



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 16 of 2017
and
I. A. No. 25 of 2017

Dated 15.04.2024

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

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

... Petitioner

AND

1. Southern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.6-1-50, Mint Compound,
Hyderabad 500 063.
2. Transmission Corporation of Telangana Limited,
TSTRANSCO, Vidyut Soudha,
Khairatabad, Hyderabad 500 082.

... Respondents

The petition came up for hearing on 28.01.2021, 18.03.2021, 09.06.2021, 15.07.2021, 25.08.2021, 23.09.2021, 28.10.2021, 20.12.2021, 27.12.2021, 17.01.2022, 18.04.2022, 23.05.2022, 11.08.2022, 14.11.2022, 09.01.2023, 04.04.2023, 10.04.2023 and 24.04.2023. The appearance of counsel for the petitioner/representative of the petitioner and respondents is as given below:

Date	Petitioner	Respondents
28.01.2021, 17.01.2022	Sri. Abhishek Manot, Advocate	Sri. Mohammad Bande Ali, Law Attaché
18.03.2021,	-None-	Sri. Mohammad Bande Ali, Law Attaché

Date	Petitioner	Respondents
04.04.2023		
09.06.2021, 15.07.2021, 25.08.2021, 28.10.2021, 23.05.2022, 24.04.2023	Sri. Kunal Kual, Advocate	Sri. Mohammad Bande Ali, Law Attaché
23.09.2021, 20.12.2021, 10.04.2023	Sri. Samiskruth Rao, Advocate	Sri. Mohammad Bande Ali, Law Attaché
18.04.2022, 11.08.2022, 14.11.2022, 09.01.2023	Sri. T. G. Rajesh Kumar, Advocate	Sri. Mohammad Bande Ali, Law Attaché
29.04.2021	Proceedings did not take place due to administrative reasons	

Having been heard the matter through video conference on 28.01.2021, 18.03.2021, 09.06.2021, 15.07.2021, 25.08.2021, 23.09.2021, 28.10.2021 and physically on 20.12.2021, 27.12.2021, 17.01.2022, 18.04.2022, 23.05.2022, 11.08.2022, 14.11.2022, 09.01.2023, 04.04.2023, 10.04.2023 and 24.04.2023. and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Sundew Properties Limited (petitioner/SPL), a deemed distribution licensee under Section 14(b) of the Electricity Act, 2003 (Act, 2003) has filed a petition under Section 86(1)(f) of the Act, 2003 seeking directions to the existing licensee to hand over the distribution assets falling in its area by questioning the inaction of the existing licensee. The averments in the petition are extracted below:

a. The petitioner has stated it has been recognized by the Commission by order dated 15.02.2016 in O.P.No.10 of 2015 as deemed distribution licensee (deemed licensee) and is filing the present petition being aggrieved by the Southern Power Distribution Company of Telangana Limited's (respondent No.1/TSSPDCL) letter dated 21.07.2016. By the said letter, the respondent No.1 has:

- (i) *Rejected petitioner's request vide its letters dated 04.05.2016, 16.06.2016 and 19.07.2016 for bifurcation of the 33 kV feeders within the K. Raheja Information Technology Park campus at Madhapur, Hyderabad (KRIT Campus), between Special Economic Zone (SEZ) and non-SEZ areas.*

- (ii) *Directed petitioner to handover the aforementioned assets and downstream network immediately for respondent No.1's utilization and make its own arrangements for supply in the SEZ area.*
- b. The petitioner has stated that pursuant to the Commission's order dated 15.02.2016, it filed a miscellaneous application being I.A.No.2 of 2016 in O.P.No.10 of 2015 and an affidavit dated 10.06.2016, seeking compliance of certain directions of the Commission set out in order dated 15.02.2016. The said interlocutory application was disposed of by the Commission vide order dated 04.08.2016. By the said order, the Commission has directed petitioner to operationalize its distribution licence on or before 30.09.2016. In order to operationalize the said distribution licence, it is quintessential for petitioner to bifurcate its 33 kV feeders within the KRIT campus between SEZ and non-SEZ areas.
- c. The petitioner has stated that being aggrieved by respondent No.1's inaction, it is constrained to approach the Commission seeking the following directions against respondent No.1, to:
- (i) *Segregate the 33 kV feeders along with the existing network, within KRIT campus, between SEZ and non-SEZ areas as more particularly elaborated herein below, to enable petitioner to operationalize its distribution licence.*
- (ii) *Handover the possession of the distribution assets to SPL, to enable it to supply electricity in its licence area, including the segregated 33 kV feeders and its associated bays in 132/33 kV substations (SS) at Madhapur and Jubilee Hills.*
- d. The petitioner has stated and described the parties:
- (a) It is a company incorporated under the provisions of the Companies Act, 1956 (Act, 1956) having its registered office at Sy.No.64(part), Mindspace, Cyberabad, Hitec City, Madhapur, Hyderabad. It is a deemed licensee having been notified as a developer of a sector specific SEZ, for Information Technology (IT)/Information Technology Enabled Services (ITES) in terms of:
- (i) Special Economic Zones Act, 2005 (SEZ Act)
- (ii) The following notifications issued by the Ministry of Commerce and Industry (MoC&I), Government of India (GoI) being:
- (a) Notification No.S.O.1770(E) dated 16.10.2006 read with notification No.S.O.780(E) dated 18.05.2007 and notification No.S.O.1928(E) dated 06.08.2010, notifying petitioner's IT/ITES park as a SEZ in terms of Section 4 of the SEZ Act.

- (b) Notification No.S.O.528(E) dated 03.03.2010, issued under Section 49(1)(b) of the SEZ Act, notifying that the provisions of Section 14(b) of the Act, 2003 shall apply to all SEZs notified under Section 4(1) of the SEZ Act.
 - (c) Notification No.P.6/3/2006-SEZ dated 27.02.2009 read with notification of even number dated 06.04.2015, notifying that all the provisions of the Act, 2003 read with the rules and regulations framed thereunder would apply to distribution facilities in the SEZs, wherever warranted.
- (b) The respondent No.1 is a company incorporated under the provisions of the Act, 1956 with headquarters at 6-1-50, Mint Compound, Hyderabad. The respondent No.1 has been incorporated to carryout electricity distribution business as part of the unbundling of erstwhile APSEB.
- (c) The respondent No.2, is Transmission Corporation of Telangana Limited (TSTRANSCO), is a company incorporated under the provisions of the Act, 1956 with its headquarters at Vidyut Soudha, Khairatabad, Hyderabad, to carry out planning, construction and maintenance of the transmission network in the State of Telangana.
- e. The petitioner has stated about the brief facts of the case. It is notified as the developer of a sector specific SEZ, for IT/ITES at Hyderabad, in compliance with the provisions of the SEZ Act and the notifications issued thereunder by the MoC&I as stated above. By the said notification, petitioner's IT/ITES park has been notified as a SEZ in terms of Section 4 of the SEZ Act. The petitioner is a deemed distribution licensee in terms of Section 14(b) of the Act, 2003 and in terms of MoC&I's notification No.S.O.528(E) dated 03.03.2010.
- f. The petitioner has stated that since 17.10.2011 till date it has been procuring/ sourcing power from respondent No.1 pending operationalization of its distribution licence, through bulk supply, in terms of the various HT agreements executed between the parties. On 10.03.2014, it filed a petition which was later numbered as O.P.No.10 of 2015 by the Commission upon its constitution, to take on record and identify it as a deemed distribution licensee. On 15.02.2016, the Commission passed its order in O.P.No.10 of 2015, thereby taking on record petitioner's deemed distribution licensee status.
- g. The petitioner has stated that on 04.05.2016 it sent a letter to respondent No.1 requesting it for bifurcation of the 33 kV feeders within KRIT campus between SEZ and non-SEZ areas. It further highlighted that the entire cost of the following electrical assets were borne by petitioner or its associated sister concerns:

- i) 33 kV network and its associated bays in 132/33 kV Madhapur SS and 132/33 kV Jubilee Hills SS.
- ii) 33 kV indoor breakers at the switching station along with the civil works in the KRIT campus.

It was further stated that, while restructuring the assets for the purpose of operationalizing its distribution assets, the petitioner wished to retain the assets as it had incurred the entire cost of the said network.

- h. The petitioner has stated that on 07.05.2016 it sent a letter to respondent No.2 seeking grid connectivity on the intrastate transmission system. On 31.05.2016, respondent No.2 sent a letter to respondent No.1 requesting it to clarify details qua the ownership of the following elements and the modalities for transferring the same to petitioner if the elements are in fact properties of respondent No.1:
 - i. Two Nos.33 kV feeders, one from 132/33 kV SS Madhapur SS and the other from 132/33 kV Jubilee Hills SS, along with associated equipment and elements of the network.
 - ii. Distribution system below 33 kV feeders that is 33/11 kV SS, distribution transformers and associated LT distribution network to the building in the area for which distribution licence has been granted to SPL.

The respondent No.2 further requested respondent No.1 to provide the present status of power supply to the area for which distribution licence has been granted to the petitioner, that is connected load, etc.

- i. The petitioner has stated that on 16.06.2016 it once again requested respondent No.1 to:
 - i. Duly bifurcate the 33 kV feeders between it's SEZ and non-SEZ areas.
 - ii. Handover the possession of the 33 kV assets used for supplying power within it's SEZ area.

On 12.07.2016 the petitioner once again requested respondent No.2 to grant transmission connectivity to the grid at an early date to enable petitioner to operationalize its distribution licence at the earliest.

- j. The petitioner has stated that on 19.07.2016 it reiterated its request to respondent No.1 to handover the possession of the 33 kV assets supplying power to it's SEZ area, duly bifurcating the 33 kV feeders between the SEZ and non-SEZ areas. it further requested that while restructuring the 33 kV network, possession of the assets pertaining to the SEZ area be handed over to the petitioner free of cost, since the entire cost of the said assets was borne by the

petitioner.

- k. The petitioner has stated that on 21.07.2016 the respondent No.1 rejected the request to transfer two Nos.33 kV feeders and associated bays emanating from the 132/33 kV Madhapur and Jubilee Hills SS. The respondent No.1 further directed the petitioner to handover the aforementioned assets and downstream network immediately for utilization of respondent No.1 as per clause 5.3.2.2 of the General Terms and Conditions of Supply (GTCS) of distribution and retail supply licensees and make its own arrangement for supply of power to the SEZ area.
- l. The petitioner has stated that on 04.08.2016 the Commission disposed of I.A.No.2 of 2016 in O.P.No.10 of 2015, thereby directing it to operationalize its distribution licence by 30.09.2016 and supply electricity within its licensed area. In light of the aforesaid background, it has approached the Commission seeking reliefs on the grounds enumerated below.
- m. The petitioner has raised the following grounds/submissions. It is stated that, 109.36 acres of land has been allotted for KRIT campus. Out of the said 109.36 acres, 35.75 acres (14.47 hectares) has been notified as an SEZ in the name of the petitioner, a letter dated 30.06.2006 read with Gol, notification No.S.O.1928(E) dated 06.08.2010. The power connections, as and when required, post completion of the construction of the respective buildings, were got sanctioned from respondent No.1 in the name of either petitioner or its sister concerns.
- n. The petitioner has stated that the entire power supply to all the buildings within the KRIT campus that is the entire area of 109.36 acres is made from five 33 kV feeders. Initially, one 33 kV feeder from the 132/33 kV Madhapur substation was sanctioned by the respondent No.1, feeder-1, for supplying power within the KRIT campus. The said feeder-1 is currently supplying power to building Nos.2A, 2B, 4 and 10. Thereafter, another 33 kV feeder was sanctioned from the 132/33 kV Madhapur substation (feeder-2). Feeder-2 is currently supplying power to building Nos.6, 14, 20 and Chalet Hotels. In order to meet the additional power requirement of petitioner/sister concerns, the respondent No.1 sanctioned an additional 33 kV feeder from the 132/33 kV Jubilee Hills SS

(feeder-3). Feeder-3 is used for supplying power to building Nos.9, 12A and 12C.

- o. The petitioner has stated that subsequently, to meet the increasing demand in the KRIT campus, one more 33 kV feeder was sanctioned by respondent No.1 from the 132/33 kV Madhapur SS (feeder-4). Feeder-4 is supplying power to building Nos.12B, Inorbit Mall and the 33/11 kV Mindspace substation, for supplying power to the various buildings within the KRIT campus at 11 kV level. Recently to meet its additional load requirement, an additional 33 kV feeder from 132/33 kV Jubilee Hills SS was sanctioned (feeder-5) by respondent No.1. Feeder-5 is supplying power to building No.11.
- p. The petitioner has stated that it is pertinent to highlight that, all the buildings in SEZ area and non-SEZ areas are fed from the aforementioned common 33 kV feeders, that is feeder-1 to feeder-5, which are sanctioned and paid for either by the petitioner and/or its sister concern. Out of the five 33 kV feeders, feeder-2 and feeder-5 are in the name of the petitioner. The details of petitioner's feeders are provided in **table No.1** below:

Sl. No.	Feeder name	Emanating from	Feeding to building Nos.	
			SEZ	Non-SEZ
1.	KRIT Park (Hyderabad) Private Limited* (feeder-1)	132/33 kV SS at Madhapur		2A, 2B, 4 and 10
2.	Sundew Properties Limited. (feeder-2)	132/33 kV SS at Madhapur	14 and 20	6 and Chalet Hotel
3.	Intime properties Limited* (feeder-3)	132/33 kV SS at Jubilee Hills	12A and 12C	9
4.	Trion Properties Private Limited.* (feeder-4)	132/33 kV SS at Madhapur	12B	In orbit mall and 33/11 kV SS Mindspace
5.	Sundew Properties Limited. (feeder-5)	132/33 kV SS at Jubilee Hills		11

**petitioner's sister concern*

- q. The petitioner has stated that, the need of segregation of the power connections, that is 33 kV feeders between the SEZ and non-SEZ areas has arisen in light of:
- i. petitioner's distribution licensee status in terms of Section 14(b) of the Act, 2003.

- ii. This Commission's order dated 15.02.2016, taking on record petitioner's deemed licensee status.

It is evident from the aforesaid table that, the 33 kV feeders emanating from the two substations of respondent No.2 being Madhapur and Jubilee Hills, which are feeding/supplying power to various buildings, both in the SEZ as well as non-SEZ areas within the KRIT campus. In this regard, it is stated that, the two SPL feeders, that is feeder-2 and feeder-5 along with the associated distribution network can be utilized exclusively for petitioner's licensed area, that is the SEZ area. Therefore, the load of building Nos.6, 11 and Chalet Hotel can be diverted on feeders-1, 3 and 4.

- r. The petitioner stated that the bifurcation of the 33 kV network between the SEZ and non-SEZ areas, as indicated in table Nos.2 and 3 below, is quintessential for operationalizing petitioner's distribution licence.

Table No.2: Proposal bifurcation of feeders for supply in the SEZ area

Sl. No.	Feeder Name	Emanating From	To feed to building
1.	Sundew Properties Limited. (feeder-2)	132/33 kV Madhapur, SS	14 and 20
2.	Sundew Properties Limited. (feeder-5)	132/33 kV Jubilee Hills, SS	12 A, 12 B and 12 C

Table No.3: Proposal bifurcation of feeders for supply in the non-SEZ area

Sl. No.	Feeder name	Emanating from	To feed to building
1.	Intime Properties Limited. (feeder-3)	132/33 kV Jubilee Hills SS	9, 6 & Chalet Hotel
2.	Sundew Properties Limited. (feeder-5)	132/33 kV Madhapur SS	In Orbit Mall, 11 & 33/11 kV SS, Mindspace
3.	KRIT Park (Hyderabad) Private Limited (feeder-1)	132/33 kV Madhapur SS	2A, 2B, 4 & 10 (No change)

- s. The petitioner stated that after bifurcation of the aforementioned feeders, the remaining three 33 kV feeders, that is feeders-1, 3 and 4 proposed to feed the buildings in the non-SEZ area, shall have sufficient capacity, in the event respondent No.1 is required to cater to new/additional load within the non-SEZ areas in the KRIT campus. It is pertinent to note that, the entire cost towards erection of all five feeders, its associated equipment and the downstream distribution network has been borne by petitioner and/or its sister concerns. It is stated that, petitioner has proposed the rearrangement of the assets in a

manner where the assets paid for by the petitioner are retained with it. This would enable petitioner to operationalize its distribution/supply electricity within its licensed area. In this regard, it is stated that, the cost already incurred by petitioner towards the erection of the 33 kV bays at 132/33 kV SS at Madhapur and Jubilee Hills and laying of cables from the respective substations pertaining to SPL's dedicated feeders are set out in table No.4 below:

Table No.4: Costs incurred by SPL for feeders 2 and 5

Sl. No.	Name of the Feeder	Emanating From	Cost incurred as per the estimate sanctioned by TSSPDCL
1.	Sundew Properties Limited. feeder-2	132/33 kV SS at Madhapur	Rs.2,28,76,550/-
2.	Sundew Properties Limited. Feeder-5	132/33 kV SS at Jubilee Hills	Land Cost: Rs.53,64,060/- Estimate Cost Rs.1,67,69,381/- Total Rs.2,21,33,441/-

- t. The petitioner has stated that it had vide its letter dated 19.07.2016 requested respondent No.1 to hand over the possession of two 33 kV assets (feeders-2 and 5), so as to enable it to operationalize its distribution licence and supply power to its consumers within the SEZ area. The petitioner further highlighted that the entire capital of the same had been incurred by it, the said facilities ought to be retained by it upon permanent disconnection of power supply by respondent No.1.
- u. It is stated that the respondent No.1 vide its letter dated 21.07.2016 rejected petitioner's request for transferring the above assets and further directed petitioner to hand-over the same and the downstream network immediately, for utilization by respondent No.1 as per clause 5.3.2.2 of the GTCS. The petitioner was also directed to make its own arrangement for supply of power within the SEZ area. In this regard, it is stated that:
- i. *Clause 5.3.2.2 of the GTCS only states that, notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the respondent No.1, which shall maintain it at its own cost. Further, the respondent No.1 shall also have the right to use the service line for supply of energy to any other persons.*
 - ii. *The intent of clause 5.3.2.2 is that the service line is to be considered the property of respondent No.1 only for the purpose of its maintenance*

and operation. The maintenance and operation costs are to be borne by respondent No.1.

- iii. The capital cost of all five feeders is incurred by the petitioner and/or its sister concerns.*
 - iv. Clause 5.3.2.2 is in regard to consumers and not deemed distribution licensees. The petitioner is a deemed distribution licensee.*
 - v. Clause 5.3.2.2 does not deal with dedicated distribution systems such as that of the petitioner. The said feeders as well as the associated network of the petitioner, is a dedicated distribution system created, operated and maintained only for the KRIT consumers. In other words, the respondent No.1 has not incurred any cost toward creation of the said network. The capex, of the said network is not reflected in respondent No.1's aggregate revenue requirement/tariff. Therefore, no prejudice whatsoever would be caused to respondent No.1 and/or its consumers, who have not contributed for the construction, of the said assets, in the event the said two 33 kV feeders being 2 and 5 and the associated network is transferred to the petitioner for supplying power within the SEZ area, that is the very intent for which they were constructed.*
 - vi. The assets had been created as dedicated feeders from the 132/33 kV SS at Madhapur and Jubilee Hills for supplying power to the consumers within KRIT campus, which contains both SEZ and non-SEZ areas. These feeders are not being used by the respondent No.1 to supply to any consumers outside the KRIT campus.*
 - vii. Being a distribution licensee, the petitioner is obligated to supply power to its consumers within its licensed area that is the SEZ area, which it rightly proposes to do by utilizing the electrical assets constructed and paid for by it for the very purpose.*
 - viii. The cost of laying the aforementioned electrical assets has already been taken into account/consideration by the Commission for calculating the capital expenditure incurred by the petitioner while taking on record SPL's deemed distribution licensee status. In the event petitioner is required to implement respondent No.1's letter dated 21.07.2016, then the same would be contrary to consumer interest.*
- v. The petitioner has stated that, the request of respondent No.1 to the petitioner to handover the two Nos.33 kV feeders and associated bays at 132/33 kV Madhapur and Jubilee Hills SS along with downstream network and make altogether new arrangements for supply of power in the SEZ area is contrary to the statutory scheme, irrational and unsustainable. Re-creation of the entire infrastructure to supply power to the SEZ area will lead to exorbitant costs on the petitioner, which shall in turn impact the tariff of the consumers and lead to wastage of resources, thereby defeating the principles laid down in the Act, 2003. The Act, 2003 clearly recognizes the following principles:
- i. Consumer interest ought to be protected.*

- ii. *It is a duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in its area of supply.*
- iii. *The tariff should be reflective of cost of supply.*

The respondent No.1's letter dated 21.07.2016 is evidently contrary to the aforesaid well established principles and hence cannot be implemented.

- w. The petitioner stated that, there is no provision under the Commission's regulations or under the erstwhile Andhra Pradesh Electricity Regulatory Commission's (APERC) regulations qua transfer of assets to a consumer upon termination of the agreement or permanent discontinuance of supply of power. However, the Electricity Supply Code, 2005 as amended from time to time, notified by the Maharashtra Electricity Regulatory Commission (MERC) provides for such a situation and states as under:

"3.3.5 where the distribution licensee has recovered the expenses referred to in regulations 3.33 above at any time after the notification of these Regulations, the consumer shall be entitled to depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:

Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these regulations:" (emphasis supplied)

In light of the above, it is stated that, there is no statutory bar on the respondent No.1 for:

- i. *Segregation of SEZ and non-SEZ load.*
 - ii. *Handing over the possession of the assets (feeder, associated equipment and the downstream network) to petitioner.*
 - iii. *Therefore, consumer interest demands that the respondent No.1 should segregate the 33 kV feeders between SEZ and non-SEZ areas, by bifurcating the connected network as indicated above and hand over the possession of the assets pertaining to 33 kV feeders-2 and 5 to the petitioner. Without prejudice to the above and in the alternative, the petitioner be permitted to continue using the said electrical assets without any corresponding additional costs.*
- x. The petitioner stated that, for it to commence its power distribution operations, the State Transmission Utility (STU) (TSTRANSCO) being respondent No.2 is required to grant transmission connectivity to the grid, as necessitated under the CERC (Indian Electricity Grid Code) Regulations, 2010. As stated hereinabove, the petitioner has on 07.05.2016 already made requisite

applications to respondent No.2, seeking grid connectivity on the intrastate transmission system.

- y. The petitioner stated that on 31.05.2016, respondent No.2 sent a letter to respondent No.1, requesting it to clarify details qua the ownership of the feeders and the modalities for transferring the same to the petitioner, if the elements are in fact properties of the respondent No.1. It is pertinently stated that grant of open access is also quintessential for the petitioner to operationalize its distribution license. Therefore, till the time the issues arisen between respondent No.1 and it are resolved, the Commission may, in the interim, direct respondent No.2 to grant transmission connectivity/open access to the petitioner on the existing 33 kV network for operationalizing its distribution licence. The petitioner has filed a separate miscellaneous application seeking interim relief in this regard.

2. The petitioner has sought the following prayer in the petition.

- a. *“Direct TSSPDCL to segregate the 33 kV feeders within KRIT campus, between SEZ and non-SEZ areas and bifurcate the connected network, as more particularly elaborated herein above, to enable SPL to operationalize its distribution licence.*
- b. *Direct TSSPDCL to transfer the non-SEZ loads on feeders 1, 3 and 4.*
- c. *Direct TSSPDCL to handover the distribution assets to SPL to enable it to supply electricity in its licensed area including the segregated assets pertaining to two 33 kV feeders (feeders–2 and 5) and its associated bays in 132/33 kV substations at Madhapur and Jubilee Hills along with the downstream network to SPL.*
- d. *In the alternative to prayer (c) above, permit SPL to continue using the assets pertaining to two 33 kV feeders (feeders–2 and 5), its associated bays in 132/33 kV substations at Madhapur and Jubilee Hills and the downstream network for the purpose of enabling SPL to distribute electricity in the licensed area (SEZ area) without any corresponding additional costs.’*

3. The petitioner has filed a separate Interlocutory Application in the above said original petition. The petitioner/applicant has sought the following prayer in this application.

- a. *“to direct TSTRANSCO to grant transmission connectivity at 33 kV level on two Nos.of 33 kV SPL feeders emanating from 132/33 kV substations at Madhapur and Jubilee Hills, on interim basis, till such time the Commission adjudicates upon the transfer of assets between SPL and TSSPDCL.*

- b. *to direct TSSPDCL to disconnect the consumers pertaining to SPL's licence area (that is the SEZ area), on such date and time as specified by SPL, upon grant of open access by the State Load Dispatch Centre."*

4. The petitioner has filed additional affidavit and contents of the same are extracted below:

a. The petitioner stated that the present matter has not been listed despite a lapse of 5 years from the date of filing. Therefore, the petitioner is placing all the relevant facts qua the proceedings emanating from the order dated 15.02.2016 in O.P.No.10 of 2015 by which a status of deemed distribution licensee has been accorded to the petitioner by the Commission. In this regard, the relevant facts are as under:

- (i) *On 30.12.2005, M/s KRIT made a proposal to the MoC&I, for setting up a sector specific SEZ for IT/ITES, at Madhapur, Ranga Reddy District, Hyderabad in the erstwhile state of Andhra Pradesh.*
- (ii) *By its various communications dated 30.06.2006, 16.10.2006, 18.05.2007 and 06.08.2010, MoC&I granted approval to the petitioner earlier known as KRIT to develop, operate and maintain its SEZ in terms of the provisions of the SEZ Act.*
- (iii) *On 03.03.2010, MoC&I in exercise of its powers conferred u/s 49(1)(b) of the SEZ Act, notified that, a developer of a SEZ is deemed to be a distribution licensee under the provisions of the Act, 2003. By virtue of the said notification, MoC&I amended Section 14 (b) of the Act, 2003 by adding a proviso therein, which recognises a developer of a SEZ as a deemed distribution licensee.*
- (iv) *On 10.03.2013, the petitioner filed an application, being O.P.No.42 of 2014 before the erstwhile Andhra Commission, seeking identification as a deemed distribution licensee.*
- (v) *On 02.06.2014, the erstwhile state of Andhra Pradesh was bifurcated into states of Andhra Pradesh and Telangana, in terms of Andhra Pradesh Reorganization Act, 2014.*
- (vi) *On 03.11.2014, the Commission was constituted. Consequently, O.P.No.42 of 2014 that is the petitioner's application seeking identification as a deemed distribution licensee was transferred from the Andhra Commission to this Commission and was re-numbered as O.P.No.10 of 2015.*
- (vii) *On 15.02.2016, the Commission passed an order dated recognizing and according deemed distribution licensee status to the petitioner with effect from 01.04.2016. While doing so, the Commission directed the petitioner to obtain from its promoters, a sum of Rs.26.90 Crores as equity share capital contribution for its power distribution business by way of account payee cheques. The said compliance had to be completed by 31.03.2016. The relevant part of the order is reproduced herein below:*

"... .."

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

.....”

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....”

- (viii) In order to operationalise its licence, on 16.03.2016, the petitioner filed an application in I.A.No.2 of 2016 in O.P.No.10 of 2015 seeking clarification and/or modification of the Commission's order dated 15.02.2016, that is the order recognizing/identifying the petitioner as a deemed distribution licensee.
- (ix) On 04.08.2016, the Commission passed an order dismissing the petitioner's I.A.No.2 of 2016 in O.P.No.10 of 2015. While doing so, the Commission extended the time period for compliance of the conditions stipulated in its order dated 15.02.2016, upto 30.09.2016. The said extension was granted on the basis of erroneous recording of the submission made on behalf of the petitioner.
- (x) On 23.08.2016, the present petition was filed before the Commission.
- (xi) On 26.08.2016, aggrieved by the Commission's erroneous recording of the concession made on behalf of the petitioner, the petitioner filed a Review Petition (SR) No.40 of 2016 (wrongly written as R.P.No.40 of 2016).
- (xii) On 12.09.2016, the petitioner filed Appeal No.3 of 2017 before the Hon'ble Appellate Tribunal for Electricity (ATE) challenging the order dated 15.02.2016 passed by the Commission. Along with the said

appeal, an I.A. in I.A.No.3 of 2017 for stay was filed by the petitioner.

- (xiii) On 20.06.2017, the Commission passed an order in Review Petition (SR) No.42 of 2016, adjourning it since the Appeal filed by the petitioner was pending consideration before the Hon'ble ATE.
- (xiv) On 20.02.2018, petitioner filed an I.A.No.253 of 2018 in Appeal No.3 of 2017 before the Hon'ble Tribunal, seeking the following reliefs, which are reproduced hereinbelow for ease of reference.

“

15. In the light of the facts and circumstances as stated hereinabove, it is humbly prayed that this Hon'ble Tribunal may be pleased to:

- (a) Allow the instant application and direct the registry to list the captioned Appeal No.3 of 2017 for early hearing and disposal; and/or
 - (b) Direct Ld. Telangana Commission to forthwith hear and dispose-off (i) O.P.(SR) No.33 of 2016 retail supply tariff; (ii) O.P.(SR) No.41 of 2016 filed on 26.08.2016 seeking segregation of electrical assets; (iii) O.P.(SR) No.42 of 2016 filed on 26.08.2016 seeking grant of transmission connectivity; and (iv) O.P(SR) No.69 of 2016 filed 01.12.2016 seeking approval of power purchase agreement and adoption of tariff determined through transparent bidding process under Section 63 of the Electricity Act, filed before it, pending adjudication of the present Appeal.
 - (c) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to enable SPL to operationalize its distribution licence...”
- (xv) On 13.03.2018, the Hon'ble ATE passed the interim order as under.
- “... .. We have heard learned counsel for the appellant. As agreed by learned counsel for the parties, list this application along with the main appeal for hearing on 07.05.2018. All the contentions raised by the parties in this application are kept open. It is needless to clarify that there is no impediment for the State Commission to decide the matters pending for adjudication before it in accordance with law...”
- (xvi) On 27.09.2019, the Hon'ble ATE passed its judgment in Appeal No.03 of 2017, upholding this Commission's order dated 15.02.2016.
- (xvii) In and around November 2019, the petitioner filed Civil Appeal in C.A. No.8978 of 2019 before Hon'ble Supreme Court, challenging Hon'ble ATE's judgment dated 27.09.2016 in Appeal No.03 of 2017. Presently, the pleadings are completed and the matter is likely to be listed on 01.02.2021.

- c. The petitioner has stated that in view of the Hon'ble Tribunal's order dated 13.03.2018, this Commission is required to hear and adjudicate the present matter. Even otherwise, the dispute in the Hon'ble Supreme Court is qua the legality and validity of the condition imposed by the Commission qua infusion

of additional equity of Rs.26.9 Crores by way of account payee cheques and not regarding the bifurcation of assets. Therefore, the Commission can proceed with the adjudication of the present petition.

5. The respondents have filed counter affidavit and the averments are extracted below:

a) It is stated that the Commission by order dated 15.02.2016 in O.P.No.10 of 2015 identified and accorded the deemed licensee status to the petitioner with the following conditions with effect from.01.04.2016:

- i) *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 there under, 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 license.*
- ii) *The petitioner has been notified as a developer of a Special Economic Zone for Information Technology/Information Technology Enabled Services by MoC&I, under the SEZ Act, 2005 the area of the distribution shall be the whole of 14.47 hectares situated at the location mentioned the title. 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.*
- iii) *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.*
- iv) *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.

- v) This licensee is not transferable, except in accordance with the provisions of the Act, 2003, the rules and the regulations made thereunder.
- vi) (i) 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
 - (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.
- (ii) 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.
- (iii) 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.
- vii) 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.
- viii) 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.
- ix) The provisions contained in Rule 28 of Regulation No.10 of 2013 from time to time.
- x) The deemed licensee shall pay the license fee as per the Regulation issued under Section 86(1)(g) of the Act, 2003 and in force from time to time.
- xi) The deemed licensee shall allow open access to any consumer in its

- area in accordance with the open access regulation of this Commission.
- xii) *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 subsidize 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.*
 - xiii) *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.*
 - xiv) *The provisions contained in the Act, 2003 shall apply to the deemed Licensee with regard to revocation of deemed licence and sale of the power distribution business.*
- b) It is stated that general terms and conditions of supply (GTCS) clause 5.3.2.2
- “5.3.2.2 Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s).”*
- It is stated that since same feeder is utilized for SEZ and non-SEZ, ownership lies with respondent No.1 and the petitioner has to lay its own network within the SEZ area to supply power to his consumers. In case if the petitioner wants to utilize respondent No.1’s network within SEZ area, the petitioner is liable to pay relevant wheeling and other charges as determined by the Commission from time to time.
- c) It is stated that the respondent No.1 may not consider the request of consumer on transfer of 33 kV lines equipment and elements of network. Hence, separate 33 kV lines from respondent No.2’s SS for power supply to the deemed distribution licensee, petitioner shall be arranged by themselves. The respondent No.1 will not supply power to another deemed distribution licensee, petitioner.
- (i) It relied on the GTCS clause 5.3.2.2 which already extracted above.
 - (ii) It is stated that hence, the ownership of 33 kV feeders pertaining to 33 kV feeders of 132/33 kV Madhapur 132/33 kV Jubilee Hills and associated equipment lies with respondent No.1 though the expenditure towards it was incurred by the petitioner under turnkey basis.
- d) It is stated that the Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance

of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

- e) It is stated that vide Lr.No.CGM(C)/SE(C)/DE(C)/ADE-I/D.No.2182/16, dated 21.07.2016, the petitioner was requested to handover 2 Nos. 33 kV feeders and associated bays at 132/33 kV Madhapur and Jubilee Hills substations and downstream network immediately for utilization by respondent No.1 as per clause No.5.3.2.2 of GTCS and make their own arrangements for SEZ area immediately.
- f) It is stated that vide Lr.No.CGM(C)/SE(C)/DE(C)/ADE-I/D.No.1976/16, dated 13.10.2016 a letter was addressed to the Chief Engineer/Planning, Comml and Coordination of respondent No.2 by submitting the following information:
- I. The ownership of the 33 kV feeders of 132/33 kV Madhapur and 132/33 kV Jubilee Hills and the associated equipment and elements of network. If these are property of the DISCOM, modalities for transferring the same to the petitioner may be furnished.*
 - II. The ownership of the distribution system below 33 kV feeders that is 33/11 kV substation, distribution transformers and associated LT distribution network to the buildings in the area for which distribution license has been granted to the petitioner. If these are property of the DISCOM, modalities for transferring the same to the petitioner may be furnished.*
 - III. Present status of power supply to the area for which distribution license has been granted to the petitioner viz connected load etc. The connectivity application has been filed for 16 MW of load.*
 - IV. Any other issues related to the subject matter that respondent No.1 would like to bring to the notice of respondent No.2 for consideration before according the approval for grid connectivity.*
- g. It is stated that a letter was addressed to the petitioner to handover above 2 Nos. 33 kV feeders and associated bays at 132/33 kV Madhapur and Jubilee Hills SS and downstream network immediately for utilization by respondent No.1 as per clause No.5.3.2.2 of GTCS and to make their own arrangements for SEZ area immediately. It was made clear that these 2 Nos 33kV feeders and downstream network that is 33/11 kV substation, distribution transformers and associated LT distribution network are the properties of respondent No.1. Hence, the petitioner has to make its own arrangements for SEZ area. The above information was also placed before the Principal Secretary to Government, Energy Department, Telangana.

- h) It is stated that the petitioner has to segregate their SEZ loads and non-SEZ loads.
 - i) It is stated that the petitioner has to provide distribution network for operationalising its deemed licensee to SEZ area at their own cost.
 - j) It is stated that handing over possession of distribution assets to the petitioner cannot be considered as per clause No.5.3.2.2 of G.T.C.S.
 - k) It is stated that as per Section 46 of the Act, 2003 the Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.
 - l) It is stated that the petitioner has approached the Commission seeking the status of deemed distribution licensee basing on the approval of Central Government vide SEZ Act 2005. It thus becomes very much clear that the petitioner has to approach respondent No.1 only after segregating the loads of SEZ and non-SEZ area.
 - m. Hence, it is prayed the Commission the following:
 - a. *Dismiss the petition as devoid of any merit as stated supra in the counter affidavit.*
 - b. *Sustain the CSS order dated 23.06.2016 passed in O.P.No.6 and 7 of 2016.*
6. The petitioner has filed rejoinder and the averments thereof are extracted below:
- a. The petitioner has stated that it had filed the present petition as part of its action to operationalise its deemed distribution licensee status under the Act, 2003, recognized by the Commission vide order dated 15.02.2016 in O.P.No.10 of 2015 for seeking the following reliefs as extracted supra.
 - b. The petitioner has stated that on 28.01.2021, the present matter was listed for the first time where this Commission directed the parties to complete the pleadings. Ultimately, on 14.07.2021, a joint reply was filed by the respondents. Further, liberty was given to the petitioner to file its rejoinder to the replies filed by the respondents. In terms thereof, issue wise rejoinder to the reply is being

filed by the petitioner.

- c. It is stated that each and every averment, allegation and submission made by the respondents in their reply be treated as denied and traversed by the petitioner. Nothing should be deemed to have been admitted by the petitioner, save and except what are matters of record and/or is specifically admitted hereinbelow:
- d. The petitioner has stated that in the reply dated 14.07.2021, the respondents have submitted that:
- (i) *As per Clause 5.3.2.2 of the GTCS, a service line shall be the property of respondent No.1 notwithstanding that a portion or full cost of the service line has been paid for by the consumer. Thus, ownership of 33 kV feeders emanating from 132/33 kV Madhapur and 132/33 kV Jubilee Hills sub-station and associated equipment lies with the respondent No.1 even though the petitioner paid for the same under turnkey basis.*
 - (ii) *Since the feeders in question are utilized for both SEZ and non-SEZ loads, the respondent No.1 owns the same, petitioner has to lay its own network within the SEZ area to supply power to its consumers. If petitioner wishes to utilize respondent No.1's network within the SEZ area, petitioner is liable to pay wheeling and other charges as determined by the Commission from time to time.*
 - (iii) *The respondent No.1 does not wish to consider petitioner's request for transfer of the 33 kV equipment. Hence, separate 33 kV lines from substation of respondent No.2 may be arranged by petitioner. One distribution company will not supply power to another deemed distribution licensee.*
 - (iv) *The Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.*
- e. The petitioner stated that at the outset, the petitioner is constrained to point out that while the respondents, that is respondent Nos.1 and 2 professed to have together filed the reply dated 14.07.2021, the affidavit thereto is attested by the authorised signatory of the respondent No.1. The Commission may take a suitable view regarding such irregularity. It is stated that filing of the reply by two distinct and unrelated entities, that is TSSPDCL and TSTRANSCO demonstrates an attempt to deny choice to the consumers of the SEZ area, operationalizing the petitioner's deemed distribution status and compliance of the Commission's order dated 15.02.2016.

- f. The petitioner stated that furthermore, the respondents have sought for the Commission to “sustain the CSS order dated 23.06.2016 in O.P.No.6 and 7 of 2016”. It is stated that the petitioner understands that the said order pertains to the determination of retail supply tariffs for FY 2016-17 to be charged by the respondent No.1. It is stated that the present petition does not challenge the same in any form or manner, as evident from a perusal of the prayers extracted above.
- g. The petitioner stated that in order to appreciate, it is necessary to note the peculiar facts of the instant case and development of network within SEZ and non-SEZ area, being:-
- (i) On 10.06.2002, 109.36 acres of land at Madhapur, Rangareddy District, Hyderabad was allotted for KRIT campus by the then Andhra Pradesh Industrial Infrastructure Corporation.
 - (ii) On 30.12.2005, M/s KRIT made a proposal to the MoC&I, for setting up a sector specific SEZ for IT/ITES, at Madhapur. Out of 109.35 acres, 35.75 acres (14.47 hectares) was earmarked for setting up a SEZ. Thereafter, 18.07.2006, a revised proposal was submitted by M/s KRIT, increasing the total area from 14.47 hectare to 16.29 Hectare.
 - (iii) By its letters dated 30.0.2006 and 05.09.2006, M/s KRIT's proposal of setting up a SEZ was accepted. Thereafter, the name of the developer of the SEZ was changed from M/s KRIT to the petitioner.
 - (iv) Between the year 2004 to 2020, the respondent No.1 had started supplying electricity within the entire KRIT campus including the SEZ area as and when the need for power supply had arisen. In this context, it is noteworthy that, the connection for power supply was taken in the name of petitioner and its sister concerns. In other words, the connection was provided to petitioner and its sister concerns in its capacity as a 'consumer' of power. Further, the power to the entire KRIT campus including the SEZ area is being fed through 5 feeders of 33 kV each. These 5 feeders are emanating from 132/33 kV Jubilee Hill SS and 132/33 kV Madhapur SS. In this regard, the break-up of the power supply to all the buildings in SEZ and non-SEZ area is provided in the table below:

Table No.1 Power Supply to SEZ and Non-SEZ Area

Sl. No	Feeder name	Emanating from	Feeding to building Nos.	
			SEZ	Non-SEZ
1.	KRIT Park (Hyderabad) Private Limited.* (feeder-1)	132/33 kV SS at Madhapur		2A, 2B, 4 & 10
2.	Sundew Properties	132/33 kV SS at Madhapur	14 and 20	6 & Chalet Hotel

Sl. No	Feeder name	Emanating from	Feeding to building Nos.	
			SEZ	Non-SEZ
	Limited. (feeder-2)			
3.	Intime Properties Limited.* (feeder-3)	132/33 kV SS at Jubilee Hills	12A and 12C	9
4.	Trion Properties Private Limited.* (feeder-4)	132/33 kV SS at Madhapur	12B	In orbit Mall and 33/11 kV SS Mindspace
5.	Sundew Properties Limited (feeder-5)	132/33 kV SS at Jubilee Hills	12D	11

(v) It is stated that, the need of segregation/bifurcation of the power connections (that is 33 kV feeders) between the SEZ and non-SEZ areas has arisen in light of:-

- The petitioner's distribution licensee status in terms of Section 14(b) of the Act, 2003.
- The Commission's order dated 15.02.2016, taking on record petitioner's deemed licensee status.
- The above indicated 5 Nos feeders supplying power to both the buildings in SEZ area and non-SEZ area. To operationalize the distribution license, it is necessary to bifurcate the feeders between SEZ and non-SEZ.

(vi) As stated above, 33 kV feeders emanating from Madhapur and Jubilee Hills SS are feeding/supplying power to various buildings, both in the SEZ as well as non-SEZ areas within the KRIT campus. In this regard, it is stated that feeder-2 and feeder-5 along with the associated distribution network can be utilized exclusively for petitioner's licensed area, that is for supplying electricity in SEZ area, whereas the entire load of non-SEZ area can be catered to by feeder 1, 3 and 4. Thus, the load of building Nos.6, 11 and Chalet Hotel can be diverted on feeders 1, 3 and 4. The supply of electricity in SEZ and non-SEZ area, post bifurcation of feeders, would be as under:-

Table No.2: Proposed Bifurcation of feeders for supply in the SEZ area

Sl. No	Feeder name	Emanating from	To feed to building
A. Supply in the SEZ area			
1.	Sundew Properties Limited (feeder-2)	132/33 kV Madhapur, SS	14 and 20
2.	Sundew Properties Limited	132/33 kV Jubilee Hills, SS	12A, 12B, 12C and 12D

Sl. No	Feeder name	Emanating from	To feed to building
	(feeder-5)		
B. Supply in the Non-SEZ area			
3.	Intime Properties Limited. (feeder-3)	132/33 kV Jubilee Hills SS	9, 6 and Chalet Hotel
4.	Trion Properties Private Limited. (feeder-4)	132/33 kV Madhapur SS	In Orbit Mall, 11 and 33/11kV SS Mindspace
5.	KRIT Park (Hyderabad) Private Limited. (feeder-1)	132/33 kV Madhapur SS	2A, 2B, 4 and 10 (no change)

- (vii) It is stated that after bifurcation of the aforementioned feeders, the remaining three 33 kV feeders, that is feeders-1, 3 and 4 proposed to feed the buildings in the non-SEZ area will be able to cater to the existing load and have sufficient capacity to cater to new/additional load within the non-SEZ areas in the KRIT campus. This is evident from the table below:

Table No.3: Capacity and spare capacity of each feeder after bifurcation as proposed

Sl. No	Feeder name	Total capacity (in MW)	Capacity in use (in MW)	Spare capacity (in MW)
1.	KRIT Park (Hyderabad) Private Limited* (feeder-1)	10.55	8.899 (84.3 %)	1.651 (15.64 %)
2.	Intime Properties Limited* (feeder-3)	9.15	7.194 (78.62 %)	1.956 (21.37 %)
3.	Trion Properties Private Limited* (feeder-4)	20.115	16.225 (80.66 %)	3.89 (19.33 %)

- (viii) It is pertinent to note that, the entire cost towards erection of all five feeders, its associated equipment and the downstream distribution network has been borne by petitioner and/or its sister concerns. The petitioner has proposed the rearrangement of the assets in such a manner where the assets paid for by petitioner are retained with it and there is no duplication in incurring capital expenditure for setting up distribution network. This would also enable the petitioner to operationalize its distribution license and supply electricity within its licensed area. The total capital expenditure incurred by petitioner for setting up feeder 2 and 5 is set out in table No.4 below:

Table No.4: Costs incurred by Sundew for feeder 2 & 5

Sr. No.	Name of the feeder	Emanating from	Cost Incurred as per the estimate sanctioned by SPDCL
1.	Sundew Properties Limited. Feeder-2	132/33 kV SS at Madhapur	Rs.2,28,76,550/-
2.	Sundew Properties Limited. Feeder-5	132/33 kV SS at Jubilee hills	Land Cost: Rs.53,64,060/- Estimated Cost: Rs.1,67,69,381/- Total: Rs.2,21,33,441/-

h. It is stated that the above expenditure has already been considered by the Commission in O.P.No.10 of 2015 as capital expenditure for the petitioner to operationalize its deemed distribution licensee status.

i. It is stated that the respondents have denied petitioner's request for bifurcation of assets by solely relying on clause 5.3.2.2 of the GTCS. Clause 5.3.2 of GTCS is reproduced hereinbelow for ease of reference:

".....

5.3.2 Service Line Charges

5.3.2.1 *The Service line charges payable by the consumers for release of new connection/additional load under both LT and HT categories shall be levied at the rates notified by the company in accordance with regulations/orders issued by the Commission from time to time These charges shall be paid by the consumer in advance failing which the work for extension or supply shall not be taken up. These charges are not refundable.*

Provided that where any applicant withdraws his requisition before the company takes up the work for erection of the service line, the Company may refund the amount paid by the consumer after deducting 10% of the cost of the sanctioned scheme towards establishment and general charges. No interest shall be payable on the amount so refunded.

5.3.2.2 *Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s)."*

j. The petitioner stated that as regards the applicability of GTCS,

(i) *GTCS is formulated in terms of clause 21 of General Terms and Conditions of Supply of Distribution and Retail Supply Licensees in AP. Clause 21 of the said licences provides that these terms and conditions relate to rights and obligations of the distribution licensee and the consumers and not qua distribution licensee and a deemed distribution licensee.*

(ii) *Admittedly, the entire capital expenditure qua setting up these feeders is*

borne by the petitioner and its sister concerns. In other words, respondent No.1 has not incurred any cost towards creation of the said network. The capex of the said network is not reflected in respondent No.1's aggregate revenue requirement/tariff. Therefore, no prejudice whatsoever would be caused to respondent No.1 and/or its consumers who have not contributed for the construction, of the said assets in the event the said two 33 kV feeders (feeders-2 and 5) and the associated network is transferred to the petitioner for supplying power within the SEZ area that is the very intent for which they were constructed. Without prejudice to the above, under the Act, 2003, a consumer cannot be the owner of a distribution system. Hence, clause 5.5.3.2 may be applicable to normal situations qua a consumer. However, in the present case, the petitioner as a deemed distribution licensee in terms of Section 42(1) of the Act, 2003, is capable of owning a distribution system that is the feeders concerned. Hence, clause 5.5.3.2 will be inapplicable in the present case.

- (iii) Clause 5.5.3.2 deals with a 'service line' and not the dedicated distribution system as is the situation in the instant case. It is petitioner's submission that these feeders are not service lines. In this regard, the following definitions provided under the Act, 2003 are noteworthy:-
- "2(42)" "Main" means any electric supply-line through which electricity is, or is intended to be, supplied;
- 2(18) "Distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;
- 2(61) "Service line" means any electric supply line through which electricity is, or is intended to be supplied-
- (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or
- (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;"
- (iv) On a perusal of the aforesaid definition, it is clear that a service line is an electricity supply line which is connected with the distribution mains and not directly from the network of the transmission line. In terms of the provisions of the Act, 2003, the feeders so created are not service lines and hence clause 5.5.3.2 is not applicable. It is stated that 'mains' is the entire electric supply line through which electricity is or intended to be supplied. Typically, 'mains' constitutes both the 'distribution mains' and the 'service line'. Further, the nature of an electricity supply line, whether to be treated as a 'distribution mains' or 'service lines' depends on the intent and the purpose for which such line is used and the bearing of cost of such line. If the line is intended or used to connect to more than one consumer in different/non-contiguous premises where the cost is borne by the consumers at large, than the said line is considered as a distribution main and the same cannot be considered as a 'service line'. It is settled law that delegated legislation like the GTCS cannot be contrary to the parent statute and thus would have to be read accordingly.

(v) *In fact, GTCS prescribe a different dispensation for ‘dedicated feeders’ which have been solely paid for by the consumer:*

“2.2.20(a) “Express Feeder” means a HT feeder through which power is supplied to same class of consumers (say industry) from the substation where transformation to required voltage takes place.

... ..

2.2.27(a) “Independent (Dedicated) Feeder” means a HT feeder through which power is supplied to a single consumer from the substation where transformation to required voltage takes place.

... ..

3.2.2.2 HT consumers seeking to avail supply through independent (Dedicated) feeders from the substations where transformation to required voltage takes place shall be:

... ..

Provided that the DISCOMs shall have the right to convert an existing independent feeder into an Express Feeder and in such cases, the DISCOM shall also compensate to the existing Consumer who had paid the entire cost of line including take off arrangement in the substation, subject to fulfilment of following conditions:

- (i) The age of feeder shall not be more than 10 years. If independent feeder age is more than 10 years, no compensation is required to be paid to the existing consumer and no service line charges shall be collected against existing feeder.*
- (ii) If the line age is less than or equal to 10 years, the prospective consumer shall pay 50% of estimated cost of line including take off arrangement upto the tapping point.*
- (iii) The amount paid by the new consumer shall be adjusted against the future bills of existing consumer who has earlier paid for the cost of feeder including take off arrangement.*
- (iv) Once the feeder is converted into express feeder, no compensatory charges shall be collected from the subsequent consumers to avail power supply from that express feeder.”*
- (vi) It is stated that the purpose of the dedicated feeder is that the said feeder would be used to supply electricity to a consumer, who bears the entire cost for laying such feeder and the burden of laying such feeder would not be passed on to the other consumer. Further, in case the said feeder is being converted from dedicated feeder to the express feeder that is the said feeder could be used by other consumers, then the cost of laying such feeder would be passed onto the new consumers of the distribution licensee.*

However, the regulations framed by the Commission do

not contemplate a situation as to what happens to the dedicated feeders where the agreement of power supply between the consumer and distribution licensee is terminated by the consumer. Thus, there is a need for intervention of this Commission to decide the issue at hand. In this regard, it is to be noteworthy that any subordinate legislation/decision which provides for transfer of these lines, without any compensation would amount to illegal expropriation and would be contrary to Article 300-A of the Constitution of India.

- k. The petitioner stated that in view of the above, it is incorrect to suggest that the ownership of dedicated feeder has been transferred to respondent No.1. In fact, the situation at hand, has not been covered under the present regulatory regime. It is noteworthy that the Maharashtra Electricity Regulatory Commission (MERC) has allowed four deemed distribution licensees to utilize the 33/22 kV network from 132 kV substation to the premises of the SEZ area free of cost and the said licensees are in operation from 2015.
- l. The petitioner stated that as regards the respondents' submissions that is in case respondent No.1's network is used, the petitioner will have to pay CSS and other charges, it is stated that the said submissions are wrong and denied. Furthermore, as regards the respondents' submissions that is one distribution company will not supply power to another deemed distribution licensee, it is stated that in terms of the statutory framework, a distribution licensee cannot deny access to its network including to another distribution licensee.
- m. The petitioner stated that without prejudice to the above, the down stream network that is 33/11kV substation, distribution transformers and its associated LT distribution network is not the property of respondent No.1. All the buildings in the IT Park that is SEZ and non-SEZ areas are extended supply under HT category by respondent No.1. As per applicable law, any network beyond metering point that is HT breakers, transformers, LT breakers, LT panels and the associated LT network to supply electricity to IT clients belong to such HT consumers.
- n. The petitioner stated that without prejudice to the above, as is evident from the above, the regulations framed by this Commission do not contemplate a situation as to what happens to the dedicated feeders where the agreement of power supply between the consumer and distribution licensee is terminated by

the consumer who then is recognized as a distribution licensee. Thus, there is a need for intervention of this Commission to decide the issue at hand. It is stated that there is no statutory bar on respondent No.1 for:-

- (i) *Segregation of SEZ and non-SEZ load.*
- (ii) *Handing over the possession of the assets (feeder, associated equipment and the downstream network) to Sundew.*

- o. The petitioner stated that therefore, consumer interest demands that, respondent No.1 should segregate the 33 kV feeders between SEZ and non-SEZ areas, by bifurcating the connected network as indicated above and hand over the possession of the assets pertaining to 33 kV feeders-2 and 5 to the petitioner. Without prejudice to the above and in the alternative, the petitioner be permitted to continue using the said electrical assets, without any corresponding additional costs.
 - p. In light of the foregoing, the petitioner prayed the Commission to grant reliefs as prayed for by the petitioner in the present petition. The petitioner craves leave to add/amend pleadings/place on record additional documents as necessary for effective adjudication by this Commission.
7. The counsel for petitioner has filed written submissions and the same are extracted below:
- a. It is stated that the petition was filed on account of the peculiar facts of the ground realities and the fact that the entire cost for constructing the feeders to connect to the consumers within the SEZ and non-SEZ area was incurred by the petitioner in its capacity as a consumer. Pursuant to the petitioner being recognised as a 'deemed distribution licensee', the present petition was filed such that it is able to operationalise its distribution licence in a cost-effective manner, which is in the interest of the consumer.
 - b. It is stated that on 14.07.2021, a common reply was filed on behalf of the respondents and on 26.10.2021, a rejoinder was filed by the petitioner.
 - c. It is stated that during the pendency of the present proceedings, attempt was made on behalf of the petitioner to amicably settle the present dispute. In this context, the petitioner had already made its position clear and provided a via-media mutually agreeable to both the parties. However, the same was not accepted by the respondent No.1 vide its letters dated 24.12.2022 and

07.01.2023.

d. It is stated that the relevant facts of the case are provided hereunder:

- (i) *It is stated that on 10.06.2002, 109.36 acres of land at Madhapur, Ranga Reddy District, Hyderabad was allotted for KRIT campus by the then Andhra Pradesh Industrial Infrastructure Corporation.*
- (ii) *It is stated that on 30.12.2005, M/s KRIT made a proposal to the MoCI, for setting up a sector specific SEZ for IT/ITES, at Madhapur. Out of 109.35 acres, 35.75 acres (14.47 hectares) was earmarked for setting up a SEZ. Thereafter, 18.07.2006, a revised proposal was submitted by M/s KRIT, increasing the total area from 14.47 hectare to 16.29 hectare.*
- (iii) *It is stated that by its various communications dated 30.06.2006, 16.10.2006, 18.05.2007 and 06.08.2010, MoCI granted approval to the petitioner earlier known as KRIT to develop, operate and maintain its SEZ in terms of the provisions of the SEZ Act.*
- (iv) *It is stated that in the meanwhile, with effect from 2004, the respondent No.1 started supplying electricity within the entire KRIT campus including the SEZ area as and when the need for power supply had arisen. In this context, it is noteworthy that, the connection for power supply was taken in the name of the petitioner and its sister concerns and the entire capital expenditure for constructing the distribution network to feed the consumers were paid for by the petitioner. It is noteworthy that the said cost was incurred by the petitioner in its capacity as a consumer of electricity. Till date, the power is being supplied by the respondent No.1 on the network built at the cost of the petitioner.*
- (v) *It is stated that on 03.03.2010, MoCI in exercise of its powers conferred u/s 49(1)(b) of the SEZ Act, notified that, a developer of a SEZ is deemed to be a distribution licensee under the provisions of the Act, 2003. By virtue of the said notification, MoCI amended Section 14(b) of the Act, 2003 by adding a proviso therein, which recognises a developer of a SEZ as a deemed distribution licensee. Accordingly, on 10.03.2014, the petitioner filed a petition being O.P.No.42 of 2014 before the erstwhile A. P. Commission, seeking identification as a deemed distribution licensee under Section 14 of the Act, 2003 read with clause 13 and schedule 2 of the A. P. Distribution Licence Regulations.*
- (vi) *It is stated that on 02.06.2014, the erstwhile state of Andhra Pradesh was bifurcated into state of Andhra Pradesh and Telangana, in terms of Andhra Pradesh Reorganization Act, 2014. Thus, the afore mentioned petition was transferred to this Commission and renumbered as O.P.No.10 of 2015.*
- (vii) *It is stated that on 15.02.2016, this Commission passed an order recognising and according to the status of 'deemed distribution licensee' status to the petitioner with effect from 01.04.2016. However, while doing so, this Commission erroneously directed the petitioner to obtain from its promoters, a sum of Rs.26.90 crores as equity share capital contribution for its power distribution business, by way of account payee cheques. The said compliance had to be completed by 31.03.2016. The relevant part of the order is reproduced hereinbelow for ease of reference:*

“

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

... ..

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.”

The petitioner had challenged the conditions levied by this Commission on it. It is stated that, presently the issue raised by the petitioner is pending consideration before the Hon'ble Supreme Court in C. A. No.8978 of 2019.

(viii) It is stated that in order to operationalize its distribution licence, the load of the 5 feeders which are supplying power to 5 feeders of 33 kV, paid by and commissioned for the petitioner, is bifurcated between SEZ and non-SEZ areas. Accordingly, letters were issued by the petitioner on 04.05.2016, 16.06.2016 and 19.07.2016 for seeking bifurcation of the existing 33 kV feeders within SEZ and non-SEZ areas. It was highlighted that the entire cost of the following electrical assets was borne by the petitioner or its sister concerns:

(a) 33 kV Network and its associated bays in 132/33 kV Madhapur SS and 132/33 kV Jubilee Hills SS.

- (b) 33 kV indoor breakers at the switching station along with the civil works in the Mindspace campus.

However, the said request was not accepted by the respondent No.1 which led to filing of the present petition.

- f. It is stated that presently, feeders 1 to 5 emanating from Madhapur and Jubilee Hills SS are feeding/supplying power to various buildings, both in the SEZ as well as non-SEZ areas within the KRIT campus. In this regard, the details of the power supply to all the buildings in SEZ and non-SEZ area is provided in the table below:

Table No.1: Power Supply to SEZ and Non-Sez Area

Sr. No	Feeder Name	Emanating From	Feeding to Building Nos.	
			SEZ	Non- SEZ
1.	KRIT Park (Hyderabad) Private Limited.* (feeder-1)	132/33 kV SS at Madhapur		2A, 2B, 4 and 10
2.	Sundew Properties Limited. (feeder-2)	132/33 kV SS at Madhapur	14 and 20	6 and Chalet Hotel
3.	Intime Properties Limited.* (feeder-3)	132/33 kV SS at Jubilee Hills	12A and 12C	9
4.	Trion Properties Private Limited.* (feeder-4)	132/33 kV SS at Madhapur	12B	Inorbit Mall and 33/11kV SS Mindspace
5.	Sundew Properties Limited. (feeder-5)	132/33 kV SS at Jubilee Hills	12D	11

- g. It is stated that considering the peculiar ground realities and change in circumstances, the petitioner states that the following be considered for providing power supply by the petitioner and the respondent No.1 to the consumers situated in SEZ and non-SEZ area, being:

- (i) Power supply within SEZ area: The petitioner states that feeder-2 and feeder-5 which are in the petitioner's name and paid for by the petitioner emanating from Madhapur SS and Jubilee Hills SS up to the existing 33 kV switching station be handed over to the petitioner/can be exclusively utilized by the petitioner for supplying power within its area of supply. The existing downstream network that is feeders/lines from existing 33 kV switching station upto the consumers premises—depicted with black colour lines in Annexure-1 can be retained by the respondent No.1 while the entire cost of the same is borne by the petitioner. For petitioner to supply power within the SEZ area, it will lay down the feeders/lines from the existing 33 kV switching station to proposed

switching station and feeders/lines from proposed switching station to the consumers premises.

- (ii) Power supply within non-SEZ area: Feeders 1, 3 and 4 emanating from Madhapur SS and Jubilee Hills SS upto the existing 33 kV switching station and the downstream network which supplies power to the consumers in non-SEZ area be retained by the respondent No.1, even when the entire cost is incurred by the petitioner.

h. It is stated that the details of the bifurcation proposed is provided in table below:

Table No.2: Proposed bifurcation of feeders for supply in the SEZ area

Sl. No	Feeder Name	Emanating From
A. Supply in the SEZ area by the petitioner		
1.	Sundew Properties Limited (feeder-2)	132/33 kV Madhapur, SS
2.	Sundew Properties Limited (feeder-5)	132/33 kV Jubilee Hills, SS
B. Supply in SEZ and non-SEZ area by the respondent No.1		
3.	Intime Properties Limited. (feeder-3)	132/33 kV Jubilee Hills SS
4.	Trion Properties Private Limited. (feeder-4)	132/33 kV Madhapur SS
5.	KRIT Park (Hyderabad) Private Limited. (feeder-1)	132/33 kV Madhapur SS

- i. It is stated that the above bifurcation allows the petitioner to provide power supply to the consumers situated in SEZ area, while the respondent No.1 would also be able to provide power supply to consumers situated in SEZ area and non-SEZ area. The proposed bifurcation is in consumer interest as capital cost to be incurred only by the petitioner is minimized while no capital cost is to be incurred by the respondent No.1. Further, post bifurcation, the respondent No.1 would be able to cater not only the existing load of non-SEZ area from the remaining three 33 kV feeders that is feeders-1, 3 and 4 but the load of the SEZ area as well approximately load of SEZ area is around 11.4 MW. It is further noteworthy that each feeder can handle around 20 MW. Therefore, there would be capacity to cater to additional load also. This is evident from the table below:

Table No.3: Capacity and Spare Capacity of each feeder after bifurcation as proposed in non-SEZ Area

Sl. No	Feeder name	Total capacity (in MW)	Capacity in use in March, 2023 (in MW)	Spare capacity (in MW)
1.	KRIT Park (Hyderabad) Private Limited.* (feeder-1)	10.55	4.902 (46.46%)	5.648 (53.54%)
2.	Intime Properties Limited.* (feeder-3)	8.061	5.04 (62.52 %)	3.57 (37.48%)
3.	Trion Properties Private Limited.* (feeder-4)	20.115	17.257 (83.96 %)	2.858 (16.04 %)
Total		38.726	27.199	12.076

- j. It is stated that the petitioner has proposed the rearrangement of the assets in such a manner where the assets paid for by the petitioner are retained with it and there is no duplication in incurring capital expenditure for setting up distribution network. This would also enable the petitioner to operationalize its distribution license and supply electricity within its licensed area. The total capital expenditure incurred by the petitioner for setting up feeder 2 and 5 is set out in Table No.4 below:

Table No.4: Costs incurred by the petitioner for feeder 2 and 5

Sr. No	Name of the feeder	Emanating from	Cost incurred as per the estimate sanctioned by SPDCL
1.	Sundew Properties Limited. Feeder-2	132/33 kV SS at Madhapur	Rs.2,28,76,550/-
2.	Sundew Properties Limited. Feeder-5	132/33 kV SS at Jubilee hills	Land Cost: Rs.53,64,060/- Other Cost: Rs.1,67,69,381/- Total: Rs.2,21,33,441/-

- k. It is stated that the above expenditure has already been considered by the Commission in O.P.No.10 of 2015 as capital expenditure for the petitioner to operationalize its deemed distribution licensee status.
- l. It is stated that the above suggestion is in line with 6th proviso to Section 14 read with Section 42 of the Act, 2003. While a parallel distribution licensee is required to lay down its distribution network, in terms of Section 42, the said network ought to be developed in 'economical and coordinated' manner. The proposed bifurcation is in line with the above framework coupled with the fact that it encourages minimizing the capital expenditure and wastage of resources.
- m. It is stated that in its reply and during the course of the hearing, the respondent No.1 has denied the petitioner's request by relying on clause 5.3.2.2 of the GTCS to state that the entire feeder which emanates from the substation upto the consumer's premises is a service line, which is a property of the distribution licensee.
- n. It is stated that the said submission of the respondent is misconceived and contrary to the applicable statutory framework. In this context, it is relevant to note Clause 5.3.2 which reads as under:

"... ..

5.3.2 *Service Line Charges*

5.3.2.1 *The Service line charges payable by the consumers for release of new connection/additional load under both LT and HT categories shall be levied at the rates notified by the company in accordance with regulations/orders issued by the Commission from time to time These charges shall be paid by the consumer in advance failing which the work for extension or supply shall not be taken up. These charges are not refundable.*

Provided that where any applicant withdraws his requisition before the Company takes up the work for erection of the service line, the Company may refund the amount paid by the consumer after deducting 10% of the cost of the sanctioned scheme towards establishment and general charges. No interest shall be payable on the amount so refunded.

5.3.2.2 *Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s)...*

o. It is stated that as regards the applicability of GTCS as below:

(i) *GTCS is formulated in terms of clause 21 of General Terms and Conditions of Supply of Distribution and Retail Supply Licensees in AP. Clause 21 of the said licences provides that these terms and conditions relate to rights and obligations of the distribution licensee and the consumers and not qua distribution licensee and a deemed distribution licensee (between two licensees).*

(ii) *Clause 5.5.3.2 deals with a 'service line'. The term 'service line' is defined under clause 2.2.48 in the rejoinder. The definition of the term 'service line' is pari-materia the definition of 'service line' under the Act, 2003. It is the petitioner's submission that the 33 kV feeders which emanates from Madhapur SS and Jubilee Hills SS up to the existing 33 kV switching station are not service lines. This is evident from the analysis of the following definitions under the Act, 2003.*

2(42) "Main" means any electric supply-line through which electricity is, or is intended to be, supplied;

2(18) "Distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;

2(61) "Service line" means any electric supply line through which electricity is, or is intended to be supplied-

(a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or

(b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;"

(iii) *On a perusal of the aforesaid definition, it is clear that a service line is an electricity supply line which is connected with the distribution mains at one end and to the consumer premises on the other end. However, in the facts of the present case, the 33 kV feeders are connected to the transmission sub-station at one end and to the switching station at the*

other end. Hence, these feeders cannot be considered as a 'service line'. Furthermore, the 'mains' are the entire electric supply line through which electricity is or intended to be supplied. The nature of an electricity supply line, whether to be treated as a 'distribution mains' or 'service lines' depends on the intent and the purpose for which such line is used and the bearing of cost of such line. If the line is intended or used to connect to more than one consumer in different/non-contiguous premises where the cost is borne by the consumers at large, than the said line is considered as a distribution main and the same cannot be considered as a 'service line'.

- (iv) *Without prejudice to the above, under the Act, 2003, a consumer cannot be the owner of a distribution system. Hence, clause 5.5.3.2 may be applicable to normal situations qua a consumer. However, in the present case, the Petitioner is a deemed distribution licensee and is capable of owning a distribution system, i.e., the feeders concerned. Hence, Clause 5.5.3.2 will be inapplicable in the present case.*
- p. It is stated that the regulations framed by the Commission do not contemplate a situation where a consumer who pays for the laying of the network subsequently becomes the deemed distribution licensee. In view of the peculiar ground realities coupled with the duty of the Commission to minimise imprudent capital expenditure by the distribution licensee, there is a need for intervention of the Commission to decide the issue at hand to provide a solution keeping in mind, amongst others, consumer interest.
- q. It is stated that no prejudice whatsoever would be caused to respondent No.1 and/or its consumers who have not contributed for the construction, of the said assets, in the event the said two 33 kV feeders, being feeders-2 and 5 and the associated network is transferred to the petitioner, for supplying power within the SEZ area that is the very intent for which they were constructed, since the entire capital expenditure qua setting up these feeders is borne by the petitioner and its sister concerns. Thus, as such, the capex, of the said network is not reflected in respondent No.1's aggregate revenue requirement/tariff.
- r. It is stated that in fact, the situation at hand has not been covered under the present regulatory regime. It is noteworthy that the MERC has allowed four deemed distribution licensees to utilize the 33/22 kV network from 132 kV substation to the premises of the SEZ area free of cost and the said licensees are in operation from 2015.
- s. It is stated that there is no statutory bar on respondent No.1 for:-

- (i) Segregation of SEZ and non-SEZ load.
 - (ii) Handing over the possession of the assets being feeder, associated equipment and the downstream network, to the petitioner.
- t. It is stated that therefore, consumer interest demands that, the respondent No.1 should segregate the 33 kV feeders between SEZ and non-SEZ areas by bifurcating the connected network as indicated above and hand over the possession of the assets pertaining to 33 kV feeders-2 and 5 to the petitioner. Without prejudice to the above and in the alternative, Feeders 2 and 5 may be transferred to the petitioner at written down value of such feeders. Without prejudice to the above and in the alternative, the petitioner be permitted to continue using the said electrical assets, without any corresponding additional costs.
- u. In light of the foregoing, the Commission may grant reliefs or such other orders in the interest of justice as prayed for in the petition.
8. The Commission has heard the counsel for petitioner and the representative of the respondents and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 28.01.2021:

“... .. The counsel for the petitioner stated that the matter involves transfer assets from the existing licensee to the deemed licensee in its area of operation. The matter was filed in the year 2016 pursuant to refusal by the existing licensees both distribution and transmission regarding transfer of assets to the deemed licensee. The matter has been pending since then and the distribution licensee could not operate the licence from that period onwards. The representative of the respondents/licensees took objection to proceed with the matter, stating that the petitioner had approached the Hon’ble Supreme Court regarding the condition imposed while granting the deemed licensee status. According to him, unless such condition is complied with, there is no case for the petitioner.

The counsel for the petitioner stated that the order of the Commission while granting deemed distribution licensee status was condition subsequent and not condition precedent, as such there is no hindrance for taking up other activities of the licence. The issue before the Hon’ble Supreme Court is confined to whether the petitioner is required to comply with the condition subsequent imposed by the Commission. If the petitioner succeeds, it is not required to infuse additional capital as directed by the Commission or otherwise, it is required to bring in the additional capital. That issue has no bearing on the functioning of the licensee or for undertaking other activities including securing of assets for operationalizing the distribution licence.

The representative of the respondents stated that the Commission may not

accede to the request of the petition at this point of time until and unless the appeal before the Hon'ble Supreme Court is decided. The counsel for the petitioner would urge that the parties may complete the pleadings and the Commission may hear the matter for deciding it. If a decision is taken and if it is so necessary, the Commission will be putting the petitioner under subject to the orders of the Hon'ble Supreme Court.

In these circumstances, the Commission has adjourned the matter and directed the parties to complete the pleadings that is filing of counter affidavit while duly serving a copy on the counsel for the petitioner on or before 15.02.2021, thereafter the rejoinder, if any, on or before 22.02.2021 with a copy to the respondents being duly served.”

Record of proceedings dated 18.03.2021:

“... .. The representative of the respondents stated that they need further time to file counter affidavit in the matter. Therefore, the matter is adjourned.”

Record of proceedings dated 09.06.2021:

“... .. The counsel for the petitioner stated that time has been sought by the respondents for filing their response in the matter, but did not due so till date. The representative of the respondents stated that it needs further time to file the counter affidavit in the matter. The Commission while agreeing to the request of the respondents, require them to file the counter affidavit on or before 28.06.2021 duly serving the copy on counsel for the petitioner, either in physical form or by email. Likewise the counsel for petitioner shall file the rejoinder if any on or before 15.07.2021 duly serving the copy on counsel for the petitioner, either in physical form or by email. Therefore, the matter is adjourned.”

Record of proceedings dated 15.07.2021:

“... .. The counsel for the petitioner stated that the counter affidavit is yet to be filed by the respondents. Office informed the Commission that a copy of the counter affidavit has been collected by the party yesterday. Then, the counsel for petitioner sought adjournment for filing rejoinder, if any. The Commission sought to know the status of appeal pending before the Hon'ble Supreme Court. The counsel for petitioner replied that the matter is likely to be listed on 23.07.2021 after it was mentioned. In view of the request made by the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 25.08.2021:

“... .. The counsel for the petitioner stated that he needs further time to file rejoinder in the matter. The Commission sought to know the status of the appeal before the Hon'ble Supreme Court. The counsel for petitioner stated that the matter is scheduled to be listed for hearing on 09.09.2021, however, from 31.08.2021 the Hon'ble Supreme Court is scheduled to undertake physical hearing of the matter, as such a further mention will be made for early hearing of the matter expeditiously. In view of the request made by the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 23.09.2021:

“... .. The advocate representing the counsel for the petitioner stated that further time may be granted for filing rejoinder in the matter. He also stated that a letter to that effect has been submitted to the Commission seeking adjournment of the case. The representative of the respondents has no

objection. In view of the request made by the advocate representing the counsel for petitioner, the matter is adjourned.”

Record of proceedings dated 28.10.2021:

“... .. The advocate representing the counsel for the petitioner stated that rejoinder has been filed by the petitioner on 27.10.2021. The representative of the respondents stated that he is not in receipt of the same. The Commission directed the petitioner to make available a copy of the rejoinder to the respondents immediately. The representative of the respondents sought time to make submissions in the matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 20.12.2021:

“... .. The advocate representing the counsel for the petitioner stated that rejoinder has been filed by the petitioner on 27.10.2021. The representative of the respondents stated that now he is in receipt of the same. The counsel for the petitioner sought weeks’ time to make submissions in the matter. Accordingly, the matter is adjourned.”

Record of proceedings dated 27.12.2021:

“... .. The advocate representing the counsel for the petitioner stated that the matter is being argued by a senior advocate, who has to come from out station, as such, a suitable date may be given by adjourning the matter. A letter seeking adjournment of the case is also filed. In view of this submission, the matter is adjourned.”

Record of proceedings dated 17.01.2022:

“... .. The advocate representing the counsel for the petitioner stated that the petitioner is required to operationalize the deemed distribution license accorded to it. For that purpose, it needs the distribution network alongwith feeders for undertaking power supply within the area of the distribution license given to it. As such, the present petition is filed seeking to give directions to the subsisting licensee to handover the distribution assets falling within the area of the special economic zone, which is recognized as a distribution licensee by the Commission under the Electricity Act, 2003.

In order to appreciate the issue, the advocate representing the counsel for petitioner has shown the map and the location of the assets that are required to be transferred to it. He also explained how the power supplies is being done in the area and what would happen upon transfer of the assets by the existing licensee. It is his case that the petitioner would maintain the assets so transferred to it for undertaking power supply and extend supply to various entities within its area. It is also his case that power supply has to be drawn by it from the distribution network only and cannot be received from the transmission network in its case.

The advocate representing the counsel for petitioner has endeavoured to state that he prepared to argue the contentions made thereof, but it is his proposal to discuss the same with the existing licensee for arriving at mutually acceptable solution. For that purpose, it intends to place on record the proposals before the respondents through proper correspondence. Even otherwise, he has relied on the provisions of the terms and conditions of supply relating to service line charges, service line and distribution network.

The representative of the respondents agreed to the proposal of the petitioner

for discussing the matter at a mutually convenient date in the presence of concerned officers. The Commission also expressed its support for such an action before it could undertake comprehensive hearing in the matter. Both the representative sought for another date for arriving at a solution and submitting the same to the Commission. Keeping in view of the proposals and request of the parties, the matter is adjourned.”

Record of proceedings dated 18.04.2022:

“... .. The advocate representing the counsel for the petitioner stated that earlier the Commission required the parties to make an attempt to hammer out the solution between them, but the same has not fructified. The representative of the respondents confirmed that the effects have failed. The advocate representing the counsel for petitioner sought time to make submissions in the matter by two weeks. In view of the request made by the advocate for petitioner, the matter is adjourned.”

Record of proceedings dated 23.05.2022:

“... .. The advocate representing the counsel for the petitioner stated that the Commission had earlier required the parties to hammer out the solution between them, but the same has not fructified and the proposal made by the petitioner is not acceptable to the existing licensee. He also stated that the licensee is not understanding the provisions of the Act, 2003 and the regulations thereof. Therefore, he sought another opportunity to discuss the matter along with legal provisions in the presence of himself and the representative of the respondents, who is present now in this matter, so as to understand the legal implication and settle the matter. The representative of the respondents has no objection and accordingly the matter is adjourned.”

Record of proceedings dated 11.08.2022:

“... .. The advocate representing the counsel for the petitioner stated that the parties had earlier represented that they would have mutual discussion in the presence of the counsel for parties for arriving at a solution in the matter. Efforts were made to organize the meeting on the subject matter, but the same could not be fructified. He requested for further time in making efforts for scheduling a meeting and arriving at a solution. He also filed copies of letters addressed to the CMD of TSSPDCL on 14.07.2022 and 08.08.2022. The representative of the respondents stated that he would appraise the management of the situation and also the communications sent by the petitioner and seek instructions in the matter. Considering the submissions of the representatives and in view of the fact that the appeal filed by the petitioner is still pending before the Hon'ble Supreme Court, the matter is adjourned.”

Record of proceedings dated 14.11.2022:

“... .. The advocate representing the counsel for the petitioner stated that the parties have taken steps to find a solution to the issue and a meeting was taken for that purpose. However, no tangible result has been arrived at. The representative of the respondents stated that the meeting did take place and the respondents would communicate their view shortly. Accordingly, the matter is adjourned.”

Record of proceedings dated 09.01.2023:

“... .. The advocate representing the counsel for the petitioner stated that

though the Commission required parties to conciliate in the matter, they could not arrive at solution. In fact, they have communicated their view that they are not accepting any proposal made by the petitioner. Accordingly, the matter has to be argued, for which a date may be given. In these circumstances, the matter is adjourned.”

Record of proceedings dated 04.04.2023:

“... .. The Commission is in receipt of a letter from the petitioner with a request to adjourn the case as the counsel for petitioner is in some personal difficulty on account of illness. Considering the letter of the counsel for the petitioner, the matter is adjourned to the next date of hearing for the reason that it is one of the oldest matters.”

Record of proceedings dated 10.04.2023:

“... .. The advocate representing the counsel for petitioner has filed a copy of the email addressed to the Commission requesting the adjournment of the matter due to the ill health of the senior counsel suffering from complications arising out of Covid. The Commission expressed its displeasure of seeking to keep the matter pending for years together. However, in view of the submissions made by the advocate representing the counsel for petitioner, the matter is adjourned on payment of cost of Rs.5,000/-. The details of the cost to be paid will be indicated by the office. This adjournment is a final chance.”

Record of proceedings dated 24.04.2023:

“... .. The counsel for petitioner stated that the petition is filed for directions to the existing distribution licensee to part with certain assets which are existing within the area of SEZ which has been recognized as distribution licensee by the Commission. Earlier, the petitioner had approached the Commission for being declared as deemed distribution licensee, which was considered favourably to the petitioner. After such declaration, the petitioner had approached the existing distribution licensee to segregate the assets and part with certain assets which are within the area of SEZ. But the distribution company as well as the transmission licensee are not forthcoming in the matter. Therefore, it had filed the present petition seeking directions to that effect against the distribution licensee.

The counsel for petitioner stated that the distribution licensee has filed a counter affidavit and contended that the assets demanded by the petitioner cannot be parted by them as the same are the property of the DISCOM and it is required to undertake fresh installation of required assets, as the DISCOM cannot part its assets. The reliance placed by the DISCOM on the general terms and conditions of supply is not appropriate. It is his case that the GTCS has been framed prior to 2010 notification under SEZ Act and therefore, this present situation would not have been factored into while framing the relevant clauses including service line which are now sought to be stated as assets of the DISCOM.

The counsel for petitioner stated that the assets sought for transfer to it do not constitute service line as is contended by the DISCOM. In this regard, he has filed a detailed sketch map alongwith statement identifying the assets, service line, feeders and distribution substation. He has explained through the said sketch map as to what is required to be assigned to the petitioner and what is to be retained by the DISCOM from the identified assets. He also stated that

just because certain assets are taken over by the petitioner, the existing distribution licensee is not precluded from serving the consumers located within the SEZ area. He also identified the total area which is under the control of the petitioner as also the area that is notified as SEZ.

The representative of the respondents stated that the claim of the petitioner cannot be accepted as it is against the terms and conditions of supply as also contrary to the licence issued to the petitioner. The petitioner after obtaining the licensee status ought to have established its own network for undertaking distribution of electricity and retail sale thereof within the area of its operation, more particularly the SEZ area. As a consumer, it had obtained power supply earlier before becoming SEZ and had established the lines and equipment which became the property of the DISCOM in terms of GTCS, which cannot be parted at this point of time. Though, the petitioner might have paid for the same, but as at present the said equipment or assets being the property of the DISCOM cannot be transferred to the petitioner. The petitioner cannot claim that the assets which are located within the area of SEZ should be transferred to it without operationalizing the SEZ and distribution business by laying its own line and equipment.

The representative of the respondents stated that the petitioner cannot undertake supply of power using DISCOM assets as it is not permitted under law. Without establishing its own assets for undertaking distribution business, it wants to draw power from the existing system and serve its consumers at the cost of distribution licensee. The petitioner in any case cannot claim the service lines which have become part of the distribution network and the assets mentioned by the petitioner do not constitute other than service lines and transformers. Therefore, the petitioner has not made out any case in respect of the prayer sought in this petition.

The counsel for petitioner stated and explained the provisions made in the Act, 2003, more particularly the definitions as provided for in respect of mains, distribution mains, service line and others, which constitute the necessary assets of the distribution licensee and a part of which is existing is being claimed by the petitioner through this petition. The petitioner sought orders of the Commission to enable it to operationalize the SEZ and distribution business by directing transfer of assets by the DISCOM. In view of the submissions made by the parties, the matter is reserved for orders.”

9. The Commission notices that the petitioner in this matter had already approached the Hon'ble Supreme Court in respect of the order passed by the Commission on 15.02.2016 in O.P.No.10 of 2015 consequent upon rejection of the Appeal No.3 of 2017 by the Hon'ble ATE. The said appeal is pending consideration by the Hon'ble Supreme Court. The relevant clause in support of which the respondents claimed the right over the assets is already extracted supra by the petitioner. It has also extracted the definitions provided in respect of certain other words in the Act, 2003.

10. The petitioner's case is that the assets established towards distribution of power for extending supply have been paid by the petitioner and therefore, the respondents cannot claim right over them, even though, it is under their custody and is maintained by them. In this regard, the provisions of Act, 2003 relating to Sections 43, 45 and 46 are reproduced for better appreciation.

“43. *Duty to supply on request: -*

(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:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation:- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) *It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):*

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) *If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.*

... ..

45. *Power to recover charges: -*

(1) *Subject to the provisions of this Section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of Section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*

(2) *The charges for electricity supplied by a distribution licensee shall be –*

(a) *fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;*

- (b) *published in such manner so as to give adequate publicity for such charges and prices.*
 - (3) *The charges for electricity supplied by a distribution licensee may include –*
 - (a) *a fixed charge in addition to the charge for the actual electricity supplied;*
 - (b) *a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.*
 - (4) *Subject to the provisions of Section 62, in fixing charges under this Section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.*
 - (5) *The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.*
46. *Power to recover expenditure: -*
The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.”

11. It is appropriate to state here that the petitioner had availed power supply under various HT agreements entered with respondent No.1 for itself and its sister concerns prior to it being recognized as deemed distribution licensee by the Commission. In that status, it is only a consumer like any other person. It is appropriate to state further there is no restriction under the Act, 2003 with regard to undertaking sale of electricity by one licensee to another.

12. The provisions of the Act, 2003 read along with the provisions of GTCS extracted above will have to be understood to mean the lines and equipment laid for extending power supply to the petitioner in its earlier dispensation have become the property of the respondent No.1. Therefore, the petitioner is required to and is at liberty to establish its own distribution network including the line and plant for undertaking distribution business within the area of the SEZ. Nothing precluded the petitioner from proceeding further towards establishing the network and plant for operationalizing the deemed licensee status.

13. It is contended by the petitioner that the terms and conditions were the offshoot of the licence condition of the respondent No.1. This understanding of the petitioner is erroneous for the reason that the Act, 2003 vide Section 50 provided for specifying the

supply code. The GTCS was also notified with the approval of the Commission though not specifically under Section 50 of the Act, 2003, it has been provided therein the aspects which are required to be provided under supply code. For better appreciation, the same is reproduced below:

“50. *The Electricity Supply Code:-The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges disconnection of supply of electricity for non-payment thereof; restoration of supply of electricity; tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plant or meter and such other matters.*”

14. At this juncture, the Commission also appreciates that the GTCS had been held to be statutory in nature and binding on the consumers. In a decision rendered in the matter of M/s Hyderabad Vanaspathi Limited Vs. Andhra Pradesh Electricity Board reported in AIR 1998 SC 1715, the Hon'ble Supreme Court had held as below:

“IV NATURE OF AGREEMENT-STATUTORY OF CONTRACTUAL

20. *We have already seen that Section 49 of the Supply Act empowers the Board to prescribe such terms and conditions as it thinks fit for supplying electricity to any person other than a licensee. The Section empowers the Board also to frame uniform tariffs for such supply. Under Section 79(j) the Board could have made regulation therefore but admittedly no regulation has so far been made by the Board. The Terms and Conditions of Supply were notified in H.P. Ms. No.690 dated 17.9.1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20.10.1975. They were made applicable to all consumers availing supply of Electricity from the Board. The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.” emphasis supplied*

Thus, the petitioner cannot claim right over the plant and line though erected by it in its earlier dispensation as a consumer on turnkey basis, which is now the property of the distribution licensee.

15. The petitioner has stated that the Commission had already considered the investment made towards line and plant while according deemed licensee status in its order dated 15.02.2016. On a perusal of the said order, the Commission had considered the capital adequacy for undertaking distribution business and not specific items of investments made by the petitioner. In that view of the matter, it cannot be said that the line and plant with regard to distribution activity insofar as the feeders claimed by the petitioner cannot be considered to be the property of the petitioner. The aspect of owning the line and bay for undertaking supply from the feeder of SS Madhapur and Jubilee Hills has already been set out in the earlier paragraphs.

16. The petitioner in order to operationalize its deemed licensee status has to establish its own distribution network by erecting the line, bay and feeder along with metering so as to extend power supply to the consumers located in the SEZ area. It cannot, as a matter of fact, claim ownership of the property, which is already vested in the respondent No.1 or respondent No.2 as the case may be. The submission of the petitioner that the relief sought in this petition has been kept pending by the Commission is untenable for the reason that it itself has initially approached the Commission for extension of time for operationalization of the distribution licensee status, later filed appeal before the Hon'ble ATE questioning the order granted deemed status and further having not succeeded before the Hon'ble ATE took the matter to the Hon'ble Supreme Court. The matter is now pending consideration before the Hon'ble Supreme Court.

17. The Commission is constrained to observe that the petitioner itself had proceeded to litigate on the order passed by the Commission duly recognizing it as a deemed distribution licensee, of course with a condition that the petitioner has to infuse additional capital through promoters' stake. The matter before the Hon'ble Supreme Court is confined to this aspect only. Nothing prevented the petitioner from proceeding further in the matter at the earliest point of time, the Commission has taken up the matter for consideration.

18. The Commission is of the view that since the parties have subscribed to proceed with the matter, it has been proceeded with by the Commission.

19. The petitioner's claim about the handing over of the assets to it more particularly

feeder Nos.2 and 5 as it can utilize the same for operating the distribution licence, is contrary to the GTCS and the assets were created for undertaking power supply to the petitioner when it was a consumer. As stated supra, the line and plant established by the petitioner either on turnkey basis or by the respondents upon payment of the estimated cost, would become the property of the respondent No.1. The petitioner now cannot claim right over the said assets. Merely because it now stands to be the distribution licensee. Having become the distribution licensee, the petitioner ought to have established its own plant and machinery for undertaking power supply to the consumers located in the SEZ area.

20. In terms of the observations recorded by the Commission in the earlier paragraphs, the petitioner undertakes power supply to its consumers located in the SEZ area. The distribution system more particularly the 33 kV line and feeder have to be established independently and there is no option for the petitioner to establish the same. No doubt as a consumer, the petitioner itself and its sister concern might have paid for and established the existing distribution system, but in terms of the GTCS, it has now become the property of respondent No.1. Thus, the petitioner cannot claim right over the said property.

21. The provisions in the Act, 2003 specifically mention that the distribution licensees have to establish and maintain the required plant and machinery. In this regard, it is appropriate to notice the 6th proviso of Section 14 of the Act, 2003, which is extracted below:

“... ..

Provided also that the Appropriate Commission may grant a licence 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 licence within the same area, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including 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 licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

... ..”

Further, Section 42(1) of the Act, 2003 specifically mentions as extracted below:

“42. *Duties of distribution Licensee and open access:-*(1) *It shall be the duty*

of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

.....”

The above provisions amply demonstrate that a licensee undertaking distribution has to establish its own network and maintain it in an efficient, economic and coordinated manner. By taking over the assets of the existing licensee, the petitioner would not be able to satisfy any of the ingredients as set out in the provisions of the Act, 2003 with regard to establishment and maintenance of the plant and machinery.

22. By considering the above position, the request/suggestion made by the petitioner for bifurcation of the feeders according to its own understanding, is neither appropriate nor in the interest of the parties including it being contrary to the provisions of the Act, 2003 set out herein above. It is very much clear as noticed supra, the petitioner has to establish its own network towards distribution and retail sale of electricity, but also conduct such business in an efficient and economic manner only through its own network of distribution and not otherwise.

23. It is contended that by bifurcation of the existing feeder, the respondent No.1 would also be able to serve the consumers in the SEZ area. If this rational is to be accepted, the purpose of declaring the petitioner as a deemed distribution licensee by virtue of insertion of the proviso in the Act, 2003 through SEZ Act, 2005 would stand defeated. Not only that, the Act, 2003 even though recognizes grant of licence to two or more persons for undertaking distribution activity, it is essential that such licensees have to satisfy the capital adequacy and creditworthiness. The Commission had occasion to consider these aspects in its earlier proceedings, insofar as the petitioner itself is concerned. Having been satisfied only, the petitioner was allowed to become a deemed distribution licensee. If the present proposal of the petitioner is to be given effect to, to a certain extent the above said satisfaction of the Commission stands derided. Thus, this contention cannot be accepted.

24. It is contended by the petitioner that the assets towards feeders No.1 and 5 relating to Madhapur and Jubilee Hills SS were paid for by the petitioner or its sister concern. As such, transferring those assets including the downstream lines would avoid duplication of capital expenditure, which had already been considered in the

earlier proceedings of the petitioner for declaration as deemed distribution licensee. At first instance, it should be made clear that the presumption of the petitioner that the line and plant established by the petitioner, which have become the property of the respondent No.1 cannot be considered as a part of capex of the petitioner, as it was not done so specifically. Further, even though the petitioner might have paid for the assets towards feeder Nos.1 and 5 along with lines, etc., individual specific plant and machinery would not form part of the aggregate revenue requirement of the respondent No.1 also as is misunderstood by the petitioner. The petitioner cannot claim right over the line and feeders though it had paid for it, now as a distribution licensee when the same were created and established in the context of the petitioner being a consumer. Thus, it cannot claim right over the said assets, nor it is appropriate to the Commission to allow the same.

25. An argument has been set forth by the petitioner that the GTCS is not applicable to the petitioner as a deemed licensee. The understanding appears to be that the same have been notified pursuant to clause 21 of the licence condition of the respondent No.1. Alas, it is worth mentioning that this aspect has already been stated supra pointing out that GTCS notified considering the requirements under Section 50 of the Act, 2003 would stand to be a statutory regulation and is applicable to all the stakeholders, who are ultimately connected to the existing distribution licensee. It has to be stated here that the petitioner in its earlier dispensation was in fact bound by the same. Thus, the petitioner cannot thus entangle itself from the existing GTCS until it operationalizes its distribution status by establishing its own plant and machinery for retail sale of electricity. This is more so because until such time it continues to be the consumer of the respondent No.1.

26. Reference has been made to the definitions relating to service line, main and distribution main by the petitioner. The definitions of the above said words in the Act, 2003 would come into play qua a distribution licensee when it is undertaking retail sale electricity to any consumer and vice-versa. At present, the petitioner is still being a consumer of the respondent No.1 would stand on the side of the consumer only and not as a distribution licensee. Even otherwise, the Act, 2003 would not put fetters on the above said words on the application of the said definitions insofar as one distribution licensee undertaking supply to another distribution licensee and as such

the definitions would work between them also. However, in the absence of operationalizing the deemed distribution status, as stated above the petitioner continues to be a consumer of the respondent No.1 and thus, these definitions automatically will apply.

27. The petitioner cannot now state that it is not drawing power from the existing licensee and is utilizing power generation from its own sources. In the absence of the same, it is understood that the petitioner is still a consumer of the respondent No.1 along with its sister concerns. It is stated that establishing new line and plant would be to incur imprudent capital expenditure and utilizing the existing line and plant as has been established for the sake of drawing power earlier as a consumer by taking over the same would be prudent. Considering the factual matrix coupled with the provisions of the Act, 2003, the Commission is of the view that the petitioner in order to sustain as a deemed distribution licensee has to establish its own line and plant and do not rely on the feeders in the custody of the respondent No.1 including the downstream line and bay equipment.

28. The petitioner's contention that the regulations do not cover the aspect of deemed licensees extending the line and feeder, is irrelevant in the context of the provisions of the Act, 2003 as extracted above. Reference has been drawn to the regulations of Maharashtra on the subject. The said provisions are neither binding nor can be considered for deciding the matter. The petitioner's request to handover the assets from Madhapur and Jubilee Hills SS towards feeders and downstream lines cannot be considered for the reason that the said assets were established pursuant to the request for extension of supply by the petitioner itself as a consumer earlier. Having changed its status to certain extent, the petitioner now cannot rely on the same.

29. The issue of the consumer interest would arrive only when the petitioner undertakes distribution and retail supply activities pursuant to its status as deemed licensee. The understanding the consumer interest is paramount only when the assets of the existing licensee are segregated into the assets falling under the SEZ area and non-SEZ area is erroneous. It is not necessary that the assets as existing today should be bifurcated and handed over to the petitioner in respect of those which are falling under the SEZ area and non-SEZ area. The Act, 2003 does not place fetters on the existing licensee to serve any consumer in the area of the other licensee also where

the area of operation of both licensees is similar and the same. As such, the petitioner itself has to establish its own network from the feeder to downstream lines. For this reason, the prayer of the petitioner cannot be acceded to.

30. Last but not the least, it has to be stated that the petitioner has not operationalized its distribution licence and is under litigation before the Hon'ble Supreme Court in respect of the condition imposed by the Commission. The proceedings in Civil Appeal No.8978 of 2019 are pending consideration before the Hon'ble Supreme Court. In view of the pendency of the proceedings before the Hon'ble Supreme Court, it is not appropriate for this Commission to bestow any benefit unless and until the issue raised by the petitioner itself is settled either way.

31. In these circumstances, the Commission is not inclined to grant any relief to the petitioner. Accordingly keeping in mind, the discussion as set out in the foregoing paragraphs, the petition stands dismissed. The parties shall bear their own costs.

32. Since the main petition itself is being disposed of, nothing survives in the Interlocutory Application and the same stands closed.

This Order is corrected and signed on this the 15th day of April 2024.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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