GUJARAT ELECTRICITY REGULATORY COMMISSION
AHMEDABAD

13th March, 2002
22nd March, 2002

CORAM: Justice S.D. Dave, Chairman
Shri B.M. Oza Member
Shri R.K.Sharma, Member

PETITION NO. 63/2002

WITH

PETITION NO. 64/2002

ORDERS
13/03/2002
22/03/2002

PART-I

(A) COMMON ORDERS.

(1) These Common Orders shall govern the disposal of these two Petitions, arising under almost similar circumstances between the same Parties, calling upon this Commission to decide the same question, on the basis of the same facts and Law.

(2) The Applicant before us happens to be M/s. Maradia Chemicals Ltd, a company incorporated under the Companies Act 1956 and having their Regd. Office at Ahmedabad. The Non-Applicants or Respondents happen to be the Gujarat Electricity Board.

(3) The Applicant has suffered the Notice under Section 24 of the Indian Electricity Act, 1910 for the demand of arrears running in Crores of Rupees, and a consequent discontinuance of the supply of power, as a sequel of a possible non-payment.

(4) The Reliefs prayed for, in both the Proceedings are almost similar i.e. to stay the Implementation/Operation and Execution of the Notice dated 30th Jan. 2002 issued by the GEB under Section 24 of the Electricity Act 1910.

(B) THE QUESTION

(5) The Question which requires to be adjudicated upon and answered by us can be formulated as under:-

(6) Whether, upon the Facts and in the Circumstances of the case, we have the requisite Jurisdiction, Power or Authority, to entertain and decide the Petitions, taken out by the Applicant, which centre round the Notice u.s. 24 of the Indian Electricity Act 1910, for the alleged non-payment of charges for energy running in Crores of Rupees, the demand thereof within the statutory, stipulated period, or else the possibility of discontinuance of the supply of power?

(C) THE ELECTRICITY REGULATORY COMMISSIONS ACT, 1998.

(7) We are a State Commission established under Section 17 of the Electricity Regulatory Commissions Act, 1998 and thus are a Body Corporate having perpetual succession and a common seal. We have the power to acquire hold and dispose of property. We as a Commission have been empowered to contract also.

(8) The Preamble of the said Act (Now hereafter referred to as the ERC Act) reads thus:-

" An Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficiency and environmentally benign policies and for matters connected therewith or incidental thereto:"

(9) Section-22 (1) of the ERC Act says that we shall discharge the following functions, namely:-

(a) to determine the tariff for electricity, wholesale, bulk, grid or retail as the case may be, in the manner provided in Section 29.

(b) to deterine the tariff payable for use of transmission facilities in the manner provided in Section 29;

(c) ***to regulate power purchase and procurement process of the transmission utilities and distribution utilities including the price at which the power shall be procured from the Generating Companies, generating stations or from other sources for transmission, sale distribution and supply in the State.***

(d) ***to promote competition, efficiency and economy in the activities of the electricity industry to achieve the objects and purposes of this Act.***

(10) Section 22 (2) of the ERC Act says that the State Government may by Notification in the Official Gazette, confer upon us any of the functions enumerated at Section 22 (2) (a) to (p). Section 22 (3) says that the State Commission shall exercise its functions in conformity with the National Power Plan. It is not disputed that the Notification as contemplated under Section 22 (2) has been published in the Official Gazette.

(D) THE INDIAN ELECTRICITY ACT, 1910

(11) This Act (Now hereinafter referred to as the Ele.Act) came into being on the Statute Book of the Country as it was found to be expedient to amend the law relating to the **Supply** and **Use** of electrical energy.

(12) Section 24 of the Ele. Act has been captioned as Discontinuance of Supply to Consumer Neglecting To Pay Charge and says that where any person neglects to pay any charge or sum for energy, due from him to a Licensee, the latter, may cut off the supply

after giving not less than seven clear days notice in writing to such a person, by adopting any of the technical methods to effect the cut off the supply.

(E) FACTS IN THE BACK GROUND.

(13) The Applicant M/s.Maradia Chemicals Ltd is a Company registered under the Companies Act, 1956, engaged in the business of manufacture and sale of Chemicals, having their Regd. Office at Ahmedabad.

(14) The Gujarat Electricity Board (Now hereinafter referred to as the GEB) was before this Commission for the fixation of Tariffs to various categories of the consumers. The said Proceedings were registered as Case No. 19/1999 and came to be disposed off under the Tariff Orders dated 10th October, 2000. The Commission in the said Tariff have determined the Tariff of various Consumer Categories including HTP-IV category. The Applicant was at that time asking for the Special Tariff, but the said prayer emanating inter-alia from the Applicant came to be rejected by a brief mention thereof at Para No. 9,8.8 of the said Tariff Orders.

(15) The Commission had thought it proper and fit to be satisfied by a brief mention precisely because of a specific reason i.e. the taking out of separate Proceedings by the Applicant asking for a Special Tariff. These Proceedings registered as Application No. 15 of 1999, initiated on 4th June, 1999 came to be disposed off vide the Orders dated 27th November, 2000, disallowing the prayer for the Special Tariff.

(16) It appears that during the pendency of the said Application No. 15/1999, the Applicant was required to approach the Commission by taking out the Application for Interim Relief as their supply of electrical energy was cut off by the GEB on the ground that the Applicant has failed to pay up the arrears, running in Crores of Rupees, even after the service of the requisite Notices.

(17) The said Application for Interim Relief came to be disposed off by the Commission under the Orders dated 20th December, 1999, ordering the GEB to reconnect the power supply subject to the condition that the Applicant shall pay an amount of Rs. 50 lacs within a period of 7 days and shall continue to pay the charges from December, 1999 till the disposal of their Main Application.

(18) The above said Orders of the Commission were taken before the High Court of Gujarat at Ahmedabad by the GEB by preferring First Appeal No. 8073 of 1999, which came to be disposed off alongwith the C.A. therein, under the Orders dated 3rd October, 2001, upon the statement of the learned Counsel for the Appellant GEB, that the matter has been settled out side of the Court.

(19) The settlement referred to in the said Orders in broad terms was to the effect that the dues of the GEB, which at that time were in sum of Rs. 53 Crores shall be paid by the Applicant by the monthly installment of Rs. 10 lacs but that accommodation was limited to the period till the Applicant is rehabilitated in their manufacturing and commercial business.

(20) It appears that undisputedly, at a later juncture, the installment was increased to an amount of Rs. 25 lacs per month and that the Applicant pays the amount of the installment regularly.

(21) We have on record the Minutes of the Meeting, chaired by the Hon'ble the Minister for Industries on 12th December, 2001 attended by the Hon'ble the Minister for Energy, the top ranking Government Officials, Member Finance (GEB) and Shri Rasik Maradia, the, Managing Director of the Applicant, also, in which it was decided that, despite the request coming from the M.D of the Applicant for the continuance of the said facility, looking to the huge arrears of about Rs.83 Crores, no further indulgence could be shown and now the accommodation of paying the dues by installments can not be continued.

(22) The Applicant has presented before the Commission a Photostat copy of the Notice dated 30th January, 2002 issued by the GEB calling upon the Applicant to pay the entire due amount in sum of **Rs. 852854838.84** within a period, of 10 days and saying that, if the said amount is not paid, on the expiry of the said period the power supply to the Applicant shall be cut off without further Notice. This Notice obviously is under Section 24 (1) of the Ele Act.

(F) PRESENT PROCEEDINGS

(23) The Applicant firstly approached the Commission by taking out Petition No. 63 of 2002, dated 5th February, 2002. But faced with a vehement contention coming from the

GEB that this Commission has no jurisdiction to enter, hear, decide and allow such an Application, the Applicant also moved another Application in the Review Petition No. 15/1999 which has been filed by them on 14th December, 1999 against the Orders dated 27th November, 2000, rejecting the prayer for the Special Tariff. This Application has been named and styled as **"ADDENDA**" to the said Review Petition.

(G) AVERMENTS & RELIEFS PRAYED FOR BY THE APPLICANT.

(24) The Applicant challenges the Notice of Demand/Discontinuance dated 30th January, 2002 issued by the GEB, inter-alia on the grounds/averments that the said Notice is illegal and bad in law, unjust and improper and is contrary to the commitments made by the GEB and that the Applicant has paid, since the restoration of the power supply, a sum of Rs. 97.77 Crores towards the current or running bills, alongwith a further amount of Rs. 3.25 Crores towards the "Old Arrears" and that the disconnection is being threatened to favour only the Applicant's competitor GACL and this disconnection will help only the GACL and will be a loss to the State Government, and that the Applicant is before the BIFR.

(25) It is broadly on the above said Averments that the Applicant has prayed for the Stay against the implementation/operation and execution of the said Notice dated 30th January, 2002, and for preventing the GEB from disconnecting the power supply for alleged non-payment of the dues covered under the impunged Notice.

(H) THE OPPOSITION BY THE GEB

(26) The GEB by filing detailed Counters have urged that in substance and in reality the Applicant challenges the said Notice issued under the provisions contained under Section 24 (1) of the Ele Act, and that this Commission lacks the **Basic Jurisdiction** to entertain such Proceedings and to grant the prayers as prayed for. It is also contended that the Applicant's endeavors, to obtain a label of **"SICK COMPANY**" has failed twice upto the Appellate level, and that in the High Level Meeting dated 12th December,2001 it was decided that looking to the huge arrears no further accommodation can be granted to the Applicant, and that the indulgence shown by the State Government has been discontinued and that the GEB has "rightly" issued the Notice.

(I) THE PRELIMINARY OBJECTION & REPLY THERETO.

(27) Learned Counsel, Mr. Nirav K. Majmudar, at the outset, has raised the Preliminary Objection regarding the Jurisdiction of the Commission and has urged that the same should be decided first by us without entering into the merits of the matter.

(28) The emphatic endeavor on the other hand, on the part of Mr. Sorparkar is to urge that upon the facts and in the circumstances of the Case and regard being had to the legal provisions having a relevant bearing on the matter we should came to the conclusion that this Commission does not lack in Jurisdiction and that the matters require to be heard and decided on merits. Learned Counsel has urged that the stand taken by the GEB is not in consonance with the Legal & Factual Position.

(J) WHETHER SUBMISSION TO THE JURISDICTION OF THE COMMISSION.

(29) On the Returnable Date itself, while appearing for the GEB, Learned Counsel Mr. M.D.Pandya had made it clear that, the mere asking for time to file the Counter or the actual filing of the same should not be construed as the submission to the Jurisdiction of the Commission. All throughout, the hearing of these two Proceedings, the approach of both the sides have remained in accordance with the say coming from learned Counsel Mr. Pandya.

(30) We on our part also do not propose to take such a hyper technical view, often criticized on the ground that its acceptance, would ultimately jeopardize the party, challenging the Jurisdiction of a particular Forum, to the fullest disadvantage, and would result in gagging the mouth which speaks of "**Want of Jurisdiction**".

(K) CONTENTION & FINDINGS THEREON.

(31) The first contention coming from learned Counsel Mr. Soparkar for the Applicant is that the Review Application filed by them against the Orders, refusing to recognize and grant separate or Special Tariff is pending and that this Commission is well empowered to grant Interim Orders, regard being had to Regulation No.65 of the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations 1999.

(32) We must readily accept the second part of the submission of the learned Counsel, upon a bare reference to the said Regulations. The ERC Act includes the enabling Provisions in Section 58, which empowers the Commission to make Regulations. The

Regulation No. 65, thus made, confers power and authority to pass such Interim Orders as the Commission may consider appropriate at any stage of the Proceedings. We therefore, find no difficulty in accepting the contention that we are authorized to pass Interim Orders under the said Regulations.

(33) But the same cannot be said to be true for the first part of the contention. It is indeed true that a Review Petition is pending. But the Main Proceedings are over. They were asking for treating the Applicant and certain similarly situated Units, as Special Category Consumers entitled to a special or differential rate. After an elaborate exercise, the said contention has not been accepted by this Commission. The Review Proceeding would succeed or are likely to succeed only in certain eventualities specified in Regulation No. 105 (1) of the Regulations including the existence of an error apparent on the face of the record, or any other sufficient reason. The Applicant is no doubt praying for Review but comes to us by these two Proceedings when is faced with a Notice of Demand and/or Discontinuance of the supply. Moreover, unlike the Appellate Proceedings which are said to be in continuation of Original Proceeding, Review Petitions can not be said to be the continuation of the Main Proceedings. The scope of Review Proceedings is limited and circumscribed. Moreover, the prayer of the Applicant now is for the staying of the implementation etc of the impunged Notice. The Main Petition of the Applicant was for a Separate or Special Tariff. The say of the Applicant in the Review Petition is nothing but insistence for the same. In these set of circumstances, we are unable to agree with the contention coming from the learned Counsel that these two Proceedings and especially the subsequent one named and styled as "**Addenda**"

could be said to be the Applications for Interim Orders as contemplated under Regulation No. 65 falling in the Dockets of the Review Proceedings.

(34) Appreciating that the said contention has not been able to appeal us, the learned Counsel has in alternative urged that even if the present two Proceedings, are taken as fresh or independent Proceedings, then also we are empowered to issue the necessary Orders in them and if that be so, we are also authorized to issue Interim Orders.

(35) With a view to examine the validity of the said contention we shall have to revert to the Provisions contained in Section 22 of the ERC Act, to which a detailed reference has been made at Para No.3 hereinabove. Under those Provisions, in brief we can (a) determine the Tariff for electricity (b) determine the Tariff payable for use of transmission facilities (c) regulate power purchase and procurement process and (d) promote competition efficiency and economy.

(36) The functions which could be conferred by the State Government and which have been actually so conferred are described with all the details and precision, they require, in Sub-Section (2) of Section 22.

(37) Upon a careful examination of all what has been said regarding our Functions in Section 22 of ERC Act, we have a rather confirmed opinion that by no logical stretch the said Functions would include a Function, Power, Authority or Jurisdiction to intervene in a matter of the recovery of arrears, when the individual consumer, after having suffered

the Notice under Section 24 of the Ele Act, knocks the doors of the Commission for obtaining the stay against the recovery of dues, admitted and agreed upon for payment under a schedule, and against the possible discontinuance of the supply of power. **We are of the opinion that such a Jurisdiction is conferred upon us neither under the ERC Act, or under the Regulations framed thereunder. Any Forum either a Judicial one or a Quasai Judicial can not assume Jurisdiction despite the well defined provisions describing its functions, which at the same time confer and circumscribe its Jurisdiction.**

(38) Our opinion is strengthened further when we have a look at the Provisions contained in Section 24 of the Ele Act, captioned as

" Discontinuance of Supply to consumer neglecting to pay charge". The language employed and meaning sought to be conveyed, provide an interesting reading. When any person neglects to pay any charge the Licensee may discontinue the supply, but only after performing a statutory formality i.e. giving of not less than 7 clear days Notice. On one hand there has been grant of a right of coercive recovery. But on the other by subjecting the same to a qualification , of the Notice which assumes the significance of a statutory obligation, the defaulter is also given an opportunity to pay up the dues within a period of seven clear days. The right to discontinue is to be preceded by a statutory obligation to issue a "last warning" and or "a last opportunity to pay and avoid discontinuance".

(39) Sub-Section (2) of Section 24 works in favour of the defaulter by laying down that if there is a dispute (which under the Act is required to refer to the Electrical

Inspector) already referred to him, then the Licensee shall not exercise the said powers. But once again, the said prohibition is not to apply in a case in which a deposit has been demanded in writing by the Licensee and the Consumer has failed to comply with such a request.

(40) Section 36 of the Ele Act, deals not only with the appointment of Electrical Inspectors but also further speaks of a statutory right to appeal to the appropriate Government or to the Advisory Board if so directed. The term "appropriate Govt." has been defined under Section 2 (a) of the Ele Act, while Section 35 of the same speaks of the constitution of the Advisory Board the defining the duties and regulating the procedure of any such Board.

(41) Thus, in our opinion, a satisfactory mechanism has been provided under the Ele Act which can take care of cases like that of the Applicant, where the material question involved is in respect of the neglect of making the payment and the right of discontinuance of the power supply.

(42) We have not been able to read or even deduce such a mechanism under the ERC Act, which is primarily concerned with the Rationalization of Electricity Tariff. Chapter V captioned as "Powers And Functions of State Commission" no doubt does not provide such a mechanism. The said Chapter is loudly silent on any such function under which such a dispute between a non-paying or neglecting defaulter and creditor Licensee could be examined or adjudicated upon.

(43) Mr. Sorparkar the learned Counsel for the Applicant has, while trying to take a shelter under Section 52 of the ERC, Act has urged that the Provisions of the said Act have the overriding effect on any enactment, notwithstanding anything inconsistent therein and therefore the Provisions contained under Section 24 of the Ele Act shall stand whittled down. Mr. Majmudar the learned Counsel for the GEB who all the time reads and interprets the provisions contained in the ERC Act to convince us regarding our wanting Jurisdiction successfully, urges that the Overriding Effect of the ERC Act has nothing to do with the letter and spirit of Section 24 of the Ele Act, which speaks of Coercive Recovery. **We feel that this plea coming from Mr. Majumdar, requires to be accepted as both the Acts i.e. the Ele Act and the ERC Act, enacted for basically different objectives, do faithfully operate in two different domains. This differentiation, in our opinion, is too obvious to call for an industrious search.**

(44) We shall have to read Section 61 of the ERC Act, captioned as "Repeal and Saving" under which the Ele Act as a whole or so far as it relates to Section 24 has not been repealed.

(45) We should also make it clear that, we have not been able to read in any of the Regulations called the Gujarat Electricity Regulatory Commission (Conduct of Business) Regulations 1999, the conferring of Jurisdiction, Power or Authority to adjudicate upon such a dispute which basically centers around a dispute between a **neglecting consumer** and **a pressing Licensee**.

(46) Thus, we are of the opinion that the averments/contentions have not been able to satisfy us that we at the Commission have got the requisite Jurisdiction, Power or Authority to decide the question with which the Applicant has approached us.

(47) But before reaching the final conclusion, we would like to consider one more contention coming from learned Counsel Mr. Soparkar for the Applicant. There is an endeavor on the part of the learned Counsel to convince us that under Section 22(2) (n) of the Ele Act, this Commission can adjudicate upon certain disputes and differences of similar nature. Learned Counsel has drawn our attention to certain Press cuttings of the dailies in English language to buttress his contention. Upon reading of the said Press Report, we feel that the High Court of Mumbai was concerned with the dispute which was essentially between a Licensee and a Utility. We are in these Proceedings, concerned with a dispute between a consumer and a Licensee. We have time and again pointed out hereinabove, the nature of the dispute between the Applicant Consumer and the Opponent Licensee. **Any how, we would like to reiterate once again that we are concerned with the case of the Applicant who has suffered a Notice under Section 24 of the Ele Act. In view of the fact that the Applicant, has, according to the Opponent failed and neglected to make the payment of arrears which would run into Crores of Rupees, in our opinion, the above said pronouncement of the High Court of Mumbai as reported in the Press, would not assist the learned Counsel in his submissions before us.**

(48) During the pendency of the Proceedings before us, learned Counsel for the Applicant has thought it fit and proper to move an Amendment. During the feeble contention a in passing manner base on the Amendment, learned Counsel Mr. Soparkar for the Applicant has suggested that the proposed discontinuance of the supply of power would result into an **adverse effect on the revenue of the GEB**. This contention, as we have noticed, comes in a feeble and passing manner. We feel that this contention has been raised by the learned Counsel, with a view to urge before us that if we are concerned with the revenue of the GEB, probably the question would fall within the purview of Section 22 of the ERC Act. We must say that , we are not impressed by the above said contention coming from the learned Counsel. A consumer who has to pay arrears in sum of Crores of Rupees cannot successfully urge that the discontinuing of power, pursuant to the Notice under Section 24 of the Ele Act would have an adverse effect on the revenue of the GEB. Such an Applicant consumer cannot further urge before us that, viewing the question from the above said angle, we should hold and decide that the question would fall within the purview and scope of Section 22 of the ERC Act.

(49) **In our opinion, therefore, the above said contention, also will not render any assistance to the learned Counsel in his efforts to persuade us to hold that we have got the requisite Jurisdiction, Power or Authority to decide the question, which has been presented before us.**

(50) Learned Counsel for the Applicant also wanted to urge, once again, in passing manner and by way of a feeble contention, that there was an Agreement between the Consumer on one hand and the GEB on the other under which the Applicant Consumer was accommodated by granting installments of Rs.10 lacs per month which later on came to be enhanced to Rs. 25 lacs per month. The grievance made by the learned Counsel is that neither the Government nor the GEB can act in violation of the above said Agreement.

(51) But one should be conscious of the fact that, later on, a meeting was called on 12th December, 2001 chaired by the Hon'ble Minister for Industries and attended by the Hon'ble Minister for Energy and Shri Rasik Maradia, the Managing Director of the Applicant. During this meeting, after considering the entire matter and after hearing the Representative of the Applicant, it was decided that looking to the huge arrears of about Rs.83 Crores such a concession or accommodation cannot be allowed to be continued. Thus, it appears that when the Govt. the GEB and the Representative of the Applicant had taken the above said decision during the meeting which was convened on 12th December, 2001, and the earlier Agreement now does not survive.

(52) Even if the facts emerging from the meeting dated 12/12/01 are forgotten for a moment, then also, it is obvious that the Applicant consumer cannot come before us, making a grievance regarding a breach of the alleged Agreement. **In our opinion, the Forum for the adjudication of such dispute would definitely not the Commission**

constituted under the ERC Act. This, contention also, therefore, coming from the learned Counsel for the Applicant cannot be accepted.

(53) The learned Counsel for the Applicant, while limiting his contentions to the examination of the Preliminary Objection, has tried to project the financial crunch being experienced by the Applicant by submitting that the Applicant being a **SICK Company** is before the **BIFR**. Mr. Majmudar, the learned Counsel for the GEB, making a reference to the relevant details furnished in the Counters, has denied this factual contention, urging that even during the Appellate Proceedings the Applicant has failed to obtain such a label. We are conscious of the Provisions contained in **The Sick Industrial Companies (Special Provisions) Act 1985**, and especially in Section 22 thereof, which mandates the suspension of legal proceedingsetc. The rationale of the mandate is to safe guard, protect and preserve the assets of the Company to facilitate the making and the implementation of a scheme for the revival of the Company or to facilitate equal distribution of the assets.

(54) The question regarding the Applicant being a **SICK Company**, which could have been examined only if we prefer to hear the Matters on merits after the Applicant crosses the first hurdle being created by the Preliminary Objection regarding our Jurisdiction, has been opened at this juncture by the learned Counsel, presumably with a view to canvass before us the financial discomfiture faced by the Applicant and then to pose a question regarding their entitlement to approach us for the redressal of the grievances.

(55) We understand that this question which essentially falls within the arena of merits, which could be traveled in, only after extending our Jurisdiction to it, even if taken for deciding the spectrum of our Jurisdiction, would not carry their case any further. **We say so, basing our decision on a sound logic, governing the issue of Jurisdiction, concluding that such circumstances though unfortunate, would not be able to confer the Jurisdiction, upon a particular Forum, which has not been conferred upon it.**

(56) Learned Counsel for the Applicant has also tried to take shelter under the " Doctrine of Precedent". Mr. Soparkar, urges that in past this Commission had issued the Interim Orders and that looking to the said precedent, this time also we should not feel any hesitation in assuming the Jurisdiction and to entertain the Proceedings and to pass the necessary Interim Orders.

(57) We have taken a definite view hereinabove, that now it cannot be said that the Proceedings are pending before this Commission in which the Interim Orders could be given. It should also not escape our notice that the above said Orders were for a limited period i.e. till the Tariff Application filed by the Applicant gets decided. Moreover, except making the interim arrangement, the Commission has not traveled further.

(58) Moreover, it does not require elaborate argument to convince oneself, that generally the Interim Orders do not operate as the Precedent for the subsequent Proceedings, because in such Orders, there is hardly any "Ratio" laid down by the Forum. If there is no ratio decidendi there is absolutely no question of the same being followed in

future, in the subsequent Proceedings. Thus, because of the above said duel reasons, we are of the opinion that learned Counsel for the Applicant will not be able to invoke the "**Doctrine of ratio** decidendi or Precedent.

(L) ANSWERING THE QUESTION

(59) In view of all what has been said above, we are of the Opinion that we at the Commission have no Jurisdiction, Power Or Authority to entertain and decide the Petitions taken out by the Applicant and the Question formulated at Para 5 & 6 under Part –B requires to be answered in Negative. We answer the same accordingly.

(M) FINAL ORDERS

(60) THE PETITIONS FILED BY THE APPLICANT STAND DISPOSED OFF WITH THESE ORDERS LEAVING THEM TO APPROACH THE APPROPRIATE FORUM FOR THE REDRESSAL OF THEIR GRIEVANCES IF SO ADVISED. THE AD-INTERIM ORDERS GRANTED EARLIER SHALL STAND VACATED.

PART-II

(61) All whatever has been said above should be treated as Part-I of our Orders.

(62) These Orders were to be pronounced on 13th March, 2002. On the said date, the Application came to be presented, on behalf of the Applicant, asking for some time, so that the Applicant can present before us the copy of the Judgment/Orders pronounced by the Mumbai High Court. Though the prayer was for a limited period, in view of the fact, that some Proceedings were initiated before the High Court of Gujarat against our earlier

Orders, we had granted a larger time frame. The said Appeal, ultimately, is said to have been withdrawn.

(63) When the matter is called out today, learned Counsel, Mr. Soparkar, who appears on behalf of the Applicant, places before us a bunch of papers, which could be divided at least in two parts. The first part contains a prayer saying that, this Commission may defer the pronouncement of the Judgment, till the copy of the Mumbai High Court's Judgment is obtained and placed on record of this Commission. The other prayer is that, this Commission may extend the Ad-Interim Reliefs, till the fresh date of the pronouncement of the Judgment.

(64) The reiteration in the body of this Application, in fact saying that, still the Applicant has not been able to obtain authenticated or certified copy of the Orders pronounced by the Mumbai High Court. We would like to make it clear that the Press Report regarding this Judgment, which came to be presented by the learned Counsel Mr.Soparkar, before us, have been duly discussed by us in Part-I of our Orders, during which, we have said that the question which had fallen for the consideration of the Mumbai High Court was entirely different. Today also, we are of the same opinion . In view of this fact, now it would not be expedient on our part to grant time to the Applicant for the presentation of the copy of the Orders of the Mumbai High Court.

(65) The next part would be regarding the Judgment pronounced by the Central Electricity Regulatory Commission at New Delhi, the hearing of which had taken place on 12th September, 2001. But, before we go to the said Orders, it would be appropriate on our part to have a reference to the document under the caption " Written

Submissions". These written submissions try to support and augment the contentions coming from the learned Counsel for the Applicant on the earlier occasion, with the support of certain Supreme Court pronouncements. These pronouncements are more or less concerned with the term

"Regulate" and "Implementation thereof". Upon having studied the say of the Supreme Court, in various pronouncements, regarding the above said submissions, we are of the opinion, that the same would not assist the Applicant in canvassing their case before us any more.

(66) Para-12 of the submissions concludes by pointing out three points on the basis of which the Applicant would urge before us that the GERC has Jurisdiction in the matter. Para-12 of the submissions is nothing but the conclusion of all what has been stated therein above with the support of say of the Supreme Court in certain pronouncements. In our opinion, therefore, the concluding para of the submissions, also would not lend any assistance to the learned Counsel for the Applicant in advancing his case before us.

(67) Now left with us are the Orders pronounced by the C.E.R.C, the hearing of which had taken place on 12th September, 2001. These Orders were required to be pronounced after hearing the parties for forming a policy which could be described as " Regulation of Power Supply". The provisions which came to be considered therein are contained in Section -13 of the ERC Act, 1998. A reference to the above said provisions would go to show that they pertain to the functions of the Central Commission in entirely different circumstances. Learned Counsel, Mr. Soparkar who appears on behalf of the Applicant places heavy reliance upon the provisions contained in Section 13 (a), 13(b) and 13 (c). Any how, it should not be over looked that these are the provisions describing

the functions and limits to the powers of the Central Commission, with which we are not concerned. We may make it clear that, our concentration should be on the provisions contained in Section 22 of the ERC Act, 1998 which speaks regarding the powers and the functions of the State Commission.

(68) But, it should not be over looked that the above said were the Orders, passed by the Central Commission , while deciding upon the above said "Regulation of Power Supply" and that the Commission was squarely concerned with the provisions contained in Section 13 of the ERC Act, 1998. It was essentially a matter, regarding the tariff etc between the State Utilities and the Central Generating Companies. We are definitely not concerned with the said question in the present Proceeding. In our opinion, therefore, the above said decision rendered by the CERC would not permit learned Counsel Mr. Soparkar to urge successfully, before us, that we have got the requisite Jurisdiction to decide the question raised by the Applicant. In view of this, we are of the opinion, that all what we have said in our Orders under Part-I shall, have to be reiterated.

(69) We therefore revert to Para-60 under Part-I which is captioned as "Final Orders" and say that the Petition stands disposed off, leaving the Applicant to approach the appropriate Forum for the redressal of their grievance if so advised. We also reiterate that the Ad-Interim Reliefs granted earlier shall stands vacated forthwith.

(70) At this juncture, learned Counsel, Mr. Soparkar, who appears on behalf of the Applicant urges that these Orders of ours should not be executed or implemented till 27th March, 2002 so as to enable the Applicant to approach the appropriate Forum and to

obtain the suitable Orders. There is a strong objection coming from learned Counsel Mr. Nirav N. Majmudar, who appears on behalf of the GEB, who points out, with the assistance of the Officers of GEB, that there has been a large reduction in the consumption of energy, and therefore, the fact that, the client manufactures hazards chemicals in specified plant is not going to cause any concern, by the possible disconnection.

(71) Upon hearing the learned Counsels for the parties, we feel that, though we have said that we have no Jurisdiction to decide such Proceedings, it would be appropriate to grant sometime to the Applicant to go before the higher Forum against our Orders. We, therefore, direct that, there shall not be any disconnection as envisaged, under the impugned Notice, till 3 p.m. on 27th March, 2002.

(**72)** Learned Counsel Mr. Nirav K Majumdar who appears on behalf of the GEB presses for the cost. Looking to the fact that the Applicant is arrears of Crores of Rupeees, since last so many years and looking further to the conduct adopted by the Applicant, we could have granted the cost, in view of the say of learned Counsel Mr. Majumdar. Any how, we are of the opinion that, when ultimately, we have said that, we have no Jurisdiction to hear and decide the matter and when we have preferred to leave the Applicant to seek the redressal of their grievances else where, in our opinion, we may not impose any cost. We order accordingly.

(JUSTICE S.D.DAVE) (B.M.OZA) (R.K.SHARMA)
CHAIRMAN MEMBER MEMBER

Place: Ahmedabad
Date: 22nd March, 2002

GUJARAT ELECTRICITY REGULATORY COMMISSION

AHMEDABAD

8th March, 2002

CORAM: Justice S.D. Dave, Chairman

Shri B.M. Oza Member

IN THE MATTER OF MARADIA CHEMICALS LTD AHMEDABAD

V/S.

GUJARAT ELECTRICITY BOARD

ORAL ORDER

8/03/2002

We have heard Learned Counsels Mr. Soparkar and Mr. Mazmoodar , on the question of the jurisdiction.

List the matter on 13th March, 2002.

It shall be open for the Learned Counsel Mr. Soparkar to present before us, the copy of the Judgment/Orders pronounced by the High Court of Mumbai, the reference of which appears to have been in certain dailies.

The Exparte Ad-Interim Relief granted under the earlier Orders shall stand extended, till the said date

(JUSTICE S.D. DAVE) **(B.M.OZA)**

CHAIRMAN **MEMBER**

Place: Ahmedabad

Date: 8th March, 2002

GUJARAT ELECTRICITY REGULATORY COMMISSION

AHMEDABAD

19th February, 2002

CORAM: Justice S.D. Dave, Chairman

Shri B.M. Oza Member

Shri R.K. Sharma, Member

IN THE MATTER OF MARADIA CHEMICALS LTD AHMEDABAD

V/S.

GUJARAT ELECTRICITY BOARD

ORAL ORDER

19/02/2002

Learned Counsel, Mr. Soparkar, files the Rejoinder. Learned Sr. Counsel, Mr. Mayur Pandya, asked for sometime, making it clear that this is without the submission to the

jurisdiction of the Commission. The Relief granted under the earlier Orders shall stand extended, till the said date.

Stand Over to 8th March, 2002.

(JUSTICE S.D. DAVE) (B.M.OZA) (R.K.SHARMA)

CHAIRMAN MEMBER MEMBER

Place: Ahmedabad

Date: 19th February, 2002

GUJARAT ELECTRICITY REGULATORY COMMISSION

AHMEDABAD

15th February, 2002

CORAM: Justice S.D. Dave, Chairman

Shri B.M. Oza Member

Shri R.K. Sharma, Member

IN THE MATTER OF MARADIA CHEMICALS LTD AHMEDABAD

V/S.

GUJARAT ELECTRICITY BOARD

ORAL ORDER

15/02/2002

When the matter is called out, Learned Sr. Counsel, Mr. Mayur Pandya, appears for the GEB. There is a request, coming from the Learned Counsel, Mr. Soparkar, though, Learned Counsel Mr. Bhatt, for sometime. Upon hearing the Learned Counsels, we feel that, the matter should be adjourned to 19th February, 2002. The Exparte Ad-Interim Relief granted under the earlier Orders shall stand extended, till the said date.

(JUSTICE S.D. DAVE) **(B.M.OZA)** **(R.K.SHARMA)**

CHAIRMAN **MEMBER** **MEMBER**

Place: Ahmedabad

Date: 15th February, 2002

GUJARAT ELECTRICITY REGULATORY COMMISSION

AHMEDABAD

6th February, 2002

CORAM: Justice S.D. Dave, Chairman

Shri B.M. Oza Member

Shri R.K. Sharma, Member

IN THE MATTER OF MARADIA CHEMICALS LTD AHMEDABAD

V/S.

GUJARAT ELECTRICITY BOARD

ORAL ORDER

6/02/2002

Leave to amend. Notice, returnable to Respondent, Gujarat Electricity Board on 15th February, 2002.

Meanwhile, there shall be the stay against the execution, implementation and further operation of the Notice dated 30th January, 2002, Annexure-I, subject to the condition

that, meanwhile, the Petitioner shall continue to discharge their obligations as per the Agreement.

D.S. is permitted.

(JUSTICE S.D. DAVE) **(B.M.OZA)** **(R.K.SHARMA)**

CHAIRMAN **MEMBER** **MEMBER**

Place: Ahmedabad

Date: 6th February, 2002

GUJARAT ELECTRICITY REGULATORY COMMISSION
AHMEDABAD

13h March, 2002

CORAM: **Justice S.D. Dave, Chairman**
Shri B.M. Oza Member
Shri R.K.Sharma, Member

PETITION NO. 63/2002

WITH

PETITION NO. 64/2002

ORAL ORDERS

13/03/2002

These matters have been posted for the final Orders.

We have been put in a piquant situation by the Applicant by presenting the Application dated 12/3/02 in which it has been inter-alia stated that the Applicant has filed an Appeal against our Orders dated 8/3/02 before the High Court of Gujarat praying for the relief that, we at the Commission may be restrained from pronouncing the Judgment without taking into consideration the Judgment of the Mumbai High Court.

Without saying much, we felt it appropriate on our part, to consult the learned Counsel for the Applicant, as to what time he would like to have for obtaining the copy of the Judgment pronounced by the Mumbai High Court and present the same before us.

Learned Counsel Mr. Bhatt, who appears on behalf of the Applicant candidly states that this will be done by 20th March, 2002.

Any how, with a view to give some time-cushion, we adjourn the matters to 22nd March, 2002.

The matters shall be called out on 22nd March, 2002 at 11.30 a.m for the pronouncement of the Orders, after considering the Judgment of the Mumbai High Court if presented before us.

Before parting with the matters, we must take notice and record the strong objection, coming from the learned Counsel Mr. Nirav Majumdar, who appears on behalf of the GEB. Learned Counsel urges with great vehemence that the Arrears amounting to Crores of Rupees towards the GEB are not being paid and that it is absolutely unwise on the part of the Applicant to move such an Application at the last moment.

We have recorded the above said objection, coming from Mr. Majumdar, Counsel for the GEB, but our Orders regarding the pronouncement of the Judgment on 22nd March, 2002, after considering the Judgment of the Mumbai High Court, if placed before us, would remain the same, because we would like to give an opportunity to the Applicant to present before us the copy of the said Judgment .

The Ad-Interim Reliefs granted earlier shall stand extended till the said date.

Sd/-	**Sd/-**	**Sd/-**
(JUSTICE S.D.DAVE)	**(B.M.OZA)**	**(R.K.SHARMA)**
CHAIRMAN	**MEMBER**	**MEMBER**

Place:Ahmedabad
Date: 13th March, 2002