

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

**Petition No. HERC/PRO 1 of 2019**

**Date of Hearing : 08.09.2021  
Date of Order : 13.10.2021**

**IN THE MATTER OF**

Petition filed under Section 86(1)(a) read with Section 62(1) and 62(3) of the Electricity Act, 2003 and determination of tariff for Special Economic Zone developed by M/s ASF Insignia SEZ Pvt. Ltd. under the enabling provisions of the Electricity Act, 2003

**Petitioner**

ASF Insignia SEZ Private Limited

**Respondent**

Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)

**Present on behalf of petitioner**

M/s Priyanka Chaudhry, Advocate

**Present on behalf of respondent**

Shri Samir Malik, Advocate

**Quorum**

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

**Chairman  
Member**

**ORDER**

**Brief background of the Case**

1. The petitioner herein M/s ASF Insignia SEZ Private Limited is a Company incorporated under the Companies Act, 1956. The present petition has been preferred for determination of tariff for Special Economic Zone being developed by them.

2. Submissions of the petitioner, in brief, is set out hereunder.

1) The petitioner is developing an IT-ITES sector specific Special Economic Zone (SEZ) on the land parcels, situated in the revenue estate of Village Gwal Pahari, Tehsil Sohna, District Gurgaon, in the State of Haryana and measuring approximately 47.69 acres, out of which, the Ministry of Commerce and Industry, Department of Commerce, Government of India, has notified the first phase as, comprising of 25.11 acres of land i.e. 10.1627 hectares vide Notification No. S.O.2143 dated 17.12.2007 published in the Gazette of India dated 17.12.2007. The Second Phase of SEZ (comprising of 22.58 acres of land i.e. 9.1401 hectares) has also been notified by the Ministry of

Commerce & Industry, Department of Commerce, Govt. of India, vide Notification, S.O. 2098(E), dated 27th August 2010, published in the Gazette of India, dated 27th August 2010.

- 2) The petitioner previously used to operate under the name and style of “M/s Canton Buildwell Private Limited”, but subsequently the name and style of the petitioner’s company was changed to ASF Insignia SEZ Pvt. Ltd. on 09.02.2012 under due approval of the Ministry of Commerce and Industry, Government of India vide letter No. F2/631/2006-SEZ dated 07.02.2012 and a certificate pursuant to Section 23(1) of the Companies Act, 1956 by Registrar of Companies, National Capital Territory of Delhi & Haryana was issued to that effect in favour of the petitioner.
- 3) The Ministry of Commerce and Industry, GoI, subsequently sanctioned to the petitioner to carry out authorized operations in the Processing & Non-Processing Zone of the sector specific Special Economic Zone for IT / ITES vide letter No. F. 2/631/2006-SEZ dated 30.05.2008. The activities, as approved in these areas, were as follows;

(i) Processing Area:

- a) IT/ITES Buildings (Information Technology/ Information Technology Enabled Services Buildings);
- b) Essential Commercial – Micro Shopping (Utility Stores/ATMs);
- c) Food Courts/Restaurants, etc.;
- d) Facility Management Offices;
- e) Amenities – Energy Centre, etc.;
- f) Other allied activities like, Security/Police Posts, Effluent Treatment Plant, Air conditioning, Recreational facilities including club house, Indoor or Outdoor games, gymnasium, Common Data Centre, Bus Bay, Wi-Fi and/or Wi Max Services, Drip and Micro irrigation systems.

(ii) Non-Processing Area:

- a) Housing and/or Service Apartments;
- b) Polyclinic/Diagnostic Centre and Nursing Home;
- c) Administrative Block;
- d) Amenities – Energy Centre;
- e) Office space and Training Centre;
- f) Parking including multi-level car parking;
- g) Power including power back up facilities for captive use;
- h) Other Employee welfare facilities like, Gymnasium and SPA facility, Ayurvedic Therapy-cum Yoga centre, Day Care centre, crèche and play school, Club House- cum Recreation

Centre with community facilities like dining, swimming, and other recreation, Indoor Sports centre, Shopping arcade, Food Services, Security/Police posts, Effluent treatment plant, Air-conditioning, Bus Bay, Wi-Fi and Wi Max Services, Drip and Micro irrigation systems.

- 4) The Industries and Commerce Department, Government of Haryana, in exercise of the powers conferred by Section 5 of the Haryana Special Economic Zone Act, 2005 also notified the boundaries and extent of the area of Phase-1 of the IT/ITES SEZ of the petitioner measuring 10.1627 Hectares vide Notification No. 49/6/2009-4IB-1 dated 22.01.2009.
- 5) The office of the Development Commissioner, Noida Special Economic Zone also approved revision in demarcation of Processing zone (PZ) and Non-Processing zone (NPZ) area of the IT / ITES SEZ vide letter bearing No. F.No. 10/113/2007-SEZ/3774 dated 21.04.2016. Further the office of the Development Commissioner, Noida Special Economic Zone granted Occupation Certificate to the petitioner in respect of Housing (Tower A & B) constructed in the Non-Processing Area of the IT/ITES SEZ vide memo No. F.No. 10/113/2007-SEZ/6696 on 21.06.2017.
- 6) The office of the Development Commissioner, Noida Special Economic Zone, also granted Occupation Certificate to the petitioner in respect of Tower-C of Housing & Cultural Centre (Club/Sports) with Swimming Pool in the Non-Processing Area of the IT/ITES SEZ vide memo bearing No. F.No. 10/113/2007-SEZ/6787 on 27.06.2018.
- 7) That thus the office of the Development Commissioner, Noida Special Economic Zone has granted to the petitioner, the following Occupation Certificates, in respect of the buildings constructed in the Non-Processing Area of the IT/ITES SEZ :

S.No.	Details of Building in Non-Processing Area.	OC memo No.	Date of OC
1.	Housing (Tower A & B)	F. No. 10 / 113 / 2007 – SEZ / 6696	21.06.2017
2.	Tower-C of Housing & Cultural Centre (Club /Sports) with Swimming Pool	F. No. 10 / 113 / 2007 – SEZ / 6787	27.06.2018

The office of the Development Commissioner, Noida Special Economic Zone has also granted the following three Occupation Certificates to the petitioner in respect of the buildings constructed in the Processing Area of the IT/ITES SEZ of the petitioner:

S. No.	Details of Building in the	OC memo No.	Date of OC
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	Processing Zone		
1.	IT Building (B2)	F.No. 10 / 113 / 2007 – SEZ / 9603	30.11.2011
2.	IT Building (B3), Podium and Energy Centre	F.No. 10 / 113 / 2007 - SEZ/13318	29.12.2014
3.	Facility Management Office (BMS Room)	F.No. 10 / 113 / 2007 – SEZ / 9040	23.08.2017

- 8) The petitioner has already developed an area of 20.84 lakh sq. ft. of IT/ITES spaces and about 2.78 lakh sq. ft. of Residential space in Non-Processing Area, which is already operational.
- 9) As per the approved Master Plan, the petitioner is authorized for construction of IT/ITES Buildings and other buildings in the above-mentioned SEZ, the details of the same are as follows:
- a) IT/ITES Buildings;
  - b) Commercial;
  - c) Housing;
  - d) Socio Culture;
  - e) Energy Center;
  - f) Sewage Treatment Plants;
  - g) 66/11 kV Electrical Substation;
  - h) Other ancillary buildings;
- 10) That in order to meet the electricity requirement of the IT/ITES SEZ, the petitioner had estimated a total power requirement of 50 MW and the same would be taken up in phases depending upon the operationalization of the various buildings. For catering to this power requirement of 50 KW, the petitioner has planned and is developing a 66 kV sub-station, for which necessary approvals have already been obtained from Haryana Power Utilities. The building plans of 66 kV GIS sub-station have also been approved by the office of Development Commissioner, Noida Special Economic Zone vide its memo No. F.No. 10/113/2007-SEZ/12837 dated 22.11.2018. The estimated capital cost for setting up of this sub-station is Rs. 19 Crores. The petitioner has also got approval of General Electric Layout (GELO) from the concerned authorities and the construction work is in progress. It is expected that the substation would be functional by 3rd quarter of 2019.
- 11) The present released load is 4800 kW (Contract Demand of 4800 kVA), which are being fed

through a dedicated independent 11 kV feeder under the Bulk Supply (NDS) category and approved vide Memo No.4-WO-DRG-1444 dated 10.07.2008. This dedicated and independent feeder of 11kV for providing 4800 KW power has been drawn from Sector 56, Gurugram Receiving Station of DHVBN which is about 8 Kms away from petitioner's SEZ site. The petitioner has incurred Capital cost of Rs 1.75 Crores for providing this infrastructure to evacuate 4800 KW of power from Sector 56 Sub-Station of DHVBN, Gurugram.

- 12) DHVBN by issuing Memo. No. Ch.-30/SE/C/127/SOL dated 14.04.2017, further sanctioned additional load of 4800 KW by extension of existing load of 4800 KW to 9600 KW and also approved release of 16 MW of power on 66 kV supply pressure under HT NDS category. This 66 KV line has already been installed by the petitioner from DHVBN Sector 56 Sub-station, Gurgaon to its SEZ site at a cost of about 12.67 Crores. Additional load of 4800 KW will be surrendered on release and energisation of 16 MW supply pressure.
- 13) As the above loads have been sanctioned on Bulk Supply (NDS) tariff category and the petitioner is, therefore, required to charge from the units/customers in PZ and NPZ not in excess of tariff as applicable to petitioner's units/ customers under different user categories. However, the tariff under NDS is much higher than the tariff charged / billed by DHVBN for Domestic Supply consumers and in consequence thereof the petitioner has no option but to levy the charges on the residential units /consumers at the rate applicable under Bulk Supply (NDS) tariff category. The customers/holders of Residential units have been requesting / expressing their grievance to the petitioner for charging power tariff in accordance with the domestic tariff rate category of DHVBN.
- 14) As per the Haryana SEZ Act, 2006, the developer of SEZ is permitted to generate electricity either in or outside the SEZ for consumption within the SEZ. Similar permission is granted to the Units located in SEZ to generate electricity in or outside the SEZ for self-consumption either individually or in groups. The Haryana SEZ Act further provides for treating the Group of Units in the SEZ to be considered as a separate class of consumer and they shall be permitted to avail supply of electricity at a determined tariff from the existing licensee. There is a provision for grant of separate distribution license or franchise for distribution of electricity within the SEZ or in parts thereof.
- 15) The SEZ so far developed and further under-development by the petitioner consists of 'Processing and Non-Processing Zones', which in turn falls under different activities i.e. Industrial, Commercial and Residential. Broad distribution of sanctioned FAR for these Zones are as follows:

a) Processing Zone:

- |                                   |                       |
|-----------------------------------|-----------------------|
| (i) Industrial Projects (IT/ITES) | 2,78,119.20 Sq. Mtrs. |
| (ii) Commercial Facilities        | 8,111.81 Sq. Mtrs.    |

b) Non-Processing Zone:

- |  |                     |
|--|---------------------|
| (i) Residential Buildings                      | 86,934.00 Sq. Mtrs. |
| (ii) Commercial (including welfare activities) | 48,373.00 Sq. Mtrs. |

- 16) That DHBVN has released to the petitioner, a single point supply on Bulk Supply (NDS) category i.e. 4800 KW on 11 KV dedicated feeder and in future also, 16 MW of power on 66 KV line and additional sanction of 4800 KW on 11 KV line will be released as single point supply on Bulk Supply (NDS) category. All the Units, irrespective of industrial, commercial or domestic category, located in the SEZ, have to pay the tariff on Bulk Supply (NDS) category which are more and do not match with the tariffs paid by the residents outside the SEZ. There has been a regular objection from the residential Unit holders on this issue and the petitioner has since been pursuing with the respondent Nigam for allowing the petitioner to charge tariff on the units / customers in the SEZ area based on their activities like industrial, commercial and residential. The petitioner made regular correspondence with various senior officials of respondent Nigam on this issue as evident in the letters dated 02.11.17, 20.11.17 and 04.07.18. In spite of constant persuasion by the petitioner there has been no response from the respondent Nigam so far.
- 17) As per approvals of DHBVN, there is a condition that *“the tariff shall be charged from the individual customers, if any, in accordance with HERC regulations and sales instructions/circular issued by the Nigam from time to time (only for bulk-Domestic Supply)”*. Since the petitioner is having “Single Point Supply” in BS (NDS) tariff category, the petitioner is unable to fulfil this specific condition and the occupiers of the residential apartments have been paying the charges at higher rate i.e. under Non-Domestic Supply category. The petitioner is also receiving queries from the Lessees/Occupiers of the residential apartments for applicability of the Domestic Tariff, since they have to pay higher tariff in BS (NDS) category.
- 18) It is pertinent to point out here that in order to protect interests of the consumers, HERC has framed regulation for supply of electricity “Single Point Supply to Residential Colonies or Office cum Residential Complexes of Employers, Group Housing Societies and Commercial cum Residential Complexes of Developers, Regulations” notified on 9th January, 2013 and circulated vide Sales Circular No. D-4/2013, bearing Memo no. Ch-4/SE/C-346/2005/F-27 of 19th January 2013.

- 19) As per these regulations, the Group Housing Societies (GHS), seeking new electricity connections, have the option wherein the distribution licensee gives single point supply to the GHS at 11 kV or higher voltage, depending upon the feasibility and distribution of the electricity within the GHS is owned and managed by the GHS/Developer/RWA.
- 20) The second option is available where residents of a GHS have individual electricity connections. A reference meter is to be installed by the distribution license at the incoming supply point of the GHS, which records the total energy consumption of all the residents in the GHS. This is then compared with the total electricity consumption of all the residents in the GHS as per their individual meter readings plus the consumption for the common services / other non-domestic loads for each billing cycle. In case the difference in energy consumption for any billing cycle works out to be higher than 4%/5%, the GHS / Developer/RWA is liable to pay the difference in the energy consumption over and above the said 4% / 5%.
- 21) Therefore, in view of the above initiative undertaken by Hon'ble Commission, in order to trouble shoot the existing issues of the GHS and to cater to the best interest of the domestic supply consumers, a further initiative on part of the Hon'ble Commission is being beseeched by way of this petition.

## II. Jurisdiction of the Hon'ble Commission

- 22) The petitioner therefore files the present Petition, for kind consideration to grant appropriate relief in respect of the use of electricity in the SEZ area of the petitioner in pursuance of the enabling provisions of the relevant Statues and Regulations, as reproduced herein below:-

(a)Section 62(1)(d) of the Electricity Act 2003 empower this Hon'ble Commission to determine the tariff for retail sale of electricity. The relevant portions of the Act are reproduced hereunder,

*Section 62. (Determination of tariff): --- (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

.....

*(d) retail sale of electricity:*

*Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition*

*among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.*

- (b) Section 62(3) of the Electricity Act, 2003 further permits the Hon'ble Commission to differentiate in accordance with various factors of consumption of electricity and consumers. The relevant provision reads as follows,

*S. 62(3). The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*

- (c) Section 86(1)(a) of the Electricity Act, 2003 also states determination of tariff for bulk/retail supply of electricity as one of the functions of the Hon'ble Commission, relevant extract of which reads as follows:

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

*(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

### III. Submissions

#### A. Provisions under the SEZ Act, 2005 of the Government of India:

- 23) As per S.6 of the Central SEZ Act, 2005, the owner of SEZ is empowered to develop the area within the SEZ as 'Processing' and 'Non-Processing' areas. The Act categorizes the areas based on the activities performed in the manner as described below:

*S 6. The areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as-*

- (a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or*
- (b) the area exclusively for trading or warehousing purposes; or*
- (c) the non-processing areas for activities other than those specified under clause (a) or clause (b).*

- 24) Accordingly, the Act recognizes the categorization of the areas depending on the activities



performed therein. The petitioner's SEZ area is also being developed according to this categorization. While the 'Processing Areas' have activities of manufacturing of goods and rendering of services, the 'Non-Processing Areas' includes residential buildings, club, service apartments, banquet hall, etc.

B. Provisions under the Haryana SEZ Act, 2005:

- 25) The Haryana SEZ Act, 2005 lays down the duties, functions and power of the Developer and special provisions with reference to the infrastructure and amenities to be provided by the developer, which read as follows:

*S.8 Duties, functions and powers of Developer;*

*8. (1) Subject to the provisions of this Act, the Developer shall have the duty to secure planned development of the Special Economic Zone and provide for the establishment, construction, installation, operation, maintenance and management of the infrastructure and amenities in the zone.*

*(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Developer shall exercise and perform the following powers and functions, namely: -*

- (a) to prepare a development plan of the Special Economic Zone in conformity with the rules framed under this Act or adhered to by the Developer under sub-section (3) or as may be adopted by the Government under sub-section (4) of section 17 and to implement such plan after obtaining the approval of the Approval Committee;*
- (b) to demarcate and develop sites for industrial, commercial including Free Trade and Warehousing Zone, residential and other purposes according to the approved plan;*
- (c) to allocate and transfer, either by way of sale or lease or otherwise, plots of land, building or installation for industrial, commercial, residential or other purposes subject to his own title in relation to such plots or land, building or installation;*
- (d) to regulate the erection of buildings and setting up of industries in accordance with the building plan as approved by the Development Commissioner;*
- (e) to demarcate the boundary of the Special Economic Zone and any parts thereof and to construct and maintain demarcation structures, as per provisions of sub-section (3) and (4) of section 17;*
- (f) to fix rates for transfer of land, building or installations by way of sale, lease or otherwise from time to time;*

*(g) for the purpose of providing, maintaining or continuing any amenity and infrastructure in the Special Economic Zone, the Developer may levy such charges, as he may consider necessary, in respect of any land, building, installations or any other infrastructure upon the user/occupier thereof; and*

*(h) to perform such other functions as may be prescribed from time to time.*

*S.9(2) Provision for Infrastructure or amenity by Developer;*

*(2) Where any infrastructure or amenity is provided, the Developer shall have the power to levy charges for the use of service so provided.*

*S.10 Generation and supply of electricity;*

*(1) (a) The Developer or the Co-Developer shall be permitted to generate electricity in or outside the Special Economic Zone for consumption in the Special Economic Zone.*

*(b) Units located in the Special Economic Zone, individually or in groups shall be permitted to generate electricity in or outside the Special Economic Zone for self-consumption.*

*(c) Units located in the Special Economic Zone, individually or in groups shall be permitted to avail of supply of electricity by sourcing it through open access from generators directly and wheel electricity to the Special Economic Zone for consumption, subject to such payment as may be required for open access and wheeling of electricity.*

*(2) Groups of units in the Special Economic Zone will be considered a separate class of consumer and shall be permitted to avail supply of electricity at a determined tariff from the existing licensee.*

*(3) The Developer or the Co-Developer of the Special Economic Zone or an association of units located in the Special Economic Zone can, unless exempted under the Electricity Act, 2003 (Central Act 36 of 2003), obtain a distribution license or a franchise for distribution of electricity within the Special Economic Zone or in part(s) thereof.*

*.....*

*(5) No electricity duty or cess shall be levied on the business of generation, transmission and distribution of electricity and on consumption of electricity within Special Economic Zone.*

26) From the above provisions it is evidently clear that the petitioner could generate own electricity and supply to the units / customers in the SEZ area. They can also get electricity supply from the Licensee on the specified tariff as approved by the Commission for that category of

consumers. Once the petitioner acts as a Distribution Licensee for the SEZ, it could obtain power supply from the Licensee and/or generate its own power and supply to the units located in SEZ. If the power is received from the Licensee, the tariff will be charged from the units as approved by the Commission for that category of consumers. However, for the additional services provided to the units including captive generation, the petitioner may charge for these services directly or through a co-developer.

27) Thus, with the options available to the petitioner of the SEZ, it can get power from the respondent as per the rate under Approved Power Purchase Cost (APPC) determined by the Hon'ble Commission for relevant Financial Year for the Distribution Licensee, so that while it can discharge all the functions of a Distribution Licensee in his area of power distribution and maintain the tariffs as approved by the Hon'ble Commission for specific categories of consumers. While in the instant case, the present source of supply is from the respondent, who is supplying power at Bulk Supply (NDS) category, it is not possible to charge the consumers at the rates approved by the Hon'ble Commission for various categories of consumers. Now, in view of the issue of higher tariff i.e. tariff for Bulk Supply (NDS) category charged from the residents i.e. domestic consumers, they are not getting the benefit of concessional tariff as domestic consumers. It may be noted here that as per the Foot-note (12) of the last ARR & Distribution Retail Supply Tariff Order for FY 2018-19 of HERC dated 15.11.2018, the benefit of lower slabs is not available to the consumers and the total consumption is to be charged at a single tariff depending on the average consumption /flat/residential unit for each month.

28) C. Provisions under the Haryana SEZ Rules, 2006:

Similar provisions exist in SEZ Rules, 2006, which read as under,

*5. Requirements for establishment of a Special Economic Zone —*

*(5) Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavor that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely:—*

*(a) exemption from the State and local taxes, levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;*

*(b) exemption from electricity duty or taxes on sale, of self-generated or purchased electric power for use in the processing area of a Special Economic Zone;*

*(c) allow generation, transmission and distribution of power within a Special Economic Zone subject to the provisions of the Electricity Act, 2003 (No. 36 of 2003);*

- (d) providing water, electricity and such other services, as may be required by the developer be provider or caused to be provided;*
- (e) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) and other related Acts in relation to the Unit;*
- (f) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) in relation to the workmen employed by the Developer;*
- (g) declaration of the Special Economic Zone as a Public Utility Service under the Industrial Disputes Act, 1947 (No. 14 of 1947);*
- (h) providing single point clearance system to the Developer and unit under the State Acts and rules.*

29) Haryana SEZ Rules, 2006 further require certain special facilities to be provided in SEZ relating to the Information Technology, such as provided under Rule 5A of these Rules,

*5A. Infrastructure requirements relating to Information technology*

*In case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:—*

- (a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;*
- (b) reliable connectivity for uninterrupted and secure data transmission;*
- (c) provision for central air-conditioning system; and*
- (d) a ready to use, furnished plug and pay facility for end users.*

30) The Developer will provide the electricity services and Government will allow the authority to undertake these services. But all this has to be done as per the provisions under the Electricity Act, 2003, which reads as follows,

*ELECTRICITY ACT, 2003:*

*Section 14. (Grant of license):*

*The Appropriate Commission may, on an application made to it under section 15, grant a license to any person -*

- (a) to transmit electricity as a transmission licensee; or*
- (b) to distribute electricity as a distribution licensee; or*
- (c) to undertake trading in electricity as an electricity trader,*  
*in any area as may be specified in the license:*

.....

*Provided also that the Appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of license within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to*

*the capital adequacy, credit-worthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of license, shall be refused grant of license on the ground that there already exists a licensee in the same area for the same purpose:*

*Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate license from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:*

.....  
*Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone. (incorporated under Notification No. S.O. 528(E) dated 03.03.2010) .*

- 31) Thus, the Developer of a SEZ does not need to have a distribution license under S.14(b) of the Electricity Act, 2003 as it has been declared as a 'Deemed Licensee' for distribution of electricity in the SEZ Area. While discharging its function as a deemed distribution licensee, it is necessary that the licensee may be allowed to levy the power tariff as applicable for various categories of the consumers i.e industrial, commercial, residential/ domestic at the APPC rate.
- 32) Thus, the present Petition is being filed requesting Hon'ble Commission to appreciate the challenges being faced by the petitioner for availing power from the respondent and provide the same to various units / consumers of SEZ and maintain that the ultimate category of the consumers gets charged for their consumption on the consumer category tariff approved by the Hon'ble Commission. This can only be done if the power being made available to the petitioner from the respondent is charged at a tariff rate to be determined by the Hon'ble Commission. Such trifurcation / bifurcation is seamlessly possible as the petitioner's SEZ is a custom bonded area, wherein it is required to maintain strict bifurcation in regard to physical boundaries, operations and consumption as between its PZ and NPZ components, and inter-se between various usage categories. The petitioner also maintains that to enable the required infrastructure for applicability of differential tariff, it will provide the same by way of metering and other formalities as directed by the respondent.

33) In view of the facts enumerated above, the petitioner requests that Domestic Supply Tariff may

be charged and energy charges may be fixed accordingly for consumption of electricity in the three residential towers, comprising of 221 apartments, for which Occupation Certificate have been obtained and also for future constructions instead of raising charges under “Non-Domestic Supply” (NDS) category.

34) It is submitted that the petitioner has not filed any other petition before any Court or Forum, seeking similar relief, as prayed for, in this petition except that it had sent representations to various senior officials of the respondent but had received no response.

35) The petitioner has prayed as under:-

- (a) Admit and allow the Petition in the present form;
- (b) May kindly accept the power supply to IT/ITES SEZ of the petitioner as a separate class of consumers as provided under Sub-Rule (2) of Rule 10 of the Haryana SEZ Rules, 2006;
- (c) May please determine the tariff under the enabling provisions of S.62(1) & S.62(3) read with S.86(1)(a) of the Electricity Act, 2003 treating the IT/ITES SEZ of the petitioner as a special class of consumers, recognizing the fact that the petitioner is a deemed distribution licensee under S.14 (b) of the Electricity Act, 2003 with regard to its IT/ITES SEZ;
- (d) May please allow the power to be supplied by the respondent Nigam to the SEZ of the petitioner on a tariff equivalent to the Average rate of Power Purchase (APPC), without transmission charges, as determined by the Hon’ble Commission as Rs.3.74/kWh (Reference recent ARR and Distribution Retail Tariff order for FY 2018-19 dated 15.11.2018);
- (d) Pass such and further orders, as the Hon’ble Commission may deem fit and appropriate keeping in view the facts, needs and circumstances of the case.

#### **Proceedings of the Case**

The Commission, after hearing the parties, passed an interim order dated 14.01.2020 allowing ten days’ time to the respondent Nigam to file written submissions with an advanced copy to the petitioner. DHBVN was further directed to inform the Commission regarding nature of electricity connections released by them to similarly placed SEZs in other parts of the State.

The case was next called for hearing on 18.02.2020. The petitioner submitted that written reply of the respondent is still awaited. The learned Counsel for the respondent submitted that the issues involved in this petition are likely to be decided through Single Point Supply Regulations 2019, currently under process in the Commission. Therefore, he has not filed any written reply in the present matter.

Upon hearing the parties, vide interim order dated 18.02.2020, the Commission observed that it would still like to be apprised regarding the nature of connections released to similarly situated SEZs in other parts of the State. Similar direction had also been given to DHBVNL on 14.01.2020. The respondent was further directed to file written submissions, with an advance copy to the petitioner, within 15 days from the date of the said order.

DHBVNL, in its reply filed on affidavit dated 14.08.2020, submitted the reply and the details of SEZs in Haryana in respect of "OP" circle-II, DHBVNL, Gurugram. It has been submitted that the SEZs in the said area are charged under HT/NDS or Bulk Supply (NDS) tariff category. The reply filed by the respondent DHBVNL is as under:

- 1) It has been submitted that the present petition is devoid of any merits. Further, all allegations made by petitioner, which are contrary to the submissions made herein below, are denied in their entirety and the same may be treated as a denial in seriatim. All contentions and arguments have been taken in the alternative without prejudice to each other. Additionally, it has been submitted that the respondent is filing an issue wise response instead of a para-wise response to the petition for the sake of brevity and prolixity. Therefore, nothing shall be deemed to be admitted for the sake of specific denial unless specifically admitted hereinbelow.
- 2) The issues raised by the petitioner belatedly in the instant Petition are summarized as below:
  - A. petitioner is forced to charge its units/ customers (which includes Residential, Industrial and Commercial categories of consumers) in the SEZ area at bulk supply (NDS Category) which is higher than the tariff charged by DHBVN for the domestic supply category.  
The contentions of the petitioner in para 14 of the Petition are stated as below:
    - (i) Pursuant to the application filed by the petitioner, DHBVN has vide its memo dated 10.07.2008, approved sanctioned load of 4800 KW for the SEZ area to be fed through a dedicated independent 11 KV feeder under the Bulk Supply (NDS) category.
    - (ii) As a consequence, the petitioner is required to pay to the respondent for the electricity supplied under the bulk supply (NDS Category) as per the prevailing Haryana Electricity Regulatory Hon'ble Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Commercial cum Residential Complexes of Developers) Regulations, 2013 ("Single Point Supply Regulations").
    - (iii) To recover this cost, the petitioner is allegedly constrained to charge its units/ customers (which includes Residential, Industrial and Commercial categories of consumers) in the SEZ area at the same rate i.e. bulk supply (NDS Category) which is higher than the tariff charged by DHBVN for the domestic supply category. The residential units situated in the

SEZ are therefore forced to pay higher tariff in comparison to residential units established outside the SEZ.

- B. Units in petitioner's SEZ be considered as a separate class of consumers and tariff be determined for them by the Hon'ble Commission
- (i) In para 27 of the Petition, the petitioner contends that under Section 10 of the Haryana SEZ Act, 2005, the petitioner can generate electricity or get the supply from the existing licensee on the specified tariff as approved by the Hon'ble Commission for that category of consumers.
  - (ii) In para 34 and 35 of the Petition, the petitioner has further alleged that the power being made available to the petitioner by the respondent be charged at a tariff rate "to be determined" by the Hon'ble Commission.
  - (iii) At the end while erroneously interpreting Section 10 (2) of the Haryana SEZ Act, the petitioner has prayed that as per the provisions of Section 10 of the Haryana SEZ Act, the units in the petitioner's SEZ be considered as a separate class of consumers and tariff be determined for them by the Hon'ble Commission under the enabling provisions of the Section 62(1) and Section 62(3) read with Section 86(1) of the Electricity Act, 2003.
- C. petitioner be allowed to avail power supply from Nigam at Average Power Purchase Cost (APPC), without transmission charges, as determined by the Hon'ble Commission for the Distribution Licensee
- (i) In para 28 of the Petition, the petitioner contends that as per the options available to the petitioner under Section 10 of the Haryana SEZ Act 2005, it can avail power supply from Nigam at Average Power Purchase Cost (APPC), without transmission charges, as determined by the Hon'ble Hon'ble Commission for the Distribution Licensee so that it can maintain tariffs as approved by the Hon'ble Commission for specific categories of consumers.

**Re: Issue (A)**

- 3) At the outset it may be noted that the petitioner being the Developer of the SEZ is a Deemed Distribution Licensee for that SEZ as per Section 14(b) of the Electricity Act 2003 read with notification dated 3.3.2010 issued by the Government of India. Therefore, the petitioner has a universal obligation to supply electricity as per Section 42 and Section 43 of the Electricity Act, 2003 which is stated as below:

*"Section 42. (Duties of distribution licensee and open access): --- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the*



*provisions contained in this Act.*

...

*Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply”.*

- 4) Till the date of filing of the instant Petition there was no specific regulatory regime framed by this Hon'ble Commission prescribing regulatory conditions that would apply to SEZ developers, which are deemed to be a distribution licensee. However, during the pendency of this Petition, the Hon'ble Commission has notified the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Residential cum Commercial/ Commercial Complexes of Developers and Industrial Estates/ IT parks/SEZ) Regulations, 2020 (“Single Point Supply Regulation 2020”) on 22.04.2020 repealing the Single Point Supply Regulations 2013. The relevant provisions of the Single Point Supply Regulation 2020 relating to SEZ are extracted below for ease of reference:

*“2. Definitions*

*5. “Developer” means a person or a company, duly registered with appropriate authority, engaged in the business of developing residential/residential cum commercial complexes/Malls/IT Parks/Industrial Estates/SEZ under the license obtained from the Town & Country Planning Department Govt. of Haryana or any other appropriate authority.*

*12. “Users Association” means the Association of the individual residents/owners/leasee of the space in the shopping Malls, Commercial complex or the Industrial Estate/SEZs beneficiaries of the Single Point Supply or the body of person for the management of various activities including common facilities/services within the Complex/Shopping Malls / Industrial Estates/ SEZs, duly registered with registrar of firms and societies.*

..

*5.1 Supply of Electricity by distribution licensee to appropriate Government*

*Defense Establishments, MES, Railways, central PWD institutions/works, Jails, Police/ Para Military Establishments/ colonies, Irrigations head works, Universities / Hospitals/ medical colleges, Educational institutions under the control of State Govt./in private sector, the SEZs being considered as deemed licensee under the Act and Delhi Metro Rail Corporation are entitled to avail Single point supply under these regulations subject to the conditions as specified in these regulations and the relevant schedule of tariff categorized based on the uses of load. The distribution of supply within the complex shall be owned & managed*

*by the establishment falling under the clause appropriate government.*

*Provided further, the entities covered under deemed licensee or the SEZ may also opt to source power from other than the licensee of the area and get their tariff determined from the Commission upon filing ARR petition with the Commission.”*

The Single Point Supply Regulation 2020 allows the SEZ under Regulation 5.1 reiterated above to source power from other than the licensee of the area and get their tariff determined from the Commission upon filing ARR petition with the Commission. Thus, as per the existing legal framework, the petitioner can procure electricity supply from any of the following sources:

- (i) Enter into a long term PPA for supply of electricity with a generation plant,
- (ii) Generate electricity on its own;
- (iii) Procure by way of executing a short term, medium term PPA following the route of competitive bidding.
- (iv) Procure from Indian Energy Exchange.
- (v) Procure from other existing licensees as per the applicable tariff through single point supply under the Single Point Supply Regulation 2020.

Further, the units located in the SEZ are also permitted to procure power for their consumption from any source available in the market including the petitioner’s electricity supply, captive generation, open access, or from the existing licensee at the determined tariff etc. In this regard, the relevant provisions of Section 10 of the Haryana SEZ Act are reiterated below for ease of reference:

*“10. Generation and supply of electricity*

*(1) (a) The Developer or the Co-Developer shall be permitted to generate electricity in or outside the Special Economic Zone for consumption in the Special Economic Zone.*

*(b) Units located in the Special Economic Zone, individually or in groups shall be permitted to generate electricity in or outside the Special Economic Zone for self-consumption.*

*(c) Units located in the Special Economic Zone, individually or in groups shall be permitted to avail of supply of electricity by sourcing it through open access from generators directly and wheel electricity to the Special Economic Zone for consumption, subject to such payment as may be required for open access and wheeling of electricity.*

*(2) Groups of units in the Special Economic Zone will be considered a separate class of consumer and shall be permitted to avail supply of electricity at a determined tariff from the existing licensee.*

*(3) The Developer or the Co-Developer of the Special Economic Zone or an association of units located in the Special Economic Zone can, unless exempted under the Electricity Act, 2003 (Central Act 36 of 2003), obtain a distribution license or a franchise for distribution*

*of electricity within the Special Economic Zone or in part(s) thereof.*

In the year 2008, the petitioner proposed that they are constructing 66KV substation for fulfilling their power requirement. However, in the interim the petitioner applied to DHBVN vide A&A No. 33656/BS (NDS) dated 03.03.2008 for release of load of 4800 KW to the petitioner's SEZ to be fed through a dedicated independent 11 KV feeder under the Bulk Supply (NDS) category.

Considering that SEZ predominately involves commercial units, DHBVN vide Sanction Letter dated 10.07.2008, approved for release of 4800 KW load to be fed through a dedicated independent 11 KV feeder under the Bulk Supply (Non-Domestic Supply) category as a stop gap arrangement.

It is pertinent to state that as per the Sanction Letter, petitioner was required to charge individual consumers in accordance with relevant tariff approved by the Hon'ble Commission for respective category. The relevant portion of the sanction letter is reiterated below:

*"19. The tariff shall be charged from the individual consumers if any in accordance with HERC regulations and sale instruction/ circulars issued by the Nigam from time to time".*

In this regard, it is further relevant to state that even as per Regulation 6.4 of the Single Point Supply Regulation 2020 as extracted below, the SEZ area availing electricity from single point supply is to be supplied electricity at the Bulk Supply (NDS) category.

#### *6.4 Billing of Single Point Supply*

*For the purpose of billing of Single Point Supply the energy consumption and combined maximum demand of Employer Colony/GHS/Residential -cum-commercial Complex/Commercial complex will be recorded by Single Point Supply meter. A rebate of 4% in case of supply at 11 kV and 5% in case of supply at higher voltage in the energy consumption will be admissible to cover the expenses that may be incurred by the GHS/ Employer in meeting their obligations such as individual Metering, Billing, Collection of charges from individual Residents/Users etc. Provided in case of Single Point Supply to Commercial Complex, Shopping Mall, a rebate of 1% in their energy consumption will be admissible to cover the above such expenses.*

*Further, in case of single point supply to Industry/IT parks /SEZ the billing will be on the consumption of electricity recorded by the meter provided at single point supply.*

*The energy consumption after allowing the rebate as above and the maximum demand*

*recorded by Single Point Supply meter will be billed at the tariff as applicable to Bulk Supply (Domestic) category for GHS/Employers colonies and other relevant category tariff i.e. NDS /bulk supply /Industrial tariff in case of Commercial Complex /Users Associations and the Group of Industries.*

...

*In case of Single Point Supply to categories covered under the definition of appropriate government, Users Association and Group /Cluster of Industries, the tariff as applicable to bulk supply /NDS /Industries shall be chargeable respectively.*

It is submitted that, despite various other options available to the petitioner as stated above, the petitioner chose to avail power from the existing licensee i.e. DHBVN under bulk supply (NDS) category. As a consequence, the petitioner has opted to be a consumer of DHBVN and therefore is rightly being supplied electricity in subject SEZ area at the Bulk Supply (NDS) category as determined by the Hon'ble Commission.

It is submitted that the petitioner has been charging its Units/ consumers at a higher tariff as against the tariff determined for the respective tariff category. However, the same is an incident of the petitioner being a deemed distribution licensee and its obligation to supply electricity to its consumers as per the extant Regulations. The respondent cannot be held liable for the same as the respondent is rightly charging the petitioner as per the tariff determined and approved by the Hon'ble Commission. It is being reiterated that the petitioner is a consumer of DHBVN with a predominant characteristic of a commercial consumer for DHBVN. Accordingly, the petitioner is being charged at bulk supply (NDS) category which is in consonance with the Sanction letter issued to the petitioner as well as the Single Point Supply Regulation 2020. Further, all regulations including Duty to Supply Regulations shall also accordingly apply to petitioner.

In view of the forgoing, it is incorrect to state that due to DHBVN, the petitioner has been forced to charge higher tariff at bulk supply (NDS) category to its residential consumers.

It may not be out of place to state that the petitioner has not been able to construct its 66 KV substation as proposed by them almost for the past 12 years i.e. since 2008. Hence, evidently the petitioner has not been able to fulfill its obligations under the Electricity Act.

**Re. Issue No (B)**

It is submitted that petitioner's prayer to consider units/ consumers of the petitioner's license area as a separate class of consumers for being supplied electricity from DHBVN as per Section 10 (2) of the Haryana SEZ Act is erroneous and not maintainable. Section 10(2) is reiterated as

below:

*“(2) Groups of units in the Special Economic Zone will be considered a separate class of consumer and shall be permitted to avail supply of electricity at a determined tariff from the existing licensee.”*

It emanates from Section 10 (2) of the Haryana SEZ Act that it is an option available to the groups of units of SEZ to avail electricity from the existing licensee at the tariff already determined by the Hon’ble Commission. In the instant case, the Petition has been filed by the Developer of SEZ and not by any group of units in SEZ. Further, no particular application has been received by DHBVN from any group of units in the said SEZ area for supply of electricity as per Section 10(2). In view thereof, the prayer of the petitioner is not maintainable in law.

Even otherwise, the petitioner has wrongly interpreted Section 10(2) of the Haryana SEZ Act to mean that it allegedly allows the groups of units of SEZ Area to be considered as a separate class of consumer for supply of electricity from the existing licensee and that the Hon’ble Commission is required to separately determine a tariff for this separate class of consumers. It is submitted that the said interpretation is baseless and unsustainable for the following reasons:

- (i) The term “ will be considered as separate class of consumers” as used in Section 10(2) is to be read along with provisions of Section 10 (1) which allows units of SEZ to avail electricity either from the SEZ developer or from open market or otherwise.
- (ii) Section 10(2) provides that if a group of unit of SEZ, say for examples group of residential units in SEZ apply to the existing licensee i.e. DHBVN for supply of electricity, then they will be supplied electricity by DHBVN at “a determined tariff from the existing licensee” which in this case will be the tariff determined for residential category for DHBVN by the Hon’ble Commission in the particular financial year. Section 10(2) does not contemplate that any separate tariff will be determined by the Hon’ble Commission for such groups of units.
- (iii) Further this group of units will be considered a separate class of consumer under the SEZ Act for the SEZ Developer who have opted to avail electricity from the existing licensee. They cannot be considered as separate class of consumer for the existing licensee. In this regard, reliance is further placed on Section 62.3 of the Electricity Act 2003 which provides that the appropriate Hon’ble Commission cannot provide undue preference to any particular consumer. Relevant abstract of Section 62.3 is reproduced here as under:

*“The Appropriate Hon’ble Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer’s load factor, power factor, voltage, total consumption of electricity*

*during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.”*

- (iv) It is further submitted that if the petitioner wants that the units of its SEZ be considered as a separate class of consumer for supply of electricity, then it should file its ARR Petition wherein the petitioner may request for the same before the Hon’ble Commission and accordingly supply electricity to such consumers at the tariff which will be determined by the Hon’ble Commission in the said ARR Petition. Regulation 5.1 of the Single Point Supply Regulation 2020 entitles the SEZ to source power from other than the licensee of the area and get their tariff determined from the Commission upon filing ARR petition with the Commission.

**Re: Issue No (C)**

In respect of the petitioner’s contention (Para 28 of the Petition) that the petitioner has the option to avail power supply from Nigam at Average Power Purchase Cost (APPC) determined by the Hon’ble Commission for the Distribution Licensee without transmission charges, it is submitted that the same is erroneous and misleading as the same is not contemplated under the extant law, rules and regulations as applicable here.

As stated above, at present the petitioner is a consumer of the DHBVN availing bulk supply under the Single Point Supply Regulations. A consumer of a licensee cannot be allowed to avail such supply at the APPC considering that the Tariff determined by the Hon’ble Commission for the licensee to be recovered from its consumers does not merely include the APPC. It also includes several other costs incurred by the licensee for catering to such supply requirement. The petitioner cannot be exempted from paying the same. In this regard, the following points are noteworthy:

- (i) It is submitted that APPC is a tariff determined by the Hon’ble Commission for a particular licensee in exercise of its statutory powers.
- (ii) APPC of DHBVN so determined by the Hon’ble Commission for the relevant financial year is after factoring its power purchase arrangements for its consumers and other ancillary aspects.
- (iii) Nigam being a revenue neutral entity, the cost so incurred is passed on to its consumers based on their respective consumption. Thus, Nigam has the obligation to optimally utilize its assets to supply electricity at optimal cost which comprises of power purchase cost, transmission charges, O&M, Interest & Finance Cost, Depreciation, etc.
- (iv) As stated above that as per Section 62.3 of the Electricity Act 2003, the appropriate Hon’ble Commission cannot provide undue preference to the petitioner while

determining tariff. In case if the petitioner is allowed to avail supply from DHBVN at APPC then the same would be a breach of Section 62.3.

- (v) In case the prayer of the petitioner is allowed, the burden of the balance cost of the Nigam in providing service to the petitioner including the transmission charges will be passed on to the other consumers of the Nigam which may result in unjustified tariff hike.

Even otherwise, if petitioner is considered to be a distribution licensee availing supply from DHBVN, then the same cannot be allowed at the APPC without transmission charges considering that the APPC of one licensee cannot be automatically made applicable to another licensee. The licensed area of the Nigam and the petitioner are distinct. As stated above, several other costs are incurred by DHBVN while supply power to the petitioner which includes transmission charges, O&M charges, Interest & Finance Cost, Depreciation, etc. It is submitted that DHBVN cannot be forced to bear this cost and pass it on to its consumers as they are not liable to bear the same.

In light of the above, it is submitted that the petitioner's prayer for supply of power to its SEZ by the Nigam on a tariff equivalent to the Average Power Purchase Cost, without transmission charges is unsustainable and untenable.

**RE: Query raised by the Hon'ble Commission vide daily order dated 19.02.2020**

It has been submitted that this Hon'ble Commission, vide order dated 19.02.2020, has directed DHBVN to provide information relating to nature of connections released to similarly situated SEZs in other parts of the State. In this regard, a table of electricity connections released to SEZs in other parts of State of Haryana has been attached with the present reply.

In the forgoing facts and circumstances, it is submitted that the instant Petition is devoid of any merit and ought to be dismissed in limine. The answering respondent craves leave of this Hon'ble Commission to add or amend or file further submissions, if required, at any stage to assist this Hon'ble Commission.

The petitioner, subsequent to the hearing, vide email dated 11.09.2021 filed written submissions as under:

The fact of the case in brief are as follows:

- a) The petitioner is developing an IT/ITES Sector Specific Special Economic Zone (SEZ Project) on land parcels admeasuring (approx.) 47.69 acres, and situated within the revenue estate of Village Gwal Pahari, Tehsil Wazirabad, District Gurgaon, in the State of Haryana, pursuant to

Notification no. S.O.2143, dated 17.12.2007 (Annexure P-2) issued for Phase 1 (admeasuring 25.11 acres); and Notification no. S.O.2098 IT/ITES, dated 27.08.2010 (Annexure P-3) for Phase 2 (admeasuring 22.58 acres) of the said SEZ Project, by the Department of Commerce in the Government of India, which has since been correspondingly published in the Gazette of India.

b) In the said SEZ Project, the petitioner has developed :

- several IT/ITES buildings, which are occupied by various multinational companies like TCS, IBM, Ericsson, Mercer, etc., for undertaking IT/ITES business activities;
- amenity and commercial / retail spaces, which are occupied by various commercial establishments operating their respective food, gym, retail outlets, etc.; and
- 221 residential apartments, which are occupied by different individuals and used for domestic / residential purposes.

c) The above referred independent & different entities / units occupying (i) IT/ITES; (ii) commercial; and (iii) residential spaces in the SEZ Project of the petitioner are taking supply of power from the petitioner for their respective usage (viz. industrial / IT-ITES; commercial; and domestic, respectively), which power is being supplied by the petitioner by drawing the same from Bulk Supply (NDS) Category Connection taken by it from the respondent – DHBVN.

d) Under the extant rules & laws applicable to the instant case, the petitioner is a “Deemed Distribution Licensee” for purposes of supplying electricity to various entities / units occupying spaces and operating from the said SEZ Project.

#### **Grievance of the petitioner**

The grievance of the petitioner is that it is being made to pay for the entire power drawn by it from its said Bulk Supply (NDS) Category Connection at commercial rates, irrespective of the end use of such power for industrial / commercial / domestic purposes by respective entities / units occupying the IT-ITES / commercial / residential spaces (respectively) within the said SEZ Project, as aforesaid.

As a result of the said anomaly, at least in case of domestic consumption of electricity at 221 residential apartments of the SEZ Project, the relevant occupants / entities are having to pay for their domestic consumption at rates which are substantially higher than, and do not match with the tariff otherwise being charged for domestic consumption from owners / occupiers of residential apartments situated outside the SEZ Project.

In view of above, there have been regular objections from the residential unit holders of the SEZ Project on this issue; consequently, even the petitioner has since long been pursuing with the respondent Nigam for charging tariff in lieu of consumption by various units / customers occupying spaces in the SEZ Project based on their respective usage / activities like industrial, commercial and



residential, on basis of tariff otherwise applicable to the users/consumers of the distribution license situated outside the SEZ Project for similar usage.

As per proviso to Section 14 of the Electricity Act, 2003, the developer of a Special Economic Zone (SEZ) notified under the sub-section (1) of Section 4 of the SEZ Act, 2005, shall be deemed to be a distribution licensee with effect from the date of notification of its SEZ. In effect, the developer does not need a distribution license under Section 14 (b) of the Electricity Act, 2003 as it has been declared a deemed licensee for distribution of electricity in the SEZ area. It stands to reason that for purposes of discharging its function as a deemed distribution licensee, it is necessary that the licensee is required to levy the power tariff as applicable for various categories of the consumers i.e. industrial, commercial, residential/ domestic at the rate approved by APPC. In view of the said stipulations, there cannot be any discriminatory tariff amongst the various distribution licensees in the state, i.e. tariff charged from and the tariff required to be charged by the petitioner from consumers within its SEZ Project.

In fact, SEZs are not merely a deemed distribution Licensee, as aforesaid. As per the Haryana SEZ Act 2005, the developer of the SEZ is permitted to even generate electricity either in or outside the SEZ for consumption within the SEZ. The Haryana SEZ Act further also provides for treating the group of units in the SEZ as a separate class of consumers who are permitted to avail supply of electricity at a determined tariff from the existing licensee.

In view of the challenges being faced by the petitioner in availing power from the respondent by ensuring that ultimate category of consumers within its SEZ Project gets charged for their consumption as per the consumer category/usage tariff approved by the Hon'ble Commission, the petitioner filed the present petition in January 2019 with the under mentioned prayers, with a view to ensure that the same power rates be made applicable to / levied on the petitioner/ it's Consumers as are otherwise approved by APPC, with the objective of ensuring applicability / levy of domestic supply tariff on consumption of electricity (i) within the three residential towers (comprising of 221 apartments) that have already been completed in the SEZ Project (with grant of sanctions, including the occupation certificate for the said residential condominium, by the authorities); and (ii) also in regard to future residential constructions to be made by the petitioner in its SEZ Project, instead of raising charges for such domestic consumption under non domestic supply category, as was currently being done by the respondents.

The respondent Nigam has submitted that the HERC vide notification dated 22.04.2020 framed Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies Group Housing Societies, Residential Colonies, Office cum Residential Complexes and Commercial Complexes of Developers, and Industrial Estates/IT Park/SEZ) Regulations, 2020". Notification issued by the HERC 2020 Regulations, interalia included certain regulations pertaining to SEZ, wherein a SEZ has been treated as a deemed licensee under the Act under Regulation 5.1. Furthermore, under Regulation 6.1, it is stated that for supply of electricity at single point for colonies falling under the purview of Regulation 3.1; Group Housing Societies falling under purview of Regulation 4.1; consumer covered under appropriate govt/ deemed licensee as per regulation 5.1; and commercial complex/ Industrial Estates/ IT Park/ SEZ covered under Regulation 5.2; and the employer/ GHS/ Developer/ Users Association shall be obliged to seek connection for supply of electricity at a single point at 11 kV or higher voltage under these regulations by submitting an application in the prescribed form for requisite charges to the Distribution Licensee giving complete details of the load of all residential units, common services and other non-domestic/ industrial loads if any.

In view of the above 2020 Regulation, the prayers (b) and (c) of the petitioner, logically stand fructified, provided the respondent Nigam is also ad-idum with this view, but, in any case, the determination of tariff for the period of January 2019 (month of filing the petition) till April 2020 (month of notification of the regulation) continues to remain undetermined.

#### **Proceedings on 08.09.2021**

- 1) The petition was listed for hearing on 08.09.2021 before the Commission, wherein it was prayed that in the context of the 2020 Regulation, and proceeding on the basis that prayer no. (b) and (c) have been taken care of, the tariff for the interregnum period of January 2019 till April 2020 still needs to be decided by the Hon'ble Commission. It is also submitted on behalf of the petitioner that the Hon'ble Commission can allow and determine the power to be supplied by the respondent Nigam to the SEZ Project of the petitioner on a tariff equivalent to the Average rate of Power Purchase (APPC), without transmission charges, as determined by the Hon'ble Commission @ Rs. 3.74/kWh (reference to recent ARR and distribution retail tariff order for FY 2018-19 dated 15.11.2018).
- 2) During the said hearing, the counsel for the respondent DHBVNL contended that the determination of tariff could not be done by the Hon'ble Commission although the petitioner is a deemed licence as per the 2020 Regulation, but APTEL decision in Northern Railways (NR) case is applicable to the petitioner and therefore the petitioner's prayer to be treated equivalent to the respondent Nigam is

preposterous. It was stated that because of deemed distribution licensee status, the Appellant merely gets exemption from specially applying for licence under Section 14 of the Electricity Act. In order to avail further benefits under the Electricity Act it has to still show that it is in fact having distribution system and it has a number of consumers to whom it is supplying electricity. The counsel for the respondent Nigam further stated that the APPC is applicable only to the respondent Nigam, and the petitioner cannot seek application of the same to itself.

The Hon'ble Commission thereafter stated that the matter is being reserved and an order will be pronounced shortly.

**Rejoinder filed by the petitioner:**

In the context of the foregoing, the petitioner reiterates it's following submissions:

- a) In regard to averments made by the respondent Nigam based on the said APTEL decision in case of Northern Railways, the petitioner takes liberty to cite from judgement of APTEL itself in the said case of NR, wherein Ld. APTEL has also discussed a decision of the Hon'ble Supreme Court in the matter of SESA Sterlite Ltd. as follows:
- b) *"Deemed Licensee Status – This issue is res judicata. However, the Commission has examined whether NR is a deemed distribution licensee in Haryana. On this issue we can gainfully extract from the judgement of the Appellate Tribunal dated 3rd May, 2013 (Cf. Judgement of the Hon'ble Supreme Court dated 25th April, 2014 in Civil Appeal No. 5479 of 2013 (M/s Sesa Sterlite Vs. OERC & Ors) as under:- "As correctly indicated by the State Commission, the definition of term "distribution licensee" as enumerated under Section 2(17) of Electricity Act, 2003, emphasizes upon the distribution licensee to operate and maintain a distribution system and supply of power to the consumers. Considering the definition of 'supply' in Section 2(70), the supply here means sale of electricity to consumers. By merely being authorized to operate and maintain a distribution system as a deemed licensee, would not confer the status of distribution licensee to any person. The purpose of such establishment is for supply of power to consumers. Mere fact that the Appellant claims to be a deemed distribution licensee is of no consequence at all since admittedly, the entire power purchased by the Appellant is for its own use and consumption and not for the purpose of distribution and supply/sale to consumers. An entity which utilizes the entire quantum of electricity for its own consumption and does not have any other consumers, cannot, by such a notification, be deemed to be distribution licensee, even by a legal fiction. By virtue of the legal fiction created by the notification dated 3.03.2010,*

*the Developer of SEZ notified under the SEZ Act, who distributes electricity can be deemed to be a distribution licensee. Thus, this legal fiction cannot go further and make a person who does not distribute electricity to the consumers as to distribution licensee. Therefore, there is no merit in the contention of the Appellant.*

*We are in agreement with the aforesaid rationale in the impugned order of the Appellate Tribunal as that is the only manner in which the two Acts can be harmoniously construed. To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the Appellant is also treated as deemed Distribution Licensee. However, with this, it only gets exemption from specifically applying for licence under Section 14 of the Act. In order to avail further benefits under the Act, the Appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. That is not the case here. For its own plant only, it is getting the electricity from Sterlite Ltd. for which it has entered into PPA. We have to keep in mind the object and scheme of SEZ Act which envisages several units being set up in a SEZ area. This is evident from a collective reading of the various provisions of the SEZ Act viz. Section 2(g)(j)(za)(zc), Section 3, 4, 11, 12, 13 and 15. There can be a Sector Specific SEZ with Several Units i.e. for IT, Mineral Based Industries etc. but instances of single unit SEZ like in the present case of the Appellant may be rare. The Notification dated 03.03.2010 providing for the "Developer" of SEZ being deemed as a "Distribution Licensee" was issued keeping in view the concept of Multi Unit SEZs and will apply only to such cases in which the Developer is supplying the power to multiple Units in the SEZ. The said Notification will not apply to a Developer like the Appellant who has established the SEZ only for itself".*

APTEL has further noted that :

*"Admittedly, NR is not in the business of supplying electricity to public / consumers at large but distributing electricity within its own operational area and in connection with the working of the Railways. Hence, an entity i.e. NR which utilizes the entire quantum of electricity for its own consumption and does not have any other consumers, cannot, be deemed to be distribution licensee. If this was to be so quite a few consumer category (Government Connections) like Public Water Works, Street Light, Lift Irrigation / MITC etc. would also become deemed distribution licensee(s) and in case they also fully source power under Open Access mechanism will also claim exemptions from various charges making the distribution and retail supply business of the existing distribution licensee (s) unviable.*

*In conclusion the Commission reiterates that NR by merely being authorized to operate and maintain a distribution system under the Railways Act, 1989 as cited by the NR would not confer the status of distribution licensee in Haryana. Additionally, the Commission notes that a deemed*

*distribution licensee is merely exempted from obtaining licence under Section 14 of the Electricity Act, 2003. Further, Section 16 of the Act provides that “The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence: Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of license applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act”. In pursuance to the above, the Commission had framed and notified Haryana Electricity Regulatory Commission (Conditions of License for Distribution and Retail Supply Business) Regulations, 2004 dated 30th November, 2004. Hence, all the general terms and conditions specified therein has to be necessarily complied with by a distribution licensee including deemed to be a distribution licensee. Which is not the case in the present matter of NR as well as Military Engineering Service (MES) - a case earlier dealt with by the Commission. The dispensation flowing from the judgements of the Hon’ble Supreme Court as well as Hon’ble Appellate Tribunal for Electricity is squarely applicable to NR. On this issue the Commission concludes that NR, as far as Haryana is concerned, is a fully Medium-Term Open Access Consumer having connectivity agreement and medium-term open access agreements. Having held as above, the Commission (also agreed to by the parties i.e. HVPNL, Discoms and NR), considers it appropriate to frame / notify specific set of Regulations applicable to the deemed distribution licensee as some of the terms and conditions as appearing in the HERC (Conditions of Licence for Distribution and Retail Supply Business) Regulations, 2004 may not be relevant in the case of a deemed to be a distribution licensee. It is observed that a draft of General Terms of License for Deemed Licensee (u/s 16 of the Electricity Act, 2003) was put in public domain and public notice inviting comments / objections was also issued and in response to which UHBVNL vide Memo No. Ch-08 / SS-403/619/METL/Distribution Licensee/CE/C-I dated 02.06.2017 filed their comments on the draft terms and conditions. The Commission, in view of the time gap, has considered it appropriate to frame a draft afresh for inviting comments / suggestions from the stakeholders before giving a final shape to the same. Accordingly, a revised draft is also appended to the present Order (Annexure – A). As prayed for by the petitioner herein, the Commission has deliberated and decided that the following charges shall be payable by the respondent NR”.*

- c) Having regard of the above cited judicial pronouncements, the case of the petitioner is that, apart from certain quantum of its own consumption within the SEZ Project, the petitioner as a Deemed Distribution Licensee is supplying substantial electricity load to several third-party tenants / units / entities occupying spaces and operating from its SEZ Project. Furthermore, all of these tenants / occupants / units / entities operating from the SEZ Project of the petitioner,

irrespective of their being industrial, commercial, domestic category users, are having to pay the tariff on supply received / distributed from the BULK SUPPLY (NDS) category connection taken by the petitioner from the respondent Nigam at commercial rates, which, at least in case of residential usage, is substantially higher than, and do not match with the tariffs being paid by the said respondents own consumers occupying residential dwelling units outside the SEZ Project in lieu of their domestic consumption.

- d) The factual matrix of the present case is completely different from the one outlined in the case of Northern Railways. In case of Northern Railways, APTEL categorically stated that NR is not in the business of supplying electricity to public / consumers at large, and instead is consuming electricity for its own use within its own operational area in furtherance of the working of the Railways. Hence, an entity (i.e. NR) which utilizes the entire quantum of electricity for its own consumption and does not have any other consumers, cannot, be deemed to be a distribution licensee. However, this is not so in case of the petitioner / it's SEZ Project. In fact, the petitioner is seeking relief on the ground that in lieu of the load it is supplying to third party users / occupants / tenants / units occupying it's residential apartments within the SEZ Project, these ultimate category of consumer are presently getting charged for their domestic consumption not as per the consumer category tariff approved by the Hon'ble Commission, i.e. by applying the domestic charges for 221 residential units (wherein domestic activity in being undertaken), but are being charged on basis of tariff applicable to NDS Category usage, and therefore, the energy charges need to be fixed / applied according to approved tariff applicable to domestic consumption of electricity in not only the said residential towers already constructed; but also for future residential construction to be made in the SEZ Project, instead of raising charges on the said residential component under "Non Domestic Supply" (NDS) category.
- e) The HERC has framed 2020 Regulations, wherein SEZs have been introduced as a special category, by once again recognizing SEZs as a deemed distribution license, and with the stipulation that the tariff shall be charged for consumption at the rate based on usage of consumption recorded.
- f) The judgment of the Northern Railway of the Ld. APTEL as well as that pronounced by the Hon'ble Supreme Court in the case of SESA Sterlite industries are not applicable to the facts of the instant case and are clearly distinguishable, having regard of the findings provided in the said judgements itself. The said judgments held that the object of section 14 of the Electricity Act, 2003 only exempts the petitioner (i.e. NR) from seeking a separate license and for all other benefits, the petitioner NR has to show existence of the required infrastructure etc. Needless to

mention that in both the cases the consumption of energy was for solitary purpose of NR itself. Furthermore, the entire consumption recorded was for a defined use and consumed for the same. There was thus neither any classification so far as the nature of consumption was concerned; nor any distribution activity to other consumers involved. The said aspect cannot be held applicable to the instant case, in as much as there is sufficient material to show that the consumption of energy is for diverse purposes, i.e. Industrial, Commercial, Residential, Amenities and common areas, and also since different & independent end users are involved, who are receiving power with use of the distribution infrastructure of the petitioner. In fact, all the lay out / building plans as per sanctioned usage of spaces to be developed in the SEZ Project have been duly approved as such by the competent authority, and there can be no digression from the so allowed usage under the applicable SEZ mandate. Hence, the material on record clearly established the specific usage and consumption of energy by multiple end users. The operative finding of the said judgement thus is not applicable to the facts of the instant case.

- g) The judgments in question are also not applicable to the facts of the instant case since the petition in the respective cases had been filed under different statutory provisions. The petitioner has not invoked the said provisions and has rather approached the commission invoking different statutory provisions.
- h) The submission of the respondent that the petitioner should file its ARR and get its tariff determined is an ill-conceived and misconceived submission. The provision of the 2020 Regulations stipulates filing of ARR in a situation where the SEZ wants to get its own tariff determined. In the present case, the petitioner has not sought determination of its own tariff and is rather seeking applicability of the Tariff that has already been determined by the HERC, and which ought to be adhered to by all distribution licensees. There is thus no requirement even under the 2020 Regulations for the petitioner to file its own ARR. The submission and the suggestion to the said aspect does not conform to the requirement in law. Besides, the said provision can be invoked only when the deemed license opts to source its power from a source other than the master / sole Licensee of the area. Thus, the twin conditions governing the applicability of Regulation 5.1 of the 2020 Regulations are fully satisfied. Accordingly, the said aspect is required to be considered and accordingly determined by the Hon'ble Commission.
- i) The statutory objective and duty of the Hon'ble Commission is to ensure non-discriminatory tariff being recovered from the consumers by the license. Once, the illegality has been brought to the notice of the Hon'ble Commission, it is the responsibility of the Hon'ble Commission to resolve the said issues. The Distribution licensee cannot justify unjust enrichment at the cost of the consumer.

- j) That besides, there is nothing on record to suggest whether the LD system has been laid or not or that the infrastructure laid at the place is deficient. The said aspect can be sought for only when the licensee is being called upon to take over the LD system. Besides, the system having been energized, the same invariably has been laid as per the approved specifications. There can be no presumption with respect to the deficiency or shortcoming and the same is required to be established by the person suggesting the deficiency, since the petitioner cannot be expected to prove the 'negative'.
- k) The reply filed by the respondent is evasive and not responsive to the issues raised. The respondent cannot at this stage be permitted to contend that the relief claimed by the petitioner be denied since the petitioner opted the supply of energy from the respondents despite the respondent being the sole & master Distribution Licensee in the area. Be that as it may, the illegal and unjustified conduct of the respondent cannot entitle the respondent to retain what it is not entitled in law to claim. Mere predominant use of energy for any purpose cannot be the reason to claim tariff at a higher rate. To test the same, would the respondents have claimed DS tariff in an event where the energy was predominantly used for Domestic purposes even if some of it was being used for NDS category. Invariably, the respondents would have claimed the tariff on the basis of consumption. The said principle has to be applied mutatis-mutandis and uniformly, and accordingly the respondent would be liable to appropriately apportion the charges as would be applicable depending on the usage of the energy. The respondent has taken an untenable stand in para 10 of reply while referring to condition no. 19 of the Sanction letter. The condition imposed upon the petitioner has to be first complied with by the respondent and they could not have demanded any tariff different from the petitioner than is approved by the appropriate commission. The respondents cannot justify their illegal action on basis of some provisions that are not applicable or run contrary to the provisions of the Electricity Act, 2003. The respondent has unilaterally imposed arbitrary conditions taking advantage of its monopolistic status as the distribution licensee in the area.
- l) The submissions made by the respondent in reference to Issue no. (B) of the reply are misconceived in reference to Section 10(2) of the Haryana SEZ Act. The said provision clearly stipulates that Groups of units shall be considered as a separate class of consumers and shall be permitted to avail supply of electricity at the determined tariff from the existing licensee. The respondents however did not provide for any separate class and instead the Bulk SPS was offered only under the NDS category. It was for the said reason that the petitioner had to approach the Hon'ble HERC for the said relief. The respondent wants to capitalize on its own wrong. The Commission had already determined tariff for each class of consumer and as such



there was no need for prescription of any other rate of tariff. The respondents having closed the doors for release of connection as per the scheme of the Act, of 2005 cannot now seek to pass on the responsibility towards the petitioner.

- m) In so far as the response to issue no. (C ) is concerned, the submission of the respondent is misconceived. The provision, the statute drew a parallel amongst the licensee and as such the petitioner was entitled to seek parity. The Commission not having framed any separate procedure for the SEZ, the procedure as framed and the regulations governing the other licensee shall automatically be applicable to the petitioner as well. The provisions of the general law shall apply in full force to the petitioner in the absence of any special procedure or enactment. Hence, the rate or the procedure as was applicable to the respondent was also applicable to the petitioner. The contention of the respondent is thus based upon erroneous application of law and the provisions contained therein.
- n) The petition filed by the petitioner cannot be rendered infructuous merely because some of the grievances raised / appear have been redressed. In any case, so long as there are pending claims that have not been redressed, the adjudication has to done with respect to the issues and the petitioner cannot be called upon to file any other litigation for redressal of the said issues.
- o) Levy of dual tariff on the petitioner based on its usage / consumption (i.e. at commercial rates for commercial usage and domestic rates for domestic usage) on the Single Point (NDS) Category Connection shall be in line with a decision already taken in this regard by the respondent - DHBVN itself in case of M/s. Ambience Developers & Infrastructure Pvt. Ltd., Gurugram pursuant to its order no. Ch 27/SE/C/SOL-114 dated 15/03/2021 (copy attached for ready reference); and it shall also be in consonance with modality for “Billing of Single Point Supply” stipulated under paragraph 6.4 of 2020 Regulation, particularly in regard to supply provided to office complex or such other non-domestic loads existing within the GHS / Colony which have been otherwise provided Single Point (Domestic) Category Connection as illustrated in Annexure 2 of the said 2020 Regulation.

In view of the above submissions and in context of prayer (d) of the prayer Clause on page 20 of the Petition No. 1 of 2019, which inter alia pleads to the Hon’ble Commission to “Pass such and further orders, as the Hon’ble Commission may deem fit and appropriate keeping in view the facts, needs and circumstances of the case”, it is humbly prayed that the Hon’ble Commission may be pleased to consider providing the following, amongst other, reliefs to the petitioner :

- a) Either, having regard of the fact that SEZs are construed as a “Deemed Licensee” under the relevant SEZ Act promulgated by the Central & State Government, and also considering that the said Union/State’s SEZ Act(s) have an overriding effect over any other conflicting legislations (as relevant); and further having regard of the fact that under paragraph 5.1 of the 2020 Regulations, wherein the factum of SEZs being considered as “Deemed Licensee” under the Electricity Act, 2003 has been unequivocally reiterated, the supply provided to ASF Insignia SEZ Pvt. Ltd. should be construed as a supply provided to the said petitioner in its capacity as a distribution licensee, who, in turn, is required to supply the electricity so received to its consumers (i.e. tenants / occupants / entities / units existing within and at it’s said ASF Insignia SEZ Project), by charging tariff based on usage as may be applicable to each class or category of the said consumers; OR
- b) the respondent - DHBVN should be directed to give effect to provisions contained in paragraph 5.1 of the 2020 Regulation, which inter alia requires that “the SEZs being considered Deemed Licensee... are entitled to avail single point supply under these regulations subject to the conditions as specified in these regulations and the relevant Schedule of tariff categorized based on the usage of load”, i.e. by charging tariff at commercial rates for consumption within IT/ITES buildings of ASF Insignia SEZ; and on basis of domestic tariff for consumption at in-house residential complex of ASF Insignia SEZ (called Isle-de-Royal Residences), notwithstanding the fact that the connection provided by DHBVN to ASF Insignia SEZ is a Single Point NDS Category Connection; AND
- c) the reliefs so granted, should be extended to the period – January, 2019 to April, 2020 (i.e. for the period prior to 2020 Regulations) by accordingly determining tariff applicable to the petitioner in respect thereof.

**Commission Order:**

The case was heard by the Commission on 08.09.2021, as scheduled through virtual court

The Commission heard the arguments of the parties at length as well as perused the petition, reply and rejoinder filed in the matter.

At the onset, the Commission observes that while praying for a separate class of tariff for the SEZ equivalent to the Average Power Purchase Cost (APPC) determined by the Commission for the relevant year, the petitioner seems to have relied on various provisions of the Government of India SEZ Act, 2005, Haryana SEZ Act, 2005 as well as Haryana SEZ Rules, 2006 as already reproduced in the present order. The petitioner vehemently argued that the Central Act, empowers the developers of SEZs to demarcate the area within the SEZ based on the activities performed.

Accordingly, in the instant case, within the SEZ, there are processing area dedicated to manufacturing of goods, rendering of services while the non-processing area include residential buildings, club, service apartment, banquet hall etc. Further, the Haryana SEZ Act, 2005 besides other duties, functions and powers of SEZs also provides that group of units in the SEZ will be considered a separate class of consumer and shall be permitted to avail supply of electricity at a determined tariff from the existing licensee. Additionally, it has been averred that SEZs notified under sub-section 4 of SEZ Act, 2005 shall be deemed to be a licensee. Hence, they may not be subjected to Bulk Supply (NDS category) which, in turn, leaves no option for them but to recover NDS tariff from domestic consumers residing in three residential towers in the SEZ.

In the light of the aforesaid averments the petitioner has prayed for being allowed as a separate class of consumer and determine tariff u/s 62(1) and 62(3) of the Electricity Act, 2003.

Per contra, the respondent Nigam, has cited the Haryana Electricity Regulatory Commission (single Point Supply to Employers Colonies, Group Housing Societies and Residential or Residential cum Commercial/Commercial Complexes of Developers and Industrial Estates/IT parks/SEZ) Regulations, 2020 (Single Point Supply Regulation 2020") on 22.04.2020 repealing the Single Point Supply Regulation 2013 and inserted special provisions for SEZs. Hence, going forward the gap in now repealed Regulations has been plugged by the Commission. Hence, SEZs shall be bound by the terms and conditions of the Regulations supra including tariff determined by the Commission for the said category from time to time. It has been argued that, as a stop gap arrangement, the respondent Nigam, in its sanction letter dated 10.07.2008 for release of 4800 kW load to be fed through dedicated independent 11 kV feeder under bulk supply (NDS) to the petitioner, it was made clear that the petitioner was required to charge individual consumer in accordance with the HERE Regulations. Further, regulation 6.4 of the Single Point Supply Regulations 2020 also provides that SEZs availing single point supply is to be supplied electricity at the bulk supply (NDS) category. It was also argued, at length, by the respondent Nigam that Section 10 (2) of the Haryana SEZ Act pertains to groups of Units of SEZ and not developers of the SEZ i.e. the petitioner in the present case.

The Commission has considered the rival arguments and at the onset observes that the Commission was seized of the issue of different categories of electricity consumers residing in the SEZs. Hence, after due deliberations the Commission included the SEZs in the Single Point Supply Regulations, 2020. Accordingly, the eligible SEZs have the option to avail electricity supply under Single Point Supply dispensation from the distribution licensee of the area concerned.

Having observed as above, the Commission has further considered the issue of 'deemed licensee' including the citations in the matter with reference to Northern Railways.

It is not disputed that the proviso added to Clause (b) of Section 14 of the Electricity Act, 2003, specifically provides that the Developers of SEZs notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005 shall be deemed to be a licensee for the purpose of Section 14, with effect from the date of notification of such SEZ. However, it needs to be noted that on the issue of 'deemed licensee', the Hon'ble Supreme Court in its judgement dated 25th April, 2014 in Civil Appeal No. 5479 of 2013 (M/s Sesa Sterlite Vs. OERC & Ors) held as under: -

*"49. As correctly indicated by the State Commission, the definition of term "distribution licensee" as enumerated under Section 2(17) of Electricity Act, 2003, emphasizes upon the distribution licensee to operate and maintain a distribution system and supply of power to the consumers. Considering the definition of 'supply' in Section 2(70), the supply here means sale of electricity to consumers. **By merely being authorized to operate and maintain a distribution system as a deemed licensee, would not confer the status of distribution licensee to any person (emphasis added).** The purpose of such establishment is for supply of power to consumers. Mere fact that the Appellant claims to be a deemed distribution licensee is of no consequence at all since admittedly, the entire power purchased by the Appellant is for its own use and consumption and not for the purpose of distribution and supply/sale to consumers.*

*50. An entity which utilizes the entire quantum of electricity for its own consumption and does not have any other consumers, cannot, by such a notification, be deemed to be distribution licensee, even by a legal fiction. By virtue of the legal fiction created by the notification dated 3.03.2010, the Developer of SEZ notified under the SEZ Act, who distributes electricity can be deemed to be a distribution licensee. **Thus, this legal fiction cannot go further and make a person who does not distribute electricity to the consumers as to distribution licensee** (emphasis added) Therefore, there is no merit in the contention of the Appellant.*

*43. We are in agreement with the aforesaid rationale in the impugned order of the Appellate Tribunal as that is the only manner in which the two Acts can be harmoniously construed. **To recapitulate briefly, in the present case no doubt by virtue of the status of a developer in the SEZ area, the Appellant is also treated as deemed Distribution Licensee. However, with this, it only gets exemption from specifically applying for licence under Section 14 of the Act** (emphasis added). In order to avail further benefits under the Act, the Appellant is also required to show that it is in fact having distribution system and has number of consumers to whom it is supplying the electricity. That is not the case here. For its own plant only, it is getting the electricity from Sterlite Ltd. for which it has entered into PPA. We have to keep in mind the object and scheme of SEZ Act*

*which envisages several units being set up in a SEZ area. This is evident from a collective reading of the various provisions of the SEZ Act viz. Section 2(g)(j)(za)(zc), Section 3, 4, 11, 12, 13 and 15. There can be a Sector Specific SEZ with Several Units i.e. for IT, Mineral Based Industries etc. but instances of single unit SEZ like in the present case of the Appellant may be rare. The Notification dated 03.03.2010 providing for the “Developer” of SEZ being deemed as a “Distribution Licensee” was issued keeping in view the concept of Multi Unit SEZs and will apply only to such cases in which the Developer is supplying the power to multiple Units in the SEZ. The said Notification will not apply to a Developer like the Appellant who has established the SEZ only for itself”.*

In the present case the petitioner is a SEZ developer, hence, if at all, as pointed out by the respondent Nigam, it has to be covered under sub rule 2 of Rule 10 of the Haryana SEZ Rules, 2006 the petitioner ought to have been group of Units in the SEZ being developed by the petitioner herein. However, this is not the case under consideration, moreover, as averred by the respondent Nigam “no particular application has been received by them i.e. DHBVBL from any group of Units in the SEZ area being developed by the petitioner for supply of electricity as per rule 10(2) of the Rules Supra. Consequently, the prayer seeking power supply to IT/ITES/SEZ as a separate class of consumer is devoid of merit.

It is added, that so far, the petitioner is not in the business of supplying electricity to public / consumers in the SEZ but is itself a consumer of the distribution licensee namely Dakshin Haryana Bijli Vitran Nigam, also the respondent in the present matter. Hence, for all intents and purposes, the petitioner is an embedded consumer of the distribution licensee of his area and the applicable tariff shall be as determined by the Commission for the consumer category in which it may fall including Single Point Supply dispensation of 2020. Additionally, the Commission has perused the different options available to the SEZs regarding generation and supply of electricity under the Haryana SEZ Act, 2005 as placed on record by the petitioner. However, the Commission is not going into the merits of the same as they are of little significance in the present matter limited to the specific relief sought by the petitioner. At this stage, it would suffice to say that the Commission, in its ARR / Tariff order of each financial year attempts to rationalise tariff design as well as reduce the number of tariff categories. Accordingly, in the tariff order in vogue, the Commission has replaced HT Industry Supply, LT Industry Supply and NDS Supply category by HT and LT Supply tariff at different voltage of supply. This is also in line with sub-section 3 of Section 62 of the Electricity Act, 2003.

The prayer of the petitioner for being levied tariff at the Average Power Purchase Cost (APPC) has been considered. The Commission is not inclined to agree with the contention of the petitioner that they ought to be charged the APPC rate. It appears that the petitioner lacks clarity regarding APPC

determined by the Commission in the Discoms ARR / Tariff order(s). Hence, the petitioner may note, as also averred by the respondent Nigam, that APPC is the cost of power purchase of the Nigam from all sources of power i.e. generators / traders approved by the Commission divided by the quantum of power approved by the Commission from the said sources. As APPC does not include transmission charges (Central and State) and inter-state / intra-state transmission losses, it is also not the bulk power purchase cost / rate for the Discoms. Added to this would be the cost of distribution losses and the cost of distribution and retail supply business including return on equity. The figure so obtained is the average cost of power of the Discoms. Additionally, the tariff for certain category determined by the Commission also has cross – subsidy element within cross subsidy surcharge limits of +/- 20% of the average cost of supply as per the limits specified by the National Tariff Policy. Hence, the Discoms are statutorily bound to recover tariff and charges from different consumer categories as determined by the Commission from time to time.

In the present case, it is reiterated that the SEZs have been given special dispensation and brought under the ambit of the Haryana Electricity Regulatory Commission (Single Point Supply to Employers' Colonies, Group Housing Societies and Residential or Residential cum Commercial/ Commercial Complexes of Developers and Industrial Estates/ IT parks/SEZ) Regulations, 2020 notified on 22nd April 2020. Consequently, the petitioner herein shall be governed by the terms of the said regulations and the tariff as determined by the Commission applicable for the consumer category covered under the Single Point Supply category. With the notification of the Regulations supra, the main prayer of the petitioner herein i.e. determination of tariff treating IT/ITES SEZ as a special class of consumer has already been addressed.

The Commission, earlier in the present order, has already given its mind on the prayer of the petitioner seeking APPC, without transmission charges, as the rate applicable for supply of power by the respondent Nigam to the SEZ of the petitioner. Hence, for avoiding duplicity, the same is not reproduced here.

The only issue, though of academic interest at this stage qua the petitioner, is the issue of obligations and duties of a deemed licensee. In the present case, if the petitioner fulfils all the requirements of a deemed licensee as per the Electricity Act, 2003, there is no need for this Commission to notify the eligible SEZs as a deemed licensee. However, it needs to be noted that a deemed distribution licensee is merely exempted from obtaining licence under Section 14 of the Electricity Act, 2003. Further, Section 16 of the Act provides that "The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence.

In line with the above statute, the Commission has notified the Haryana Electricity Regulatory Commission (Terms and Conditions of License for Deemed Licensee) Regulations, 2020 on 18<sup>th</sup> September, 2020 (Regulation No. HERC / 52 / 2020. The said Regulation(s) is available in the public domain i.e. [www.herc.gov.in](http://www.herc.gov.in) and can be downloaded free of cost. These regulations, as the name itself suggests, specifies terms and conditions that a deemed licensee has to fulfil in order to be eligible for the dispensations as allowed to a distribution licensee. In its absence, as far as Haryana is concerned, the petitioner shall continue to be treated as an embedded electricity consumer of DHBVNL with contract demand of 4800 kVA being the load released by the respondent Nigam.

In the hearing held on 8.09.2021, the learned Counsel M/s Priyanka, appearing for the petitioner, averred that the Regulations covering SEZs were notified by the Commission in September, 2020, whereas the present petition was already before this Commission since January, 2019. Consequently, the excess amount paid by them being the difference between the tariff charged prior to notification of the Single Point Supply Regulations, 2020 and post that, ought to be refunded by the respondent Nigam.

The Commission has considered the submissions of the learned Counsel, and is of the view that the schedule of distribution and retail supply tariff and charges approved by the Commission each financial year, on the basis of approved revenue requirement for the relevant year, covers all electricity consumers of Haryana classified under different categories. Hence, it is not the case that an electricity consumer will not fall in one category or the other as determined by the Commission and therefore there is no vacuum as such. The present case is also not regarding any dispute between the petitioner and the respondent Nigam vis-à-vis tariff categorisation i.e. because of wrong categorisation the petitioner ended up paying higher tariff or vice-versa. Consequently, the submission of the petitioner, on this issue, is devoid of merit.

The Commission observes that in the latest tariff order dated 30.03.2021 in case no HERC/PRO 77 of 2021 and HERC/PRO 78 of 2021, the Commission has decided to merge HT industry category and HT NDS category into one category i.e. HT supply as well as LT industry category and LT NDS category into one category i.e. LT supply. Resultantly, any possibility of ambiguity between industrial usage and commercial usage (NDS) has been done away with.

Before parting with the present order, it may be of interest to the petitioner to note that every financial year the Commission, on an ARR / Tariff petition(s) filed by the distribution licensees viz. UHBVNL and DHBVNL, the Commission invites objections / suggestions / comments from the stakeholders as well as public at large and also holds public hearings as well. Hence, during such public proceedings any person / organisation / institutions can file their objections etc. regarding

tariff(s) and ARR for the ensuing financial year for the consideration of the Commission.

In terms of the above, the present petition is dismissed as devoid of merit.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 13.10.2021.

**Date:13.10.2021**  
**Place: Panchkula**

**(Naresh Sardana)**  
**Member**

**(R.K Pachnanda)**  
**Chairman**

HERC