



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

O. P. No. 10 of 2015

Dated 15.02.2016

**Present**

Sri Ismail Ali Khan, Chairman  
Sri H. Srinivasulu, Member  
Sri L. Manohar Reddy, Member

Between

M/s. Sundew Properties Limited  
Mindspace, Cyberabad,  
Sy. No. 64 (Part), APIIC Software Layout,  
Madhapur, Hyderabad – 500 081

... Petitioner

And

The Southern Power Distribution Company of  
Telangana, 6-1-50, Mint Compound,  
Hyderabad – 500 063.

... Respondent

This petition came up for hearing on 27.01.2015, 13.04.2015, 30.04.2015, 30.06.2015, 15.07.2015, 03.08.2015, 25.08.2015, 02.11.2015 and 23.11.2015. There was no representation on behalf of the petitioner on 27.01.2015. Sri. P. Sri Raghuram, Senior Advocate appeared on behalf of the petitioner on 13.04.2015, 30.04.2015, 30.06.2015, 15.07.2015, 03.08.2015, 02.11.2015 and 23.11.2015. Sri. T. Rajendra, Advocate represented Sri. P. Sri Ram, Advocate and Counsel for the petitioner on 25.08.2015. Sri. V.S.C. Sastry, Advocate appeared on behalf of Sri. P. Sri Ram, Counsel for the petitioner. Sri. P. Shiva Rao, Advocate appeared for the respondent on 27.01.2015. Sri. Y. Rama Rao, Standing Counsel for the Respondent, appeared on 30.04.2015, 15.07.2015, 03.08.2015, 25.08.2015 and 02.11.2015. Sri. J. Ashwini Kumar, Advocate representing Sri Y. Rama Rao, Standing Counsel for the respondent appeared on 30.06.2015. Sri. Y. Rama Rao, Standing Counsel for

the Respondent along with Sri, P. Venkatesh, Advocate appeared on 23.11.2015. The petition having stood for consideration to the date, the Commission passed the following:

### **ORDER**

The petitioner has filed this petition U/s.14(b) of the Electricity Act, 2003 (Hereinafter referred to as 'the Act'), praying to take on record the deemed distribution licensee status of the petitioner in terms of Notification dt.03.03.2010 issued by the Ministry of Commerce and Industry (Department of Commerce), Government of India (hereinafter referred to as 'MCI').

2. The petitioner company is incorporated under the provisions of the Companies Act, 1956, having its registered office at Sy.No.64 (P), Mind Space, Cyberabad, Hi-Tech City, Madhapur, Hyderabad. The Central Government having satisfied with the requirements of Section 3(8) of the Special Economic Zones Act, 2005 (Hereinafter referred to as the 'SEZ Act'), has granted a letter of approval in the name of M/s. K. Raheja IT Park (Hyderabad) Pvt. Ltd., on 30.06.2006 for the development, operation and maintenance of the Special Economic Zone (SEZ) for Information Technology and Information Technology enabled services over an area of 12 Hectares at Madhapur, Ranga Reddy district, Hyderabad. Subsequently, the Government of India, vide its letter dated 05.09.2006 issued an amendment by changing the area of Special Economic Zone for ITS/ITES from 12 Hectares to 16.29 Hectares. Thus, MCI vide Notification dated 16.10.2006 had notified the total area of 16.29 Hectares at Sy.No.64 (Part), Hi-Tech City, Madhapur as a Special Economic Zone (SEZ). The MCI in its Notification S.O.780 (E) dated 18.05.2007 issued an amendment to the name by substituting the words "M/s. Sundew Properties Limited" in the place of "M/s. K. Raheja IT Park (Hyderabad) Pvt. Ltd". Further, the MCI issued a Notification No. S.O.1928 (E) dated 06.08.2010 de-notifying an area of 1.82 Hectares from the total area of 16.29 Hectares, thereby resultant area as 14.47 Hectares which was proposed by M/s. Sundew Properties Private Limited to set up a sector specific SEZ in Madhapur, that is how, the petitioner company is empowered to file this petition. Thus, the petitioner company was notified as a developer of SEZ by the MCI vide Notification dated 18.05.2007 read with Notification dated 16.10.2006. The Ministry had issued a fresh certificate of incorporation on

27.12.2012 indicating the change of name of M/s. Sundew Properties Private Limited to M/s. Sundew Properties Limited.

3. The MCI by a Notification dated 03.03.2010 under Section 49 (1) (d) of the SEZ Act, 2005, specified that the developer of a SEZ shall be deemed to be a distribution licensee under the provisions of Section 14 (b) of the Electricity Act, 2003 (The Act). The power is supplied to the buildings of the petitioner by the Southern Power Distribution Company of Telangana Limited (TSSPDCL) at 33 kV level. For the purpose of user category, the petitioner is included under the industrial category by the Commission for tariff purposes. It does not have any other industrial, agricultural, domestic and railway categories in its SEZ area.

4. The TSSPDCL (Respondent) is engaged in the business of power distribution and retail sale of electricity under the license granted by the Commission and the petitioner is presently drawing power from it. The Act contemplates parallel licensing in distribution of Electricity and the notification of the MCI dated 03.03.2010 conferred the deemed distribution licence status to a SEZ developer to which the petitioner belongs to.

5. The erstwhile APERC had issued distribution licensee regulations in Regulation No.10 of 2013 and this Regulation has been adopted by this Commission vide its Regulation No.1 of 2014. Accordingly, a request has been made in the prescribed application form to take on record the petitioner company as a deemed distribution licensee. The petitioner company is extending leasing services to its ITS/ITES customers under its main activity and the electricity distribution business is incidental to the main business activity.

6. The TSSPDCL (Respondent) having taken the notice from the Commission, filed its objections. It is stated in the objections that the Notification of Government of India alone may not be sufficient to grant a deemed license status which has been clearly emphasized in Paragraph-40 of the Hon'ble Appellate Tribunal for Electricity (APTEL) in the Order No.206 / 2012 dated 03.05.2013. In accordance with the orders of the APTEL, the petitioner is bound to follow the other relevant provisos of Section 14 of the Act. Further, as per the 6<sup>th</sup> proviso to Section 14 of the Act, certain conditions are to be looked into by the Commission.

7. The Respondent submitted that the Central Government issued Rules known as the ***Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 (Hereinafter referred to as 'Capital Adequacy Rules')*** under Section 176 of the Act, which specify additional requirements like petitioner's finance plan for investment to set up distribution business, minimum area of supply and code of conduct of the applicant, were made to ensure that the petitioner has creditworthiness, has service obligations and mix up of consumers and transparency of the Managerial Personnel / Directors / Officers. This Hon'ble Commission has to ensure that the petitioner strictly adhered to the credit worthiness and the Code of Conduct rules stipulated by the Central Government.

8. The Respondent submitted that the petitioner had accumulated losses at the end of the financial year 2013-2014 and more than 50% of its net-worth has been wiped-out and this fact is reported in the Statutory Auditor's report. The Company's financial position is in jeopardy and the present Directors of the Company Mr. Neel C Raheja and Mr. B. Ravindernath are convicted in a case registered by the Anti-Corruption Bureau in Andhra Pradesh Industrial Infrastructure Corporation (APIIC) case. Further, another suit is filed against Mr. Ravi C. Raheja and Mr. Neel C. Raheja, present Directors of the Company and the matter is pending in the Court of Magistrate, Mumbai. Therefore, the petitioner Company has not satisfied the Code of conduct clause of Capital Adequacy Rules.

9. It is further submitted by the Respondent that the petitioner shall have to follow the procedure laid down in Section 15 (2) of the Act for grant of a licence. As per Section 15 (2) of the Act, the applicant shall, within seven days from the date of submission of the application, publish a notice of its application. Further, objections are to be received within 30 days from the date of publication of the notice. As there is no publication about the application for grant of license, the application cannot be admitted and shall have to be dismissed in limini. The area of supply comes under the jurisdiction of the Respondent and a few consumers are availing of the supply from the Respondent. Any permission granted to the petitioner shall be amounting to parallel licence and not an exclusive licence by delimiting the area of supply from the TSSPDCL control.

10. Sri. P. Sri Raghuram, Learned Senior Advocate appearing for the petitioner advanced the following arguments before the Commission.

- i. The petitioner followed the Regulations adopted by this Commission in respect of a Distribution Licence (Regulation No.10 of 2013). The APTEL order in the case of M/s.Vedanta Aluminium Ltd., Vs. Orissa Electricity Regulatory Commission on which the Respondent relied up on (placed a copy at Pg. No. 67 of compilation) does not apply to the facts of the petitioner.
- ii. The petitioner is an approved Software Technology Parks of India (STPI) unit and has been notified as a developer of SEZ for ITS/ITES under section 49 of the SEZ Act.
- iii. The petitioner is a deemed distribution licensee as per the notification dated 03.03.2010 issued by the MCI under Section 49 of the SEZ Act. The Central government has notified that the provisions of clause (b) of Section 14 of the Act, shall apply to a SEZ developer notified under Section 4(1) of the SEZ Act. The learned Senior Counsel drew our attention to the Notification Dated 03.03.2010 issued by the Central Government wherein a '**proviso**' has been inserted in clause (b) of Section 14 of the Electricity Act, 2003.
- iv. The Sixth (6<sup>th</sup>) proviso to Section 14 of the Act, does not apply to the petitioner because the petitioner has been notified as a deemed licensee and each proviso deals with a deemed Licensee other than a deemed Licensee of a SEZ. He further submitted that Rule 3 of the Capital Adequacy Rules does not apply to the petitioner, as the petitioner has been conferred the status of a deemed licensee already under the SEZ Act.
- v. Neither the Petitioner nor its Directors has been convicted by any Court. A charge-sheet has been filed in the appropriate court and filing of a FIR or a Charge-sheet does not amount to acceptance of guilty or conviction. Further, Rule 4 of Capital Adequacy Rules are not applicable to a deemed licensee.

11. Sri. Y. Rama Rao, learned counsel for the Respondent advanced the following arguments before the Commission and opposed the deemed licensee status to the petitioner:

- i. There is no definition of 'deemed licensee' in the Act and Section 14 is the only section which provides for the grant of a licence for distribution of power by any person. The petitioner may have the required qualifications under the

- SEZ Act to develop and run a SEZ, but that does not provide for an automatic grant of licence for distribution of power under Section 14 of the Act and the petitioner has to comply with the other provisions and conditions of the Act.
- ii. The procedure for grant of a licence as laid-down in section 15 of the Act has to be followed by the petitioner and the procedure prescribed therein has not been followed. Thus, the petitioner violated the provisions of Section 15.
  - iii. Regulation No.10 of 2013 is applicable to the petitioner which has been adopted by this Commission and this Regulation is in consonance with the provisions of the Act. This Regulation also stipulates that a deemed licensee should follow the procedure prescribed in Section 15 of the Act, because a deemed licensee also falls within the ken of Section 14. The provisions of Sections 14 and 15 are very clear. Any rule made under the Act by way of a Regulation cannot override the provisions of the Act. The respondent has raised various objections in its counter but the petitioner did not give a reply to the objections.
  - iv. The provisions of sixth (6<sup>th</sup>) proviso to Section 14 of the Act, and Rules made thereunder are applicable to the petitioner and the petitioner should also comply with the conditions prescribed in the sixth (6<sup>th</sup>) proviso to section 14, in addition to the procedure prescribed in section 15 of the Act.
  - v. The petitioner did not comply with the provisions of Regulation No.10 of 2013 relating to capital adequacy, creditworthiness and code of conduct. The Rule 12 of the Regulation No.10 of 2013 refers to the Rules as laid-down in "***Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005***" (the Capital Adequacy Rules) issued by the Central Government. The learned counsel referred to the notification dated 23.03.2005 (which is placed at page no.141 of the compilation of the petitioner filed on 15.07.2015) issued by the Government of India, Ministry of Power and submitted that the petitioner did not comply with Rule 3 of the Capital Adequacy Rules and these rules have been issued under Section 176 of the Electricity Act, 2003 which are binding on the petitioner.
  - vi. The petitioner's business activities are being run by the borrowed funds i.e., loans and the entire share capital of Rs.1.12 crores as on 31.03.2013 has been wiped-out on account of the accumulated losses. Rule 3 of the Capital

Adequacy Rules stipulates that the petitioner has to contribute 30% of the total investment of the power distribution business by way of equity but its total equity share capital has been wiped-out and thereby the petitioner has violated the Rule 3 notified under section 176 of the Act.

- vii. The 'explanation' to Rule 3 of the Capital Adequacy Rules stipulates that for granting of licence within the same area in terms of sixth (6<sup>th</sup>) proviso to Section 14 of the Act, the area falling within a municipal corporation or a revenue district shall be the minimum area of the supply. The petitioner is a developer of SEZ for rendering the services of ITS and ITES and it is operating in an area of 14.47 hectares in Madhapur, Cyberabad, Ranga Reddy District which cannot be equated with a revenue district or a municipal corporation. Thus, the petitioner did not fulfil the condition laid-down in Rule 3 of the Notification dated 23.03.2005 issued under Section 176 of the Act.
- viii. The petitioner's claim that it is a '**deemed licensee**' already is not acceptable. The notification issued under the SEZ Act can be placed before the Commission as one of the materials seeking for grant of a licence but that notification alone would not be sufficient to seek the Commission to grant such a licence under Section 14 of the Act. A deemed licensee has to comply with the procedures prescribed under Section 15 and Rule 12 of the Regulation.
- ix. The learned counsel by referring to the financial statements of the petitioner for the year ending on 31.03.2013, drew our attention to the qualification of the Statutory Auditor of the petitioner at clause x of the audit report which runs as under:

*“(x). The Company's accumulated losses at the end of the financial year are more than fifty percent of its net worth. The company has not incurred cash losses in the current financial year though has incurred cash losses in the immediately preceding financial year.”*

The above qualification of the Auditor in his Audit Report establishes the fact that the petitioner did not fulfil Rule 3 of the Capital Adequacy Rules as on 31.03.2013.

- x. The petitioner had negative net worth of Rs.14.8 Crores as on 31.03.2013. Thus, the entire capital of Rs.1.12 Crores has been wiped-out on account of accumulated losses of Rs.15.92 crores. The petitioner's business is being run

on borrowed funds and the situation remains the same for the year ended on 31.03.2012 (the negative net worth of Rs.3.15 crores).

- xi. The learned counsel referred to the application of deemed licence filed by the petitioner on 13.03.2014 and the column meant for "other information", the petitioner had listed the pending cases in Anti-Corruption Bureau court and also before the Magistrate Court of Mumbai and contended that the pending criminal cases disqualify the petitioner.
- xii. The respondent has a locus-standi in these proceedings because it is a distribution licence for the area for which the petitioner has made an application before the Commission for grant of a deemed licence.
- xiii. The learned counsel referred to the decision of Hon'ble ATE in Appeal No. 206 of 2002 in the case of M/s.Vedanta Aluminium Ltd., Vs. Orissa Electricity Regulatory Commission and in particular, and drew our attention to the paras: 12, 24, 25, 31, 32, 33, 34, 35, 45, 46, 47 and 50 of this decision and submitted that the petitioner's application is not in accordance with the ratio laid down in this decision. He further submitted that this decision of the Hon'ble ATE has been confirmed by the Hon'ble Supreme Court of India in the case of M/s. Sesa Sterlite Ltd., Vs. Orissa Electricity Regulatory Commission at (2014) 8 Supreme Court Cases 444.

12. In reply to the arguments of the Respondent, Sri. P. Sri Raghuram, Learned Senior Advocate of the petitioner made the following submissions:

- i. A '**Deemed**' distribution licensee has been exempted specially from applying for the grant of a licence under Section 14 of the Act. He drew our attention to the decision of the Hon'ble Supreme Court in the case of State Of Bombay Vs. Pandurang Vinayak and others at [1953] 0 AIR (SC) 244/[1953] and contended that when a statute enacts that something shall deemed to have been done and full effect must be given to such a statutory fiction and should be carried to its logical conclusion.
- ii. The Commission is bound to take the application of the licensee on record as a deemed licensee and it has no jurisdiction to enquire into the qualifications of the petitioner and the petitioner need not undergo the requirements of the qualification and the procedure stipulated in Section

- 15 of the Act as the provisions contained in Section 15 are not applicable to a deemed licensee.
- iii. The petitioner has complied with the Regulation No.10 of 2013 and the application has been made in the format prescribed therein. He submitted that Rule 12 of the Regulation No.10 of 2013 is applicable to a regular distribution licensee but not to a deemed licensee.
  - iv. The petitioner has complied with all the provisions and requirements under the SEZ Act, and qualified as a developer of SEZ. Thereby the petitioner is a deemed licensee under Section 14(b) of the Act.
  - v. The facts in M/s. Vedanta Aluminium Ltd., (supra), were different from the facts in the petitioner's case. There was no 'consumer' in the case relied upon by the respondent whereas, there are more than 30 (thirty) consumers in the case of the petitioner. Therefore, the above decision of the Hon'ble ATE does not apply to the facts of the petitioner. Consequently, the ratio laid down by the Hon'ble Supreme court in the case of M/s. Sesa Sterlite Ltd., (supra) does not apply to the facts of the case.
  - vi. The Commission has to scrutinize the information contained in the application filed by the petitioner and it has no jurisdiction to make further enquiry in the matter as it had been conferred the status of a deemed licensee already.
  - vii. Coming to the sixth (6<sup>th</sup>) proviso to section 14 of the Electricity Act, 2003, the learned senior counsel contended that the petitioner is a deemed licensee and is not required to specifically apply for grant of distribution licence and thereby it is not required to meet the requirements set out in the sixth (6<sup>th</sup>) proviso to Section 14 of the Act read with the Capital Adequacy Rules. However, the petitioner has fulfilled the Capital Adequacy Rules also.
  - viii. The minimum area of supply as stipulated in the 'explanation' to rule 3(2) of the capital adequacy rules does not apply to a SEZ. There is no minimum area requirement for setting up of an ITS/ITES SEZ and only a minimum built-up area of 1,00,000 sq. Meters is required in the case of a SEZ located in Hyderabad. The petitioner has complied with all the conditions under the SEZ Act and rules made thereunder. The provisions

of the SEZ Act and the provisions of the Electricity Act, have to be interpreted harmoniously to give effect to the provisions of the both enactments and relied on the judgement of the Hon'ble Supreme Court in the case of M/s. Sesa Sterlite Ltd., (supra).

ix. In respect of capital adequacy and credit worthiness, the learned senior Advocate made the following submissions:

- a) The provisions set out in sixth proviso to section 14 are not applicable to a deemed licensee and thereby the capital adequacy and creditworthiness rules of 2005 are not applicable to the petitioner.
- b) The Rule 12 of Regulation No.10 of 2013 which incorporates the capital adequacy, creditworthiness and Code of Conduct is not applicable to a deemed licensee and it applies to a regular distribution licensee making an application under the Act.
- c) Without prejudice to the above argument, as stipulated in Rule 3(2) of the Capital Adequacy Rules, the Commission has not determined the requirement of capital investment for setting up of a distribution network in SEZ area. However, the petitioner has incurred capital expenditure of Rs.53.3 Crores towards setting up of the power distribution system.
- d) The petitioner has complied with the Rule 3 of the capital adequacy rules also. The total share capital of the petitioner as on 20.10.2015 is held by 13 shareholders for a sum of Rs. 1,12,68,260/- (Rupees One Crore Twelve Lakhs Sixty Eight Thousand Two Hundred and sixty only). The Rule 3, stipulates that the petitioner has to contribute 30% of the capital investment required for distribution network and such a 30% can include the net worth of the promoters who are in a position to make available their resources to the project in the preceding three years after excluding other committed investments. The net worth of promoters including the negative net worth of the petitioner for three years is as under:

<b>As on 31-03-2015</b>	<b>As on 31-03-2014</b>	<b>As on 31-03-2013</b>
17,602,147,674	16,964,061,095	15,774,550,888

The total expected capital expenditure on the distribution network of the petitioner is a sum of Rs. 89.53 Crores as against this sum, the above net worth of the petitioner along with its promoter's net-worth meets the requirement of the proposed investment. Thus, the petitioner has complied with the Rule 3 of the Capital Adequacy Rules.

- e) The petitioner has filed the letters from HSBC, Allahabad Bank, IDFC, Oriental Bank of Commerce and Axis Bank to establish that it has credit worthiness and loans are being serviced regularly. The petitioner is in the business of development and operation of a SEZ, the losses incurred during the construction and initial phase shall be corrected shortly and the petitioner shall be financially stable to fulfil its rights and obligations as a deemed distribution licensee.
- f) The petitioner fulfils the Debt Equity ratio of 70:30 percent and as on 31.03.2015 it is 1:2.28 as stipulated in Rule 3.
- x. On identical facts, the Maharashtra Electricity Regulatory Commission has accepted the deemed distribution licence status of one of its sister concerns viz., M/s.Serene Properties Pvt. Ltd., and filed a copy of the order.
- xi. The Power distribution is not a standalone and it is incidental to the main business activity of developing and managing the SEZ. No separate balance sheet is available for the power distribution business. However, a combined balance sheet was prepared by the petitioner which has been filed before the Commission.
- xii. Neither the petitioner nor its Directors has been convicted by any court during the pendency of the petition. The allegations made by the respondent are denied.

13. We have heard the petitioner and the respondent at length, spread over on several dates. The petitioner has also replied to various queries raised by the Commission during the course of hearings.

14. The brief facts of the case are:

The MCI, Government of India vide Notification dated 16.10.2006 under Section 4 (1) of the Special Economic Zones Act, 2005 granted the approval for

setting up of a Special Economic Zone for Information Technology and Information Technology Enabled Services at Madhapur, Ranga Reddy District, Hyderabad in a total area of 16.29 hectares at Survey No. 64(part), Hi-tech City, Madhapur, Ranga Reddy District, Hyderabad to M/s.K.Raheja IT Park (Hyderabad) Pvt. Ltd. Subsequently, on 18.05.2007, the MCI had changed the name from M/s.K.Raheja IT Park (Hyderabad) Pvt. Ltd., to M/s.Sundew Properties Pvt. Ltd. Thereafter, the private limited company has been converted into a public limited company known as M/s.Sundew Properties Ltd. The MCI on 06.08.2010 had modified the area of the SEZ from 16.29 hectares to 14.47 hectares. Under section 49(1) of SEZ Act, the Central Government has notified the provisions of clause (b) of Section 14 of the Electricity Act, 2003, by inserting a proviso which runs as under:

*“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.”*

15. The petitioner filed an application on 13.03.2014 before the erstwhile Andhra Pradesh Electricity Regulatory Commission under Section 14(b) of the Act in the prescribed form notified in the Regulation No.10 of 2013 claiming the status of a deemed. Consequent upon the A.P.Reorganisation Act, 2014 coming into force, the petition filed was transferred to this Commission and in this regard, a memo has been filed by the petitioner on 30.06.2015.

16. We have perused Section 14 of the Act and a proviso has been inserted to sub-section (b) of Section 14 of the Act vide Notification S.O.528 (E) dated 03.03.2010 by the Central Government in exercise of powers conferred on it under Section 49(1) of the SEZ Act. There are nine (9) provisos to Section 14 of the Act and most of them deal with various of categories of licensees who shall be regarded as deemed licensees. On a close reading of the provisions of section 14, we are of the view that the '**provisos**' to section 14 are not applicable to a deemed licensee. The status of a deemed licence to a person under Section 14(b) of the Electricity Act, 2003 (The Act) emanates from the Notification given under Section 49(1) of the SEZ Act to a developer of SEZ provided the deemed Licensee satisfies the other provisions of the Act.

17. Thus, we are of the view that the petitioner gets identified as a deemed licensee provided it satisfies the other provisions of the Act. The undisputed fact is that the petitioner has been notified as a developer of the SEZ catering to the needs of ITS and ITES by the MCI in a total area of 14.47 hectares located at Survey No. 64(part), Hi-tech City, Madhapur, Ranga Reddy District, Hyderabad. In exercise of its powers conferred under section 181 (2) of the Electricity Act read with sections 15, 16 and 18 of the Electricity Act, the erstwhile APERC had notified Regulations applicable to a distribution licensee including a deemed licensee known as the Andhra Pradesh Electricity Regulatory Commission (Distribution Licence) Regulations, 2013 (Regulation No. 10 of 2013). This Commission has adopted all the Regulations of the erstwhile APERC in Regulation No.01 of 2014. Thus, we are of the view that various conditions that have been stipulated in the Distribution Licence Regulations have to be complied with by a deemed licensee including other provisions of the Act.

18. We are of the view that the provisions contained in sub-section (2), (3), (4), (5) & (6) of Section 15 of the Act are not applicable to a deemed licensee. Moreover, Regulation No.10 of 2013 adopted by this Commission contains the Rules relating to procedure for granting of a distribution licensee from Rules 4 to 11. The Rule 13 of the Regulation stipulates that Rules contained in 4 to 11 are not applicable to a deemed licensee and these Rules contain the procedure for granting of a distribution licence to a person. Thus, we follow our Regulations and hold that the procedure prescribed in sub-section (2), (3), (4), (5) & (6) of Section 15 of the Act for granting a distribution licence does not apply to a deemed licensee. Therefore, we do not agree with the submission of the learned counsel for respondent that the procedure prescribed in section 15 of Act has to be followed by a deemed licensee.

19. The Rule 13 of the Regulation No.10 of 2013 stipulates that a deemed licensee shall make an application in the form specified in Schedule – 2 to the Commission to get identified as a deemed licensee and rules 4 to 11 in the Regulations are not applicable to a deemed licensee. Thus, the Rule 13 of the Regulation No.10 of 2013 has excluded the application of Rules laid-down from Rules 4 to 11 of the Regulation No.10 of 2013. As observed earlier, the Rules 4 to 11 basically deal with the procedure to be followed by a person for obtaining a licence

from the Commission. By implication, Rule 12 is applicable to a deemed licensee also and the Rule 12 runs as under:

***“12. Application for grant of Distribution Licence in the area of supply of an existing Distribution Licensee***

***A person applying for grant of a licence for distribution of electricity through his own distribution system within the same area of supply of an existing “Distribution Licensee shall, in addition to the provisions of Regulation 4 to 11, comply with “Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005” issued by the Central Government.”***

20. We are not able to appreciate the argument of the petitioner that Rule 12 is not applicable to a deemed licensee. In our view, Rule 49 stipulates that all the general conditions applicable to a distribution licensee are also equally applicable to a deemed licensee. Thus, in our view, the Rule 12 is applicable to the petitioner.

21. The next issue that arises is whether the petitioner has complied with the provisions of Rule 12? The learned counsel for the respondent vehemently contended that the petitioner has not complied with the provisions of the Rule 12. On the other hand, the petitioner made elaborate written submissions on this issue and the learned senior counsel had patiently answered all the issues raised by us in respect of norms for computation of net worth of the petitioner and the debt equity ratio during the course of hearing with the assistance of a chartered accountant. As submitted by the petitioner, the anticipated capital expenditure is a sum of Rs.89.53 Crores for the total electrical installations or on the power distribution business in the SEZ area and already a sum of Rs.53.3 Crores had been incurred by the petitioner. The Rule 3(2) stipulates that 30% of the total investment needs to be contributed by the petitioner and its promoters after excluding the committed investments. The Auditor’s report relating to the petitioner for the Financial year ending on 31.03.2013 reveals that the entire share capital of the petitioner amounting to Rs. 1.12 Crores has been wiped out on account of accumulated losses. The statutory Auditor in his audit report further stated that for the financial year ended on 31.03.2013, the accumulated losses were more than 50% of net worth of the petitioner and the petitioner had incurred cash losses during the financial years 2012-13 and 2011-12.

As a stand-alone entity the petitioner does not fulfil the conditions laid-down in Rule 3 of the Capital Adequacy Rules. However, the Rule 3(2) also stipulates that the net worth of the promoters of the petitioner can be considered for the purpose of computation of the Debt Equity ratio of 30:70. The petitioner filed a compilation on 28-10-2015 (at page No.34 of this compilation) wherein, it had furnished the net worth of the promoters for the financial years ended on 31.03.2015, 31.03.2014 and 31.03.2013 and the net worth including the net worth of the promoters varied between Rs.1577 Crores and Rs.1760 Crores, which in our view, meets the requirements laid down in Rule 3(2). Thus, in our view, the petitioner has complied with the Rule 3(2) and we find no merit in the submissions made by the respondent. However, we place certain conditions in respect of infusion of fresh equity share capital from the promoters of the petitioner in the later part of this order under Section 16 of the Act.

22. The respondent contended that the petitioner's case is covered by the '**explanation**' to Rule 3(2) of the Capital Adequacy Rules which stipulates the minimum area of supply that can be either a revenue district or a municipal corporation. We agree with the submissions of the learned senior counsel. The petitioner fulfilled the conditions laid-down in the SEZ Rules, 2006 wherein, the minimum area requirement for setting up an ITS/ITES SEZ is prescribed. A harmonious construction of the provisions of the SEZ Act, 2005 and the Electricity Act, 2003 should be given otherwise no SEZ shall qualify as a deemed licensee under section 14 (b) of the Electricity Act, 2003. Thus, in our view, the minimum area of supply condition stipulated in the capital adequacy rules does not apply to the petitioner.

23. During the course of hearings, on 02.11.2015, the learned senior counsel for the petitioner submitted that the power distribution business is not the main business but it is incidental to the main business of development and management of a SEZ. Thereby a separate balance sheet for the power distribution business has not been prepared. We have perused Rule 43 of the Regulation No.10 of 2013 read with Rule 2 containing definition of accounting statement. Rule 43 stipulates that a deemed licensee shall maintain separate and distinct books of account for the licensed business and the statutory auditor under the Companies Act, 1956 or Companies

Act, 2013 should give his opinion stating that the statements have been properly prepared and give a true and fair view of the revenue, costs, assets, liabilities and reserves attributable to the licensed business.

24. The expression '**accounting statement**' has been defined in Rule 2 of the Regulation which, inter-alia, stipulates that a report of the statutory auditor is required for the power distribution business. The petitioner in its additional re-joinder filed on 20.11.2015 submitted that it had separated the accounts to carry on the power distribution business and enclosed a copy of the financial statements for the Financial Year 2014-15 of the power distribution business, along with a letter signed by BSR & Co. LLP, Chartered Accountants dated 09.11.2015 addressed to the Board of Directors of the Petitioner. This letter of the Chartered Accountants is not a statutory audit report as stipulated in the Companies Act and the Chartered Accountants have qualified by stating "these annexures have been prepared by the Company's management who are solely responsible for preparation of these annexures". After perusing the letter dated 09.11.2015 of the Chartered Accountants, we are of the view that the letter dated 09.11.2015 is not a statutory Audit Report stipulated in the Companies Act, 2013 or in the Companies Act, 1956 as they have not expressed their true and fair view on the revenues, costs, assets and liabilities attributable to the licensed business. Thus, the petitioner has partly fulfilled the conditions laid down in Rule 43 of the Regulation No.10 of 2013. Considering the objects of the Electricity Act, 2003, we are of the view that this technical defect which is curable if adequate time is allowed to the petitioner.

24. The petitioner in its application has sought the deemed licence status from 13.03.2014. Retrospectively identifying the petitioner as a deemed licence leads to various implications in complying with various provisions of the Act. Further, as a standalone entity, the petitioner does not fulfil the debt equity ratio as stipulated in Capital Adequacy Ruels and adequate time has to be given for infusion of fresh equity capital by the promoters in power distribution business. Further, the petitioner needs time to cure the technical issues in preparation of financial statements and furnishing of statutory report under the Companies Act, 2013. In the Memorandum of Association, there is no clear object which permits the petitioner to carry on the business of distribution of power. Thus, the Memorandum of Association needs an

amendment by the petitioner by following the procedure prescribed in the Companies Act, 2013. After considering the totality of facts and material on record, we deem it proper to identify and accord the status of a deemed licensee w.e.f. 01.04.2016 so that the petitioner shall have adequate time to comply with its obligations under the Electricity Act, 2003. Thus, we identify the petitioner as a deemed licensee w.e.f. 01.04.2016 under section 16 read with section 14 (b) of the Electricity Act subject to conditions herein under as per Section 16.

26. We identify and accord the Deemed Licence status of the petitioner with the following conditions with effect from 01.04.2016:

A. The Telangana State Electricity Regulatory Commission, in exercise of the powers conferred under Section 14 (b) of the Electricity Act, hereby identifies and recognises M/s. Sundew Properties Ltd., Mindspace, Cyberabad, Sy.No.64 (Part), Hitech City, Madhapur, Hyderabad – 500 081 as a deemed licensee to distribute the electricity in the area of distribution as indicated in the Annexure – 13 of its Application dated 13.03.2014, admeasuring 14.47 hectares of area subject to the provisions made in the Electricity Act, 2003, the rules made thereunder, the Regulations made by this Commission, any other statute as applicable to the electricity sector and general conditions of Distribution Licence specified under the erstwhile A.P. Electricity Regulatory Commission (Distribution Licence) Regulations, adopted by this Commission vide Regulation No.1 of 2014 and other Regulations specified or adopted by this Commission, including statutory amendments, alterations, modifications, re-enactments thereof, which shall be read as part and parcel of this deemed licence.

**B. Area of Distribution**

M/s. Sundew Properties Ltd., has been notified as a developer of a Special Economic Zone for Information Technology / Information Technology enabled services by the Ministry of Commerce & Industries, under the SEZ Act, 2005 the area of the distribution shall be the whole of 14.47 hectares situated in the Mindspace, Cyberabad, Sy.No.64 (Part), Hitech City, Madhapur, Hyderabad – 500 081. The area of power distribution shall be restricted to the area as indicated in the Annexure – 13 of the Application received on 13.03.2014 admeasuring 14.47 hectares.

- C. Amendment to objects clause of Memorandum of Association. The distribution of power business is not specifically stated either in the main objects or in the ancillary objects in the Memorandum of Association. The company shall amend its object clause by including the business of distribution of power as one of its objects in accordance with the procedure prescribed under the Companies Act, 2013. Further, this amendment shall be carried out by 31.12.2016.
- D. The net worth of the promoters makes the petitioner to satisfy the conditions laid down in Rule 3(2) of Capital Adequacy Rules. However, the petitioner is an independent entity registered under the Companies Act and it has another business activity viz., running of the SEZ. The power distribution business needs equity capital and a Licensee under the Act has various obligations and to meet the requirements of the Act we deem it appropriate to direct the petitioner to obtain 30% of the total investment of the power distribution business as equity share capital from the promoters on or before 31.03.2016. During the course of hearings, the petitioner submitted that the anticipated capital expenditure on the power distribution business is for a sum of Rs.89.53 Crores. Therefore, the promoters have to contribute 30% of the total anticipated investment of Rs. 89.53 Crores which works out to Rs.26.9 Crores on or before 31.03.2016. The petitioner is hereby directed to obtain a sum of Rs.26.9 Crores as equity share capital contribution for the power distribution business by way of account payee cheques and not as book entries, from the promoters of the petitioner. In case, the anticipated capital expenditure increases from time to time the promoters have to contribute 30% of the additional expenditure as equity capital. Thus, we direct that the petitioner shall maintain the Debt: Equity ratio of 70:30 for the power distribution business always.
- E. This licence is not transferable, except in accordance with the provisions of the Electricity Act, 2003, the Rules and the Regulations made thereunder.
- F. (1) The deemed licensee shall not without prior approval of the Commission -  
(a) Undertake any transaction to acquire by purchase or take over or otherwise, the utility of any other licensee/or another deemed licensee;  
or

(b) Merge or amalgamate this deemed distribution licensee with utility of any other licensee/ deemed licensee;

(c) Demerge the power distribution business and make it a stand-alone business.

(2) The deemed licensee shall not at any time assign its deemed licence, or transfer its utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Commission

(3) Any agreement relating to any transaction referred to in sub-clause (1) and sub-clause (2) above unless made with the approval of the Commission, shall be void.

- G. This deemed licence shall not in any way hinder or restrict the right of the Commission to grant a licence or a deemed license to any other person within the same area for Distribution of electricity. The deemed licensee shall not claim any exclusivity.
- H. The status of deemed licence under section 14(b) of the Act shall continue to be in force for a period of 25 (twenty five) years from April 1, 2016.
- I. The provisions contained in Rule 28 of Regulation No.10 of 2013 from time to time.
- J. The deemed licensee shall pay the license fee as per the Regulation issued under section 86(1)(g) of the Electricity Act, 2003 and in force from time to time.
- K. The deemed licensee shall allow open access to any consumer in its area in accordance with the open access regulation of this Commission.
- L. The deemed distribution licensee shall maintain separate books of account for the power distribution business and prepare separate financial statements based on the separate books of account maintained in the ordinary course of its business. It should not subsidized the other business activities and distribution assets should not be mortgaged or be charged to any bank or financial institution for raising any loan either for the deemed licence business or by any of its group concerns.

- M. The deemed licensee shall seek approval of the Commission before contracting any loan as a deemed licensee from any group company or from any financial institution by mortgaging the business assets of the power distribution business.
- N. The provisions contained in the Act shall apply to the deemed Licensee with regard to revocation of deemed licence and sale of the power distribution business.

*This order is corrected and signed on this 15<sup>th</sup> day of February 2016.*

**Sd/-**  
**L.MANOHAR REDDY**  
**MEMBER**

**Sd/-**  
**H.SRINIVASULU**  
**MEMBER**

**Sd/-**  
**ISMAIL ALI KHAN**  
**CHAIRMAN**

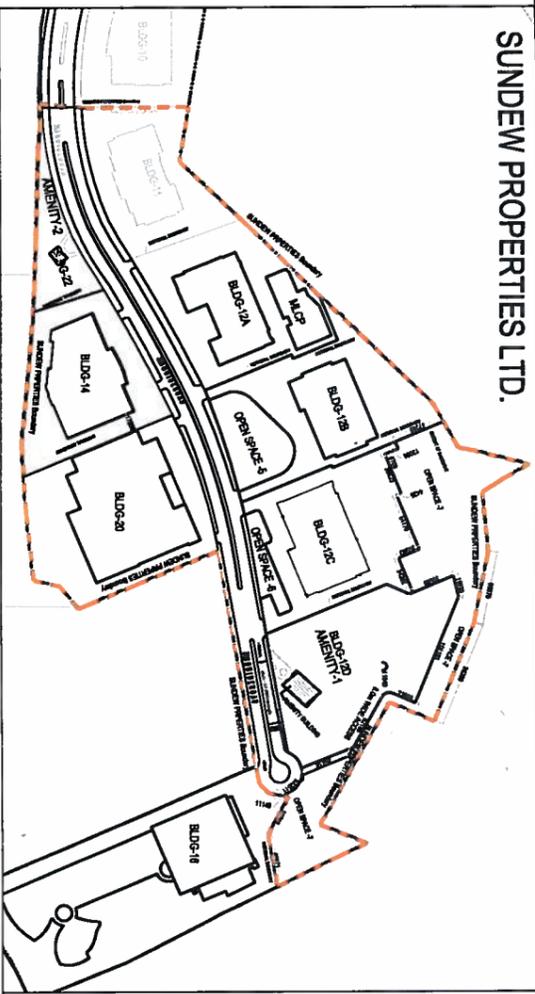
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**LEGEND**

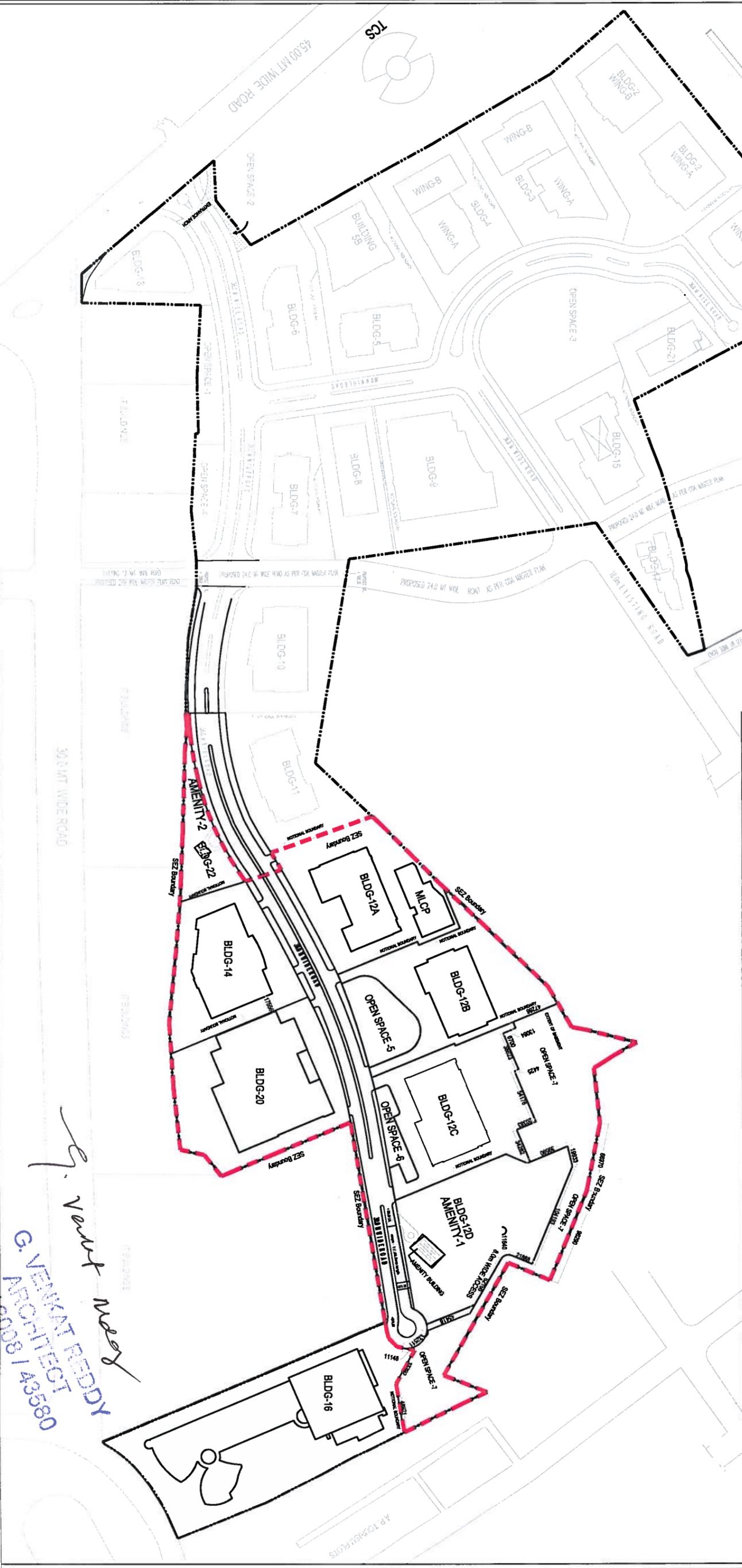
- MIND SPACE PLOT BOUNDARY
- Geographical SEZ area in which Distribution of Electricity is Proposed to Undertake (Boundaries of Proposed Area Of Supply)



RESIDENTIAL LAYOUT



SEZ AREA STATEMENT			
S.NO	BUILDING NO	NOTIONAL PLOT AREAS SQ.M	B.U.A (AREA IN Sq.mts.)
1	Building No.12-A	16,282.31	75,028.90
2	Building No.12-B	14,718.00	58,972.64
3	Building No.12-C	15,609.14	67,082.91
4	Building No.12-D	17,671.12	507.54
5	Building No.14	14,456.45	46,124.42
6	Building No.20	20,451.58	84,980.04
7	Building No.22	4,510.01	130.01
8	OPEN SPACE - 5	4,165.98	
9	OPEN SPACE - 6	1,606.02	
10	OPEN SPACE - 7	19,431.98	
11	ROADS	15,772.59	
	TOTAL	144,675.18	332,826.46
		35.75 Acres	



*G. Venkatesh Reddy*  
 G. VENKATESH REDDY  
 ARCHITECT  
 2008 / 43380

LOCATION PLAN OF M/S SUNDEW PROPERTIES Ltd. IT /ITES SEZ AREA IN S.No.64 (PART)  
 "MINDSPACE" MADHAPUR AT CYBERABAD.