises later, the entire exercise of granting permissions and connectivity with benefits under the Solar Policy would be rendered otiose.

V. That the DISCOMs apprehend that the solar plants of the likes of the petitioner were initially applied without any captive users and after securing approvals traded their share to gain on the approvals and subsequently, they have unscrupulously added captive user(s) only with the aim of getting exemptions of Cross Subsidy Surcharge and Additional Surcharge besides other benefits under the State Solar Policy.

VI. That the business module of the Petitioner is based on capitalizing Cross Subsidy Surcharge, Additional Surcharges and energy banking facility allowed only to Captive Generating Stations as per provisions of the Electricity Act, 2003 and Regulations framed by the Hon'ble Commission thereunder. The Petitioner's financial viability shall be jeopardized in absence of such waivers leading to default in serving repayment of debts and other liabilities, which ultimately shall result in Non Performing Assets (NPAs) causing heavy loss of public monies. As the applicant has envisaged and registered its solar generating plant for captive usage, he is bound to satisfy the Respondents about its captive users even at the time of making such application to HVPNL/HAREDA.

VII. That if subsequently, the petitioner's plant is found to be non-captive in nature, then the reversal of the granted benefits will entail a complex administrative action and avoidable litigation for settlement of the equities. Moreover, such a course will have the effect of depriving other bona fide generators whose applications could not be entertained due to first come first serve principle for grant of connectivity.

On the issue of Restriction on Drawl of Power

VIII. That the Regulations 24, 42, 43 & 45 of the Open Access Regulations, 2012 place a limit on the energy drawl and the same has to be within the limits of the contract demand. Perusal of the Statement of Reason with 1st amendment of Open Access Regulations makes it clear that the contract demand is a system parameter and drawl of contract demand is not allowed and restricted with by imposing heavy penalties.

IX. That clarification in this respect has already been given to the petitioner vide communication dated 31.12.2019 wherein it has been stipulated that Open Access cannot be granted beyond the contract demand. According to the Respondents, such course of action is necessary to safeguard the interests of the other stakeholders who are engaged in similar business activity.

On the issue of Restriction on Power Banking

X. That the clause, vide which limitations have been stipulated on the banking facility which can be availed of by the petitioner, has been incorporated in the Tripartite Agreement in terms of the judgment dated 13.05.2019 passed by this Hon'ble Commission in petition No.

PRO 22 of 2019 and specifically, the clause d(xiv) of Annexure A-1 to the said judgment supports inclusion of the clause in the agreement

On the issue of Loss incurred by the Petitioner

XI. That the petitioner's plant is not fully completed as on 13.02.2020 as has been claimed in the petition. The CEI report dated 13.02.2020 testifies to the same as the plant has been set up for only up to 10.72 MWP capacity as yet and not the full 20 MW.

8. That the above submissions made on behalf of the Respondents 2 to 4 have been considered by this Commission and they are almost *parimateria* with those submitted on behalf of Respondent No. 1 i.e. HVPN. Additionally, the HVPN has brought on record the correspondence which would reflect that an understanding akin to a Standard Operating Procedure was prescribed by the competent authority whereby the HVPN was discharged from the obligation to ascertain the Captive status of the Solar Generating Plants and the task of such ascertainment was assigned to the DISCOMs to be done by them from time to time.

ISSUES REQUIRING CONSIDERATION BY THE COMMISSION

9. The Commission heard the arguments of the parties at length as well as perused the reply filed in the matter. The main issue before the Commission is the non-signing of the Connection Agreement by the Respondent Nos. 2 to 4 with the solar power plant of the Petitioner. In order to examine the same, the Commission has framed the following issues for consideration and decision in the matter:

a) Whether the Petitioner is required to comply with the terms and conditions of various approvals/Policy/Guidelines and satisfy the DISCOMs on the issue of shareholding of lead shareholder and captive users of the project for execution of Connection Agreement?

b) Whether the Petitioner is in breach of the terms and conditions of the Solar policy read with the HAREDA registration/guidelines and the approvals by HVPNL?

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

d) Whether the condition in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy bad in law?

e) Whether the Petitioner is entitled to compensation for the losses suffered, along with interest?

CONSIDERATION BY THE COMMISSION

10. Before adverting to the controversy at hand, it is important to refer to a few facts which would throw a clear light on the present matter and ultimately aid the final adjudication thereof. The petitioner's application for grant of connectivity is dated 05.06.2018 and as such, the petitioner gained seniority over and above all the applicants who sought connectivity after the date of petitioner's application. It is pertinent to note here that the petitioner's application was in respect of connectivity for 20MW solar plant. It is not out of place to mention here that subsequent to the petitioner's application, another application for connectivity was received by the respondents in respect of a 50 MW solar plant to be established by AMP Solar Park Private Limited. In terms of the seniority principle which governs the grant of such connections, approval of 20 MW was granted in favor of the present petitioner whereas the subsequent applicant for 50 MW i.e. AMP Solar Park Private Limited was granted connectivity for 30 MW capacity only.

11. A perusal of the record of the case in light of the applicable provisions, specifically the *clause II (C) (iii)* of the final guidelines dated 19.03.2019 issued by HVPN, would reveal that the issuance of *In Principle feasibility* and the *Final Connectivity* by the HVNL was governed by the condition that the applicant is required to submit the required documents which enable the respondents to conduct due diligence in respect of the project. The issuance of the above two approvals by the HVPN to the petitioner, even as the nomenclature suggests, involve procedures undertaken by HVPN at the initial stage of the grant of connectivity and ascertainment of the fulfilment of various conditions including factual, on ground position by the DISCOMs at the subsequent stages for establishment of the plant. It is in compliance of this responsibility entrusted upon the DISCOMs under the applicable guidelines that the requisite documentation has been sought from the petitioners which has returned repeated denial from the petitioner.

Qua the shareholding pattern and the requisition for documents

12. It is important to note that the documents submitted by the petitioner at the time of application dated 05.06.2018 would reflect a shareholding of 50% each amongst the constituent partners. By virtue of this application, as noted in the preceding paragraph, the petitioner gained a stride over and above all the applicants who came subsequently and as such, petitioner attained seniority. It is at this point that clarity dawns about the logical reasoning behind the respondents' requisition of documents from petitioner.

It is this consideration aimed at preventing abuse of the policy benefits by the private promoters that drove the respondent DISCOMs into seeking the necessary documentation from the petitioners. It will not be out of place to mention here that this requirement of documents was also put by the Commission to the petitioner in the course of hearing of the case which call was, however, to no avail.

It is clear that such march of seniority attained by the petitioner has adequate potential to be abused by the private promoters in many ways, one instance being that any change in shareholding be brought about by the promoter thereby bartering off its seniority seeking thereby to bring into the domain of sale and purchase of the statutory benefits offered under the policy.

Qua the policy breach attributable to the petitioner

13. The Commission had the occasion to peruse the records of this case in the course of hearings including the *In Principle feasibilty* and *Final Connectivity* granted by HVPN. It is not out of place to mention that such grants by HVPN ought to be attributed an element of ascertainment of feasibility i.e. the due diligence paradigm. The records of the case would reveal that the petitioner has made the application for grant of connectivity for 20 MW solar plant out of which 10.72 MW has already been set up by the petitioner. The documents reflecting setting up of 10.72 MW part of the plant reflect that approx. 90% of the total available land i.e. 51 acres already stands utilized. This shows that there is certain lack of resource with the petitioner for setting up the plant for remaining capacity of 9.28 MW, which would tentatively require additional approx. 35 acres on pro rata basis.
14. This Commission cannot help but conclude that the information and commitment given by the petitioner for installation of 20 MW solar plant is rather misleading and amounts to short changing the respondent Utilities. This is a clear case of misrepresentation aimed at attaining the benefits & exemptions available under the policy, and without having the intention and mettle to meet the requirements of the policy.

"*Commissionary assistance from the office of Superintending Engineer, operation Circle, DHBVN, Sirsa requisitioned at the instance of this Commission"*

It is necessary here to mention that after having received detailed assistance from the Counsels for the respective parties, in the interest of factual ascertainment of the position as existent on ground, this Commission came to requisition services of Local Commissioners which hat was donned by Sh.

Ranbir Singh, working as Superintending Engineer, Operation circle, DHBVN, Sirsa and Sh. D. R. Verma, XEN Operation Division, DHBVN, Dabwali. In arriving at the above findings, this Commission is supported by the Report dated 22.09.2020 submitted by the said Local Commissioners. A perusal of the report reveals that the petitioner has installed 340 Watt panels, 45000 in number, on approx. 90% of the total available land of 51 acres. These figures reflecting the extent of the already set up part project capacity of 10.72 MW, also makes it clear that there has been utter default on the part of the petitioner in that the conditions which were required to be fulfilled within 90 days of the issuance of the *In Principle Connectivity* have remained unfulfilled hitherto. Such default by the petitioner has the effect of disentitling the petitioner from being considered under the solar policy.

A perusal of the facts and figures as revealed from the records of the case including the documents which form part of the petition has clearly brought out the position that the proposed Solar Plant project of 20 MW capacity cannot be set up in the land capital shown to be available by the petitioner. Before the grant of the Final Connectivity.

Qua claim for compensation and the loss projected by the petitioner and conduct before this Commission

15. As a corollary to the observations made in the preceding paragraphs dwelling upon the lack of diligence on the part of HVPN as also the default in compliance of policy conditions by the petitioner, this Commission is of the view that the petitioner is not entitled to the grant of any compensation for the loss allegedly incurred by it. the petitioner's claim for compensation does not merit acceptance. The right of the petitioner for grant of compensation or recovery of projected loss is foreclosed by its own conduct in not complying with the conditions of the policy and terms of approval as incorporated in the *In Principle feasibility*. Such compliance was necessary and indispensable before any connectivity grant could be made in favor of the petitioner.

ISSUE WISE FINDINGS

a) ***Whether the Petitioner is required to comply with the terms and conditions of various approvals/Policy/Guidelines and satisfy the DISCOMs on the issue of shareholding of lead shareholder and captive users of the project for execution of Connection Agreement?***

b) ***Whether the Petitioner is in breach of the terms and conditions of the Solar policy read with the HAREDA registration/guidelines and the approvals by HVPNL?***

16. 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 read with HAREDA's guidelines/clarifications. It is also not in dispute that the provisions of the said policy, HAREDA's guidelines/clarifications and HVPNL's guidelines were within the Petitioner's knowledge.
17. Therefore, the Commission has carefully examined Haryana Solar Power Policy, 2016 and its subsequent amendments, guidelines issued by HAREDA, guidelines issued by HVPNL, the relevant clauses of in-principle feasibility, final connectivity and the draft connectivity agreement.
18. 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, 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.
19. Para 4.16 of the Solar Policy provides a restriction on transference 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".

20. Subsequently, the Solar Policy was amended thrice on 19.05.2016, 23.06.2017 and 08.03.2019. The benefits of the Solar Policy were extended to the developers of captive solar plants by an amendment brought in by second amendment dated 23.06.2017.

21. Pursuant thereto, HAREDA/New and Renewable Energy Department, issued guidelines on 08.03.2019 laying down the eligibility criteria and procedure for solar power projects to avail the benefits and exemptions provided under the Policy. The solar power projects satisfying the conditions mentioned in such guidelines are eligible for various exemptions under the Haryana Solar Policy.
22. It is also a matter of record that after issuance of the said guidelines by HAREDA on 08.03.2019, HAREDA also issued a clarification on 18.04.2019 upon certain queries raised by HVPNL for processing the applications received from the developers of solar power plants. These guidelines and clarifications required each developer to demonstrate within 90 days from the date of grant of in-principle feasibility that their solar power plant satisfy requirements of being a captive power plant and that no shareholding change of at least 26% shareholding shall be permitted till completion of the project. It is also provided that a definition of captive generative plant shall be as provided Rule 3 of the Electricity Rules, 2005, as amended from time to time. The effect of the aforesaid was that a solar power generator shall have to lock in at least 26% of their equity, which is to be held by captive users till completion of the project.
23. Again it is a matter of record that the letters of registration of Solar Power Projects and providing feasibility/connectivity to these projects issued by HAREDA and HVPNL for captive consumption prescribed the condition that "*The status of captive generation solar power plant shall be ascertained by Power Utilities.*"
24. It is emanating from the Petitioner's LTOA application for connectivity dated 05.06.2018,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 did in fact avail these benefits. 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. The Petitioner's case to the effect that its captive status shall have to be judged at the end of each financial year after commencement of operations begets a question – whether such status is being judged for the purposes of availing exemptions of CSS/AS under the Electricity Act, 2003 or at present only lock in status of 26% shareholding of proposed captive user(s) is being checked for the purposes of availing benefits/exemptions under the Solar Policy.
25. 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 26% shareholding of proposed captive user(s) for the purpose of ascertaining compliance with inter alia the Solar Policy and Guidelines dated 08.03.2019.
26. It is important to bear in mind the above dichotomy for the purposes dealing with the issue mentioned above.
27. The Counsel for Discoms, based on the provisions of Solar Policy and HAREDA's guidelines/clarification etc., has contended that standard conditions for approval of in-principle

feasibility granted by HVPNL to developers of Solar Power Projects like the petitioner prescribe the following conditions:-

(i) Clause xi: The clarifications given by HAREDA vide letter dated 18.04.2019 shall be taken into consideration to ascertain captive status while providing feasibility/connectivity to solar power projects and shall be adhered.

(ii) Clause xiii: The developer shall fulfil all terms and conditions of the Electricity Rules, 2005 as required for Captive Generation plants and its amendments from time to time and Electricity Act, 2003.

Discoms have pointed out that all of the aforesaid provisions were incorporated by reference, in all tripartite Connection Agreements executed by HVPNL and Discoms with developers of Solar Power Project. In fact, Clause 3 read with clause 1.3 of the Connection agreement specifically requires such developers including the petitioner to comply with all obligations set-out in the letter of in-principle approval.

28. Considering the above, it is necessary to analyse the Solar policy and guidelines issued by HAREDA and discern the conditions governing registration by HAREDA, guidelines and grant of approvals for in-principle feasibility and final connectivity and execution of connection agreement by HVPNL. These conditions 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.

29. Our examination of the Solar Policy, HAREDA's guidelines/clarifications reveals that para 4.16 of the Solar Policy stipulates the following conditions to be adhered to by the Project Developer for deriving benefits thereunder:

(a) There should be Maximum 4 partners
(b) Minimum 51% Shareholding be held by leading partner
(c) No change in the leading shareholder, developing the Solar power Project from the date of application till one year of execution of the project.
(d) Thereafter any change in the leading shareholder may be undertaken only with information to Renewable Energy Department/HAREDA or HPPC, as the case may be.

30. Further, HAREDA also in its guidelines dated 08.03.2019 and clarification on procedure/guidelines for approval of MW scale solar power projects and final guidelines for providing connectivity to solar power plant dated 18.04.2019 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.*

31. The object of the aforesaid seems to be very clear that the developers should not set up a project merely for profiteering by way of availing benefits granted under the Solar Policy and exit the project before or after taking all permissions including execution of connection agreement. These provisions require a developer to be invested in the project and are aimed at discouraging non-serious/dummy/shell companies/investors from applying to HAREDA/HVPNL for connectivity. The

counsel for the Discoms has correctly argued that this provision has been made to prevent trading of permissions/sanctions and benefits that an applicant may obtain under the Solar Policy.

32. The above shall have to beseen in the context that benefits given under the Solar Policy are in addition to the statutory benefits given to captive generators under the Electricity Act, 2003. The counsel for Discoms has rightly argued that in order to avail benefit of any exemption, an applicant must satisfy the conditions precedent and qualifications to grant of such exemptions.
33. It is an admitted position that the Petitioner has made an application to HAREDA to set up a captive solar power plant and avail the benefits as provided under the solar policy. In view thereof, the Petitioner cannot now escape from the rigors of the Solar Policy as well as HAREDA/HVPNL's guidelines/clarification by contending that it is not required to demonstrate its captive status atthis stage, as prescribed therein. Once, the Petitioner has applied to HAREDA expressing its intention to set up a captive solar power plant and to claim exceptions under the Policy, the Petitioner is bound to comply by such terms and conditions of the guidelines and various approvals granted to it and its application shall have to be processed strictly in terms of the guidelines issued by HAREDA.
34. At this stage, the dichotomy between benefits/exemptions under the Solar Policy read with the above guidelines/clarifications and benefits/exemptions provisions of the Electricity Act, 2003 is to remembered and applied to the facts of this case. The Petitioner seems to have clearly confused the distinction and seeks to apply the same test for availing benefits/exemptions 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 in the form of waiver of Cross Subsidy Surcharge and Additional Surcharge 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.
35. The Petitioner cannot contend that it wants to set up a solar power plant availing benefits of the Solar Policy, but would not satisfy the eligibility/qualification conditions or procedural conditions mentioned therein.
36. Therefore, the insistence of the DISCOMS to satisfy the requirements of demonstrating lock-in on shareholding of lead shareholder as prescribed in para 4.16 of the solar policy and lock in of 26% shareholding of captive users prescribed in Guidelines dated 08.03.2019 and other such conditions before signing the connection agreement for becoming eligible for the special exemptions 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 Petitioner cannot be allowed to ignore these provisions.
37. The counsel for Discoms, in regard to the aforesaid, has correctly placed reliance on the following judgements to submit that when a policy/notification provides certain exemptions, it is necessary that qualifications prescribed therein are satisfied, without which no exemptions of such policy/notification can be availed.

(i) Bhai Jaspal Singh v. CCT, (2011) 1 SCC 39

"26. The conditions for availing exemptions are generally laid down in the notifications granting exemptions. Sometimes, exemptions are grafted in the Rules framed in this behalf. In Crawford's Statutory Construction, it is stated that "provisions" providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognised, the person or property claimed to be exempted must come clearly within the language apparently granting the exemption. In our opinion, the principle to be kept in view while interpreting exemption notification is that the meaning of the words given in the exemption notification is to be gathered from the language employed in the notification. The notification by which exemption or other benefits are provided by the Government in exercise of its statutory powers normally have some purpose. Such purpose is not to be defeated nor those who may be entitled for it are to be deprived by interpreting the notification which may give it some meaning other than what is clearly and plainly flowing from it."

(b) CCE v. Mahaan Dairies [CCE v. Mahaan Dairies, (2004) 11 SCC 798]:

'8. It is settled law that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred. The Tribunal has based its decision on a decision delivered by it in Rukmani Pakkwell Traders v. CCE [Rukmani Pakkwell Traders v. CCE, 1998 SCC OnLine CEGAT 152 : (1999) 109 ELT 204] . We have already overruled the decision in that case. In this case also we hold that the decision of the Tribunal is unsustainable. It is accordingly set aside.

(c) Essar Steel India Ltd. v. State of Gujarat, (2017) 8 SCC 357:

"20. We have noticed above that power purchase agreement allocated the energy to the Gujarat Electricity Board to the extent of 58% and 42% power supply was to be given to sister concerns i.e. Essar Gujarat, Essar Steel and Essar Oil as a special case. It is well settled that taxing statute are to be strictly construed specifically the exemption notification. It has been held that the statutory provisions providing for exemption has to be interpreted in the light of words employed in it and there cannot be any addition or subtraction from the statutory provision."

38. 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.

39. The Commission is of the opinion that the Petitioner had an option to either set up its power plant pursuant to and under the provisions of the Solar Policy or outside the Solar Policy. The Petitioner after having once 'elected' the Solar Policy route, shall have to follow the said route till the very end of the road i.e. till the point all conditions and/or restrictions imposed under the Solar Policy read with HAREDA's and HVPNL guidelines are complied with and exhausted. All consequences of making said choice including benefits and burdens thereof shall have to be borne by the Petitioner. Therefore, the Petitioner's contention that the issue of connectivity and the captive conditions to be fulfilled have no correlation as per the provisions of the Solar Policy, cannot be accepted. The Petitioner cannot be allowed to avail all the benefits of the policy and escape from the obligations arising thereunder. Reference in this regard may be taken of the following judgments:-

    In **Beepathumma&Ors. vs. V.S. Kadambolithaya&Ors., 1964 (5) SCR 836, New Bihar Biri Leaves Co. v. State of Bihar, 1981 (1) SCC 537**

40. Considering the law laid down in the above judgments, 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. 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 signing of the connection agreement. 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 par 4.16 of the Solar Policy and HAREDA's guidelines dated 08.03.2019.

41. In case of ***Premium Granites and Ors. v State of Tamil Nadu and Ors. AIR 1994 SC 2233*** relied on by the Respondent DISCOMs, the Hon'ble Supreme Court held that Courts/ quasi -judicial bodies should refrain from interfering in policy matters, which fall into the realm of the State/Executive. In the present case, if the reliefs sought by the Petitioner on the issue under consideration is granted, the same would tantamount to interfering with the terms and conditions of the Solar policy read with HAREDA guidelines/clarification, which as mentioned above fall within the domain of the State. Thus, for this reason also, no interreference in the conditions required to be complied with is called for.

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.

43. The Solar Policy has prescribed a lock in period of one year post completion of the project on shareholding pattern 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 of the Electricity Rules, 2005 at the end of the first financial year of operation. If such a situation arises later, the entire exercise of granting permissions and connectivity with benefits under the Solar Policy 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.

44. The argument of the Petitioner that para 4.16 is not applicable to the Petitioner on the ground that it is applicable only on the promoters of solar projects who were desirous of selling power to the Distribution Licensees through a bidding process does not hold any merit. The reason being that in the later part of para 4.16, it clearly refers to an "application" which is submitted by the developer developing the solar power project. This would include all "Project Developers" taking benefit by getting registered under the Solar Policy.

45. The Petitioner's reference to the term 'bid document' used in para 4.16 of the Solar Policy to contend that the same governs operation of para 4.16 is incorrect and this submission is made overlooking the part of the said para 4.6 which mandates that '*no change in 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.*'

46. Another dispute has been raised by the parties that the term "application" as used in para 4.16 of the solar policy refers to which application. The Petitioner contends that it is the date of application made to HAREDA for registration of project. The Respondents contend that it refers to the first application/proposal which a project developer makes to the concerned utility for setting up of the Project i.e. the LTOA application for connectivity made to HVPNL by the Petitioner. The Commission finds force in the argument of the Respondent that for the purpose of grant of "Connectivity" / execution of connection agreement by ensuring compliance of the conditions of the Solar Policy, it is necessary that the first application made by Generator which in the present case is application for LTOA for Connectivity must be seen for the purposes of reckoning compliance of Para 4.16 of the Solar Policy. The Commission notes that as per the HVPNL Guidelines dated 19.03.2019, there is a queue formed for issuance of in-principle feasibility for grant of connectivity to the Generators on "*first come first serve basis*". In this background, it is necessary to ensure that the Solar Project Developers who are granted HAREDA Registration and subsequent Connectivity satisfy the conditions mentioned in para 4.16 - no change in their shareholding and shareholding pattern as well as identification of captive users criteria for being captive at the time of making the LTOA application.

47. On perusal of the Petitioner's LTOA application dated 05.06.2018, it appears that the Petitioner had not decided on whether it would be a captive plant or an IPP solar generator. The information about the captive user was provided for the first time by way of the LTOA application of the Petitioner dated 14.01.2020 submitted with HVPNL. Therefore, it can be concluded that the Petitioner took benefit of Solar Policy and secured seniority in the list of applicants for a priority for grant of LTOA as well without there being any actual captive users until 14.01.2020. The Respondents rightly

pointed that if connectivity to the Petitioner is to be processed based on the aforesaid LTOA application dated 14.01.2020, the Petitioner would have lost its seniority and the project would not even be entitled for grant of in principle feasibility, to start with. As already noted in preceding paras, because of the seniority accorded to the Petitioner basis its LTOA application for connectivity dated 05.06.2018, another solar project developer i.e. AMP Solar Park Private Limited could only get in principle feasibility for 30 MW against an application for 50MW. Thus, the conduct of the petitioner also amounts to squatting on the scarce capacity available at the sub-station concerned.

48. It has been brought to the notice of the Commission during the arguments and through the submissions filed by the Respondent No. 2 to 4 that the Petitioner had filed an application with HAREDA for approval for setting up the solar plant in August, 2018. Therefore, even assuming that the application referred to in para 4.16 of the Solar Policy is an application filed with HAREDA, then also considering that the Petitioner had filed an application with HAREDA on 20.08.2018, the Petitioner still is in violation of para 4.16.

49. In the given facts and circumstances, it emerges that for the purpose of reckoning compliance of para 4.16 of the Solar policy and the subsequent guidelines, the LTOA application of the Petitioner for connectivity dated 05.06.2018 would have to be considered.

50. A similar 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 13.02.2018 to HAREDA and the Petitioner had submitted its application only thereafter i.e. on 20.08.2019. 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:

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51. 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 of 13.02.2019; therefore, the Guidelines dt. 8.03.19 are applicable to it on that ground alone.
52. 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."*

53. Once the above clarification is read with the actual provisions of the Guidelines as mentioned above and also, reply to the query at S. No. 2 of the very same clarification, it is crystal clear that the Guidelines uniformly apply to all project developers. Relevant portion of the said clarification relating specifically to the lock-in period reads 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****."*

54. Thus, the Petitioner's contention that the said Guidelines are not applicable to it is incorrect and therefore rejected.

55. This issue can be looked at from another perspective. Para (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."* The Petitioner did not challenge this particular condition either in this petition or otherwise. Now, effectively the above contention of the Petitioner would mean that the above condition is rendered in-operable. 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 didnot 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* as discussed in the preceding paragraphs, it is not open for the Petitioner to make such contentions.
56. Accordingly, we do not find any merit in the contention that para 4.16 of the Solar Policy or the Guidelines dated 08.03.2019 and clarification dated 18.04.2019 are not applicable on the Petitioner.
57. Therefore, the Discoms, pursuant to the order dated 22.06.2020 of the Co-ordination Committee , have correctly sent requisition list to the Petitioner on 11.07.2020 as well as 24.04.2020 to ascertain compliance of the conditions prescribed in the Solar Policy and HAREDA'S Guidelines. Non-provision of requisite information has impaired the entire process and assessment of Petitioner's compliance with these conditions.The Commission vide interim orders dated 30.07.2020 and 18.08.2020, had also asked the petitioner to provide the documents as requested for by the Respondents relating to share holding pattern at the time of application for LTOA till date.However, the Petitioner did not provide the complete details.
58. The shareholding details provided by the Petitioner to the Commission vide email dated 27.08.2020 and also included in their written submission as Appendix I only includes shareholding pattern as on 20.08.2020 i.e. date of application to HAREDA for registration and as on 29.11.2019. The shareholding details as on the date of LTOA application of the Petitioner dated 05.08.2018 has not been provided by the Petitioner.
59. A perusal of the shareholding details of the Petitioner as placed on record by the Petitioner as well as the Respondents reflects that there has been a substantial change in the shareholding of the Petitioner over the period which is in contraventions of the Solar Policy and subsequent amendments/ guidelines. The shareholding changes have been noted as below:-
    i. The Petitioner was incorporated on 26.04.2018 by Sh. Manish Mehta and Sh. Shantnu Faugaat with each having equity share holding of 50 %.
    ii. The shareholding information as on 05.06.2018 i.e. the date of LTOA application has not been shared by the Petitioner despite been requested on several occasions as discussed above. Hence, we have to presume that the shareholding was held 50% each by Sh. Manish Mehta and Sh. Shantnu Faugaat as brought out by the Respondents.

iii. The shareholding information as on 21.08.2018 i.e. the date of earlier application made to HAREDA by the Petitioner for setting up the solar plant has not been shared by the Petitioner.

iv. On 20.08.2019 i.e. the date of application to HAREDA for registration, the shareholding of the petitioner changed to M/s Cleantech Solar Energy (India) Pvt. Ltd holding 73.528%, Exide industries holding 26.471% and Shri Prashant Dhanraj Kothari holding 0.001%.

60. Subsequently there was minor change in shareholding of M/s Cleantech Solar Energy (India) Pvt. and Exide Industries.

61. Thus, it is apparent that from the date of first LTOA application dated 05.06.2018 till date when the project has admittedly not yet been completed, the shareholding of the Petitioner's project has undergone several changes qua the requirement of 51% to be held by leading shareholder and the restriction on change in the lead shareholder. This evidently is a 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.

62. Even if the contention of the Petitioner is assumed to be correct that the relevant date for reckoning lock in of shareholding of the lead shareholder (as provided in para 4.16) and 26% shareholding of captive users (as provided in the HAREDA's Guidelines dated 08.03.2019) should be the date of application to HAREDA, then also the same is also of no help to the Petitioner. The Respondents have placed on record that the Petitioner had in fact applied to HAREDA earlier in August, 2018. Thus, the relevant date even if Petitioner's arguments are accepted, would be the said date of application in August, 2018. From this perspective also, the Petitioner is in non-compliance of the above conditions prescribed in the Solar Policy and HAREDA's Guidelines.

63. In addition to the above, it is relevant that the Execution of the Connection Agreement would be a result of compliance of all the conditions mentioned in the provisions of the Solar Policy with its aforesaid amendments, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity granted to the Petitioner. We are of the opinion that once the Petitioner elected for setting up the aforesaid power plant under the provisions of the solar policy, its life cycle – shareholding (both in context of lead shareholder and captive users) until expiry of one year after its completion of the power plant is subject to 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 issue of execution of connection agreement is to be read in conjunction with the Solar Policy, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity granted to the Petitioner. They can't be read and understood in isolation with each other in the facts and circumstances of the present case. Thus, grant of physical connectivity and execution of connection agreement is nothing but an intrinsic part of the regime triggered by the Petitioner by electing to set-up its power plant under the Solar Policy. It can be seen from another perspective i.e. if the connection agreement is directed to be executed without insisting on conditions imposed in the Solar Policy, HAREDA's guidelines dated 08.03.2019, HVPNL's Guidelines, in principle feasibility and final connectivity then the very purpose

of framing of the Solar Policy would get frustrated. This becomes all the more relevant in the present context, when HPPC – a joint forum of the Discoms – is tasked with the responsibility to see compliance of para 4.16 and captive status i.e. lock in of 26% shareholding of captive users and identification of captive user emanating from HAREDA's Guidelines dated 08.03.2019.

64. In the aforesaid context, it would be useful to understand that the benefits given under the Solar Policy is a single package, having various components, which are particulars of the benefits and conditions required to be complied with for availing this benefit. One of the most important facet of setting up of a power plant is connectivity and execution of connection agreement, without which a power plant cannot be operationalized. If a power plant is being set up under the solar policy and if it is required to be demonstrate compliance of the conditions prescribed therein and if notwithstanding a developer's failure to demonstrate such compliance, connectivity is granted and connection agreement is executed, no useful purpose would be served in imposing the above conditions. The issue of connectivity cannot be separated from the Solar Policy and Guideline dated 08.03.2019 of HAREDA. It is an integral part of package of benefits and conditions prescribed under the Solar Policy and has to be examined in conjunction with the Solar Policy and Guideline dated 08.03.2019 of HAREDA

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 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 Petitioner 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 developersentry 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

In the instant case, based on the documents produced on record, it can be concluded that the Petitioner 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 Petitioner in this regard are accordingly rejected.

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

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

*"**5. Eligibility for connectivity**. –*

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

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

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

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8. Entitlement and other conditions for open access. –

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

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

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24. Imbalance Charges. –

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

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

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

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

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

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

(1)……

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

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

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

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

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

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

…….

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

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

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

"2.5. Levy of demand surcharge for total drawl (MW) exceeding the contract demand (for open access consumers) In the Schedule of Tariff approved by the Commission the provision for levy of

demand surcharge in case maximum demand of a consumer exceeds his contract demand has been made as under:

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

68. The proviso to Regulation 8 (1) cannot in any manner be read to understand that there cannot be any restriction on drawl of power by a captive consumer of a Solar based Captive generating plant, as has been argued by the Petitioner. The Petitioner's above argument is arising out of misreading of the above Regulations. Regulation 8 clearly provides that the provisions thereof are subject to the other regulations contained in Open Access Regulations. Thus, Regulation 8 shall have to be read along with other applicable regulations of OpenAccess Regulations., i.e. Regulations 24, 42, 43 and 45.
69. A conjoint reading of the said Regulations 24, 42, 43 and 45 prescribe certain consequences and penalties for over drawl of electricity by an open access consumer beyond their contract demand. These regulations in essence place restrictions on open access consumers to limit their drawl up to its contracted capacity. Regulation 42 read with regulation 24, 43 and 45 specifically prescribe penalty for drawl of power beyond the contact demand of an embedded open access consumer in the form of imbalance charges, demand surcharge, etc.
70. In caseopen access power drawl of any consumer of the Petitioner exceeds his contract demand, then in terms of the above provisions he shall be liable for penalties prescribed. The incorporation of the condition that open access granted to the Petitioner shall be restricted to the contract demand of its open access consumer is thus, in line with the provisions above mentioned. There is no illegality in making explicit what the above provisions prescribe.

71. Further, such restrictions are necessary to be placed in the approvals for connectivity granted to the solar power developers to prevent/reduce unutilized surplus solar power.
72. Accordingly, the condition no. (viii) of the in-principle connectivity which reads as:-

"viii. The power drawn by the consumer/applicant shall not be more than its contract demand during any time slot of the day",

and the condition no. (viii) of the final connectivity, which reads as:

"Open Access consumers going for tie up with solar generators, should not be permitted to have agreements more than their respective contracted demand, so that there is minimum unutilized surplus solar power generation"
are legal and in consonance with the Open Access Regulations.

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

d) Whether the condition in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy bad in law?

73. This Commission has considered its order dated 13.05.2019 passed in PRO 22 of 2019 filed by HAREDA seeking amendments in the RE Regulations. One of the prayers made in the said petition for seeking amendment in Clause no. 60 (1) & (2) of the RE Regulation, 2017 in-line with Clause no. 4.3 of Haryana Solar Power Policy 2016 amended and notified vide notification no. 19/7/2019-5P dated 08.03.2019. This Commission after considering the rival contentions and views of all stakeholders and after conducting a public hearing, inter alia, held as under:

"7. The issues raised by the stakeholders including HAREDA and the Commission's decision thereto are as under:-

i) Wheeling and banking agreement has not been finalized by HVPNL/SLDC.

Commission's view:-

Procedure/guidelines for banking of energy from RE power projects submitted by HVPNL vide memo no. Ch-104/15B-521 dated 06.03.2019 as prepared in consultation with stakeholders, is approved and enclosed with these Regulations as Annexure-A-1.

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ANNEXURE A-1

PROCEDURE / GUIDELINES FOR BANKING OF RENEWABLE ENERGY (RE) POWER:

This procedure has been prepared in compliance to the "Haryana Electricity Regulatory Commission RE Regulations, 2017(notification dated 24th July 2018). This Procedure shall be read in conjunction with the said Regulations.

The procedure covers guidelines, terms and conditions, various applicable charges, application format for applying for Banking/use of Transmission and/or Distribution system of the licensee(s) i.e. Haryana Vidyut Prasaran Nigam limited (HVPNL) and/or Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) and disposal of applications made with HPPC for Banking of power by from Solar Power developers. This procedure shall be reviewed or revised by the nodal office i.e. HPPC, as and when required to address any teething/ implementation problems that may arise, with prior approval of HERC. This procedure shall come into force after approval of the HERC.

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D. Terms and conditions for Banking:

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xiv. Any solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for."

74. A perusal of the order passed by this Commission clears the position that as per Annexure A-1, clause D of the guidelines for banking as approved by the Commission, one of the condition for availing banking facility by a RE Generator is that the solar power injected over and above the contracted capacity in any time block will be treated as dumped energy and not accounted for.
75. Thus, condition incorporated in the Tripartite Agreement to treat the power injected by the generator beyond the contracted capacity as dumped energy is in line with the aforesaid order dated 13.05.2019 and the guidelines issued by this Commission in PRO 22 of 2019. Accordingly, it is held that the same is valid and is correctly incorporated in the Tri-Partite Agreement.
76. Further, from this perspective also it is important that restriction of drawl of electricity only up to contract demand by captive users of the Petitioner is necessary and has been rightly so incorporated in the in-principle approval and final approval.

In view of the above, this Commission is of the view that the provisions of the Tripartite Banking Agreement are in consonance with the order passed by this Commission as well as the RE Regulations and thus, legally valid.

e) Whether the Petitioner is entitled to compensation for the losses suffered, along with interest?

In view of the above findings, this Commission is of the view that the delay occurred in signing the connection agreement is not attributable to the Respondents and Petitioner is not entitled to any compensation for the alleged losses suffered by it on account of non-signing of the

Connection Agreement. The project is still not complete. Besides, the right of the petitioner for grant of compensation or recovery of projected loss is foreclosed by its own conduct in not complying with the conditions of the policy, guidelines and terms of approval as incorporated in the *In Principle feasibility*. Such compliance was necessary and indispensable before any connectivity grant could be made in favor of the petitioner.

This petition is accordingly decided.

Date: 24.09.2020 **Place: Panchkula**	**(Naresh Sardana)** **Member**	**(Pravindra Singh Chauhan)** **Member**	**(D.S. Dhesi)** **Chairman**