BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISISON

GANDHINAGAR

Petition No. 2092 of 2022

In the Matter of:

Petition under Sections 42, 43, 50, 86 and other applicable provisions of the Electricity Act, 2003 read with GERC (Electricity Supply Code and Related Matters) Regulations, 2015, GERC (Standard of Performance of Distribution Licensee) Regulations 2005 and other applicable Regulations of the GERC for seeking deemed extension of time for completion of 66 KV transmission line for 5000 KVA contract demand on post-facto basis and consequently directing MGVCL to consider 60 days' notice period from the deemed extended date and to refund minimum demand charges levied by MGVCL on deemed release basis on 5000 KVA contract demand till physical release of connection.

Petitioner	:	Virgo Aluminum Limited, Survey No. 363-2, 363-3, 357, 358, 370, Village Sokhda, Taluka Matar, District Kheda – 387 570.
Represented By	:	Mr. D. S. Doshi and Mr. Pranav Doshi
		V/s.
Respondent No. 1	:	Madhya Gujarat Vij Company Limited
Represented By	:	Ld. Adv. Ms. Shrishti Khindaria
Respondent No. 2.	:	Gujarat Energy Transmission Corporation Limited
Represented by	:	Ld. Adv. Ms. Shrishti Khindaria and Mr. Shobhraj Jayswal.

CORAM:
Pankaj Joshi, Chairman
Hiren Shah, Member
Jatin N. Thakkar, Member

Date: 23/07/2026

ORDER

1. The present Petition is filed by the Petitioner, Virgo Aluminum Limited, under Sections 42, 43, 50, 86 and other applicable provisions of the Electricity Act, 2003 read with GERC (Electricity Supply Code and Related Matters) Regulations, 2015, GERC (Standard of Performance of Distribution Licensee) Regulations 2005 and other applicable Regulations of the GERC seeking deemed extension of time for completion of 66 KV transmission line for 5000 KVA contract demand on post-facto basis and consequently directing the Respondent No. 1, Madhya Gujarat Vij Company Limited (MGVCL), to consider 60 days' notice period from the deemed extended date and to refund minimum demand charges levied by MGVCL on deemed release basis on 5000 KVA contract demand till physical release of connection.

2. The Petitioner has prayed as under:

   (a) "In the facts and circumstances of the case, the Commission may please to take on record the present Petition,

   (b) In the facts and circumstances of the case, the Commission may please to admit the petition and grant the opportunity of being heard to the Petitioner,

   (c) In the facts and circumstances of the case, the Commission may please to invoke its powers to relax / inherent power for allowing deemed extension of time period up to December 2021 for completion of 66 KV line and bays work on post facto basis, and

   (d) Consequently, direct the Respondent No. 1 to refund the amount recovered by it from the Petitioner with interest of 15% per annum towards bills for minimum demand charges for 5000 KVA on deemed release basis for the period from 25.11.2020 to 31.12.2021.

   (e) The Commission may please to allow to amend / alter / modify the contents of the Petition as and when required in the given facts and circumstances of the case.

   (f) The Commission may please to pass such further order or orders as the Commission may deem just and proper in the circumstances of the case."

3. Brief of the facts of the Petition are as under:

3.1. The Petitioner, M/s. Virgo Aluminum Limited (hereinafter referred to as "Virgo" or "Petitioner" or "Applicant" or "Consumer") is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at D-117, Okhla Industrial area, Phase-I, New Delhi and having its manufacturing facility at Survey No: 363-2,363-3, 357,358,370, Village Sokhda, Tal. Matar, Dist: Kheda 387570. The Petitioner is engaged with business of Manufacturing/Processing of aluminum sheets and coils.

3.2. The Respondent No. 1, Madhya Gujarat Vij Company Limited (MGVCL), is a Distribution Licensee in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and is undertaking Distribution and retail supply of electricity in Central part of the State.

3.3. The Respondent No. 2, Gujarat Energy Transmission Corporation Limited (GETCO), is the transmission licensee in the State of Gujarat and also holding the status of 'State Transmission Utility' (STU) under section 39 of the Electricity Act 2003.

3.4. The Petitioner has submitted certain factual aspects and chronology of events relevant to the case as under:

3.5. The Petitioner has established new manufacturing / facility Unit at Survey No: 363-2,363-3,357,358,370, Village Sokhda, Tal. Matar, Dist: Kheda for Manufacturing/Processing of aluminum sheets and coils. The above new manufacturing facility is falling within supply jurisdiction of electricity distribution licensee - MGVCL.

3.6. On 31.07.2019, the Petitioner has applied for power demand of 5000 KVA at 66 KV voltage level to Respondent No. 1 at new manufacturing facility at Survey No: 363-2,363-3,357,358,370, Village Sokhda, Tal. Matar, Dist: Kheda. This was the first experience of the Petitioner seeking power supply at Extra High Tension (EHT) level involving role of MGVCL as well as GETCO and requirement of close

coordination amongst various agencies.

3.7. Pursuant to the application for new connection of 5000 KVA on 31.07.2019, as per the intimation given by MGVCL, GETCO had undertaken site survey and route survey for construction of 66 KV line and bays for catering of 5000 KVA power demand at 66 KV voltage level to the Petitioner. Further, on 04.10.2019, Additional Chief Engineer (R&C) Corporate office GETCO, had forwarded estimate to MGVCL under OPTION-III involving erection of 4.50 KM 66 KV Double Circuit Panther tower line between 66 KV GETCO Matar substation to M/s Virgo Aluminum Limited with Single Circuit stringing on DOG conductor and partly laying of 0.20 KM 66 KV, 630 mm2 XLPE power cable with aluminum corrugated sheath and erection of 1 No of 66 KV feeder bays each at 66 KV GETCO Matar substation and at 66 KV substation at Virgo Aluminum site. It is worth to mention that under Option-III, consumer has to undertake GETCO's scope of work at its own cost by paying 15% supervision charges to GETCO. The details of GETCO's scope of work included in the estimate dated 04.10.2019.

3.8. It is submitted that based on estimate dated 04.10.2019 forwarded by GETCO, MGVCL on 01.11.2019 had issued estimate to the applicant under Option-III for the following work:

Sr. No.	Particulars	Amount in Rs.
1	15% Supervision Charges & GST for erection of 1 No. of 66 KV feeder Bays at GETCO substation under deposit scheme.	6,25,029.00
2	15% Supervision Charges & GST for erection of 1 No of 66 KV feeder Bays at Consumer end under deposit scheme.	3,20,467.00
3	15% Supervision Charges & GST for laying of U/G cable line under deposit scheme	27,03.931.00
4	Pro-rate charges @ Rs. 1180/KVA for 5000 KVA	59,00,0000.00
5	18% GST on pro-rata charges	10,62,000.00
	Total GETCO Charges	1,06,31,427.00
1	MGVCL: Service Connection Charges	84,000.00

Sr. No.	Particulars	Amount in Rs.
2	Security Deposit (Non-Cont. Process) under HTP-I tariff FPPPA @ Rs. 2.10/Unit	3,28,99,114.00
	Total MGVCL Charges	3,29,83,114.00
	Grand Total (GETCO + MGVCL) Charges	4,36,14,541.00

3.9. It is submitted that as against timeline of 30 days from the date of application, as provided under GERC (Standard of Performance) Regulations, for issuing estimate to the applicant, MGVCL had issued estimate on 01.11.2019 (i.e. 92 days from the date of application). It is also to highlight the important provisions of the MGVCL estimate dated 01.11.2019 as under:

> *"4 If you fail to execute agreement within 15 days from the date of payment of estimate, your application will be liable for cancellation.*
>
> *7 You shall be responsible for obtaining and maintaining all applicable statutory approvals including consent to establish / consolidated consent and authorization from Gujarat Pollution Control Boar. Your electrical connection is liable to be disconnected on directive from any of such statutory authorities for non-compliance of the required approvals."*

3.10. Similarly, the important provisions of the GETCO estimate are as under:

- *M/s. Virgo Aluminum Ltd shall undertake the work for power demand under Option-III.*
- *During the execution of line, NOC from the land owner shall be obtained by the applicant. Also any way leave problem, compensation, legal dispute, statutory permissions, if any, raised from Government / GIDC, private land owner, farmer, State and National Highway, R&B Dept., Railway, Electrical Inspector Charges, other agency etc. shall have to be resolved by applicant at his cost.*
- *For erecting of 66 KV line from GETCO's 66 KV Matar substation to the premises of M/s. Virgo Aluminum Ltd, the official permissions/ clearances shall have to be obtained by party.*
- *M/s. Virgo Aluminum Ltd shall have to arrange for 1.0 mtr power corridor for laying of 66 KV Underground cable line and 18 mtr for 66 KV O/H line from GIDC / NH / Railway/ R & B /NA/ Industrial land & agricultural land falling along*

the line route. They have to pay ROU cost, if any to GIDC / NH / Railway / PCPIR / R&B / Electrical Inspection. During execution, During execution, complete demarcation for new proposed line from GIDC authority shall be arranged by the party and shall be responsible for the same.

3.11. It is submitted that MGVCL and GETCO had issued estimate under Option-III at their own and there was no request / representation from the Petitioner to issue estimate under Option-III (i. e. the Petitioner has to carry out GETCO's scope of work at its own cost for release of connection). However, with an intention to get power supply on early basis, the Petitioner had deposited the estimate amount to MGVCL on 31.12.2019. Further, as per the terms of estimate dated 01.11.2019, the Petitioner had signed HT power supply agreement with MGVCL on 16.01.2020.

3.12. On 17.01.2020, MGVCL intimated to GETCO regarding payment of estimate and signing of HT power supply agreement by the Petitioner. Further, Additional Chief Engineer (R&C), GETCO Corporate Office, vide letter dated 24.01.2020, informed to the Petitioner to finalize the Contractor and Vendor from approved list of Vendors for execution of 66 KV line and bays works as per the GETCO's Scope of work. Moreover, in the letter dated 24.01.2020, it was intimated that GETCO will arrange a kick of meeting jointly with GETCO's Engineering and Project Department with Petitioner's representatives and Contractor to work out the planning for drawing approval, Vendor approval, inspection requirement and any other issues.

3.13. It is submitted that the Petitioner acted swiftly and floated inquiry for appointment and selection of GETCO approved vendors for execution of GETCO's scope of work of 66 KV line and bays works and appointed M/s. HEC Infra. Project limited as contractor / vendor for execution of 66 KV line and bays works under GETCO's scope of work under Option-III. Further, the Petitioner vide letter dated 24.02.2020 also intimated to GETCO regarding appointment of contractor for execution of work.

3.14. Immediately upon appointment of Contractor / Vendor, the Petitioner vide letter dated 06.03.2020 requested GETCO to arrange a Kick of meeting at the earliest. In meantime, the Petitioner also initiated drawing preparation work of 66 KV line and

bays and draft of the same was prepared. Moreover, a Kick of meeting was convened by GETCO on 16.03.2020 amongst the Contractors and GETCO to decide the line of action for execution of 66 KV line work as per GETCO's scope of work. Further, on the same day, the drawings of 66 KV line and bays were submitted to GETCO with a request letter to approve the drawing at the earliest and also written another letter dated 16.03.2020 to Chief Engineer (Project) GETCO list for submitting list of Vendors selected by the Petitioner for GETCO's approval for purchase of materials to be used for construction of 66 KV line and bays. Subsequently, GETCO vide letter dated 18.03.2020 granted approval for appointment of HEC Infra as Contractor for execution of GETCO's scope of work vide estimate dated 01.11.2019. The Contractor on behalf of the Petitioner, vide letter dated 19.03.2020 to Additional Chief Engineer (R&C) GETCO, had submitted civil foundation drawings of CTs, Las, Isolators, Breakers etc. as a part of 66 KV feeder bayas at 66 KV GETCO Matar Substation.

3.15. The Petitioner has submitted that the above actions and communications from the Petitioner after signing of Power supply Agreement with MGVCL clearly establishes that the Petitioner had acted swiftly and in a bonafide manner to get the GETCO's scope of work done within the stipulated timeline and to get power supply in a timely manner to generate the revenue out of investment made in the project.

3.16. It is submitted that execution of 66 KV line and bays works involved various consent / permissions / clearance/ approvals from various Government departments, authorities and private parties, as under:

(i) The prerequisite approvals from GETCO (i.e. before commencement of physical works) with respect to (a) drawings of material and civil foundation work, (b) Vendor approvals for supply of material, (c) Line route approvals, (d) Inspection of materials by GETCO officials and material dispatch clearance from time to time (e) material dispatch instructions (f) arranging supervision by GETCO official during execution of work;

(ii) Government of Gujarat Gazette notification and issuing Public Notice by

GETCO for erection of 66 KV line and towers in the approve line route, in exercise of power under Section 164 of the Electricity Act 2003.

(iii) Permission / NOC from Forest Department for laying of 66 KV line in Forest land.

(iv) Permission and approval from National Highway Authority of India (NHAI) for crossing of NH-48 between CH-37 + 600 to 36 + 700.

(v) Right of Way (ROW) for laying of 66 KV line in the Godown premises of Gujarat State Seeds Corporation Ltd.

(vi) Permission / NOC from R&B Dept and Irrigation Dept for erection of 66 KV line and tower.

(vii) Right of Way (ROW) permission from concerned private parties / villages for laying of 66 KV line in Gauchar land and in private agriculture land.

(viii) Approval / Permission from MGVCL for inspection and procurement of CTPT, metering equipments, etc.

(ix) Permission and approval of Chief Electrical Inspector for 66 KV line drawings and energization permission.

3.17. It is submitted that the procurement of various permissions / NOCS / Approvals / Consents / Clearances from above authorities / Departments / parties is time consuming process requiring rigorous efforts, communications, personal follow-ups and compliances.

3.18. It is submitted that the Petitioner was making all efforts for getting approvals from GETCO for drawings and material procurement and to apply for permissions / NOCS from other government departments / parties through GETCO. In meantime, there were outbreak of COVID-19 pandemic and imposition of nationwide

lockdown leading to complete national shutdown for the period from 24.03.2020 to 31.05.2020.

3.19. Under the circumstances, there was complete chaos and uncertainty leading to derailment of planned work including approval / permission from various departments and GETCO and procurement and supply of material as all concerned were affected by one or another way due to pandemic.

3.20. On one hand the approval related works were affected due to COVID-19 pandemic, which were prerequisite to commence physical works, on the other hand, upon completion of 180 days from the date of signing of HT power supply agreement, MGVCL vide letter dated 16.07.2020 issued notice to the Petitioner under 4.3 of GERC Electricity Supply Code 2015 intimating the Petitioner to complete GETCO's scope of 66 KV line work under Option-III and avail power supply within 60 days from the notice. It was further conveyed that upon completion of notice period of 60 days, the Petitioner shall be liable to pay demand charges and minimum monthly charges considering contract demand of 5000 KVA under HTP-I tariff.

3.21. In response to above notice, the Petitioner vide letter dated 29.07.2020 represented to MGVCL extend timeline from 180 days for completion of work due to various uncontrollable circumstances. The contents of letter dated 29.07.2020 is reproduced as under:

> *"1) The kick of meeting was conducted on 16.03.2020 but we could not start anything as there was a nationwide lockdown due to Covid-19 pandemic. We could not start any type of activity till May end as our offices were closed. We even couldn't find out the Surveyor for actual survey of Transmission line till 30th June. Other activity like standard drawing approvals, feeder bay drawing approval. Vendor finalization etc. was not possible in those days and take much time. Even in many villages, Villagers are not allowing our survey team (since as outsiders), even not allowed by Village Sarpanch. We could execute the route survey with GETCO team in the month of July.*
>
> *2) We would like to inform you that in O/H & U/G Transmission line, there are so many approvals required from various agencies like R&B, National Highway, Irrigation Department, Forest, Gochar land and local farmers land*

will take much time.

3) As you are aware that the pandemic due to Covid-19 outbreak is a 'force majeure' situation, which refers to extraordinary events and circumstances beyond human control or a natural calamity, giving relief to companies which have contracts with the government.

4) Further, we are going to face Monsoon season and cannot start any kind of activity due to heavy rain area.

All above circumstances were beyond our control and could execute our activity only after July month thereon assuming that the COVID situation will improve. Hence, we are requesting you to look into the matter positively and grant us a time extension of another 6 months from the agreed completion date i. e. up to 15.01.2021."

3.22. In reply, MGVCL vide letter dated 04.09.2020 conveyed that considering nationwide lockdown due to COVID-19 pandemic (i.e. from 22.03.2020 to 31.05.2020), competent authority of MGVCL has considered the request partially and granted time limit extension of additional 71 days for execution of work. Further, it was conveyed that the Petitioner shall be liable to pay demand charges and monthly minimum charges considering contract demand of 5000 KVA under HTP-I tariff with effect from 25.11.2020.

3.23. It is submitted that since MGVCL had granted only 71 days' time limit extension ignoring the cascading effect of lockdown and further ignoring that the pandemic situations was still prevailing which had severely impeded the progress of the work, with an aim to make further effort to get extension of time due to COVID-19 related force majeure situations, the Petitioner vide letter dated 21.09.2020 requested MGVCL to grant time limit extension up to 15.01.2021. In the representation dated 21.09.2020, the Petitioner had given proper justifications and reasons for requirement of extension of time due to pandemic circumstances which were beyond the control of the Petitioner. Further, in support of seeking extension due to COVID-19 pandemic, the Petitioner had also relied on Office Memorandum dated 13.05.2020 issued by Ministry of Finance, Government of India to consider for extension of 3 to 6 months' time in completion of work under the contract without imposition of any cost or penalty on account of COVID-19 Global

pandemics.

3.24. In response to the above request of the Petitioner to MGVCL to consider COVID-19 pandemic as Force Majeure situation and to grant time limit extension for completion of 66 KV line work, MGVCL vide letter dated 12.10.2020 had regretted the request of the Petitioner and reiterated its stand to commence billing for minimum demand charges of 5000 KVA on deemed release basis with effect from 25.11.2020 i.e. after completion of extended period of 71 days from 16.09.2020. Further, MGVCL had also commenced monthly billing for minimum demand charges for 5000 KVA on deemed release basis with effect from 25.11.2020 (i.e. expiry of 71 days after 180 days signing of power supply agreement and considering 60 days' notice period thereafter).

3.25. The Petitioner cannot move ahead to execute the work as per the planning in absence of GETCO's approval for foundation drawings, Gazette notification and public notice by GETCO for construction of 66 KV line as per approved route and approval of drawings for 66 KV line and tower materials. Further, under the pandemic situation, the approval related works were affected and the Petitioner was having no other options except to wait for the permissions / approvals from various authorities.

3.26. It is submitted that there was delay in getting prerequisite permissions / clearance from GETCO in regard to various approvals, procedures and clearances. The details of clearances / approvals / permissions received from GETCO up to December 2020 is enlisted as under:

Date	Particulars
28-05-2020	GETCO letter to Virgo conveying drawings standardized by GETCO for various equipments
24-08-2020	Route approval from GETCO for erection of 66 KV S/C line on D/c Panther tower and partly laying of 66 KV, 630 mm2 Al. Corrugated sheathed XLPE UG cable from 66 KV Matar substation to switch yard of Virgo Aluminum Ltd.
15-09-2020	SE Nadiad GETCO's letter to EE Nadiad for conveying drawing approvals

Date	Particulars
22-09-2020	GETCO's Public Notice in newspapers for laying 66 KV lines in various areas
15-10-2020	SE GETCO Nadiad letter to EE GETCO Nadiad for approval of original profile, route alignment, topo sheet, tower schedule, tower summary village tikka map for 66 KV line
22-10-2020	Public notice in Govt Gazette for line laying
16-12-2020	GETCO letter to Virgo for conveying variable drawing standardized by GETCO for 66 KV Panther Tower foundation

3.27. Upon getting above permissions / approvals / clearances from GETCO in the month of December 2020, the Petitioner had acted swiftly for procurement of materials for 66 KV line and bays. Further, the Petitioner vide letter dated 07.01.2021 requested to GETCO to approve original check survey report along with tower schedule to commence physical work on site. However, there was outbreak of COVID-19 second wave in the month of mid of March 2021 and prevailed almost up to end of June -21. Due to outbreak of second wave of COVID-19 pandemic, there was severe issues related to physical follow up and compliances with GETCO office leading to delay in approval process for the check survey report. No outsiders were allowed to enter in Vadodara office. It was also not possible to have face to face discussion to understand the compliance requirements of GETCO and take physical follow up. Though, the request was made to GETCO vide letter dated 07.01.2021, the approval for check survey report could be received only vide letter dated 28.06.2021 namely after cooling down of infection rate of COVID-19 second wave. Therefore, in any case, it was not possible for the Petitioner to commence the physical work before 28.06.2021.

3.28. It is further submitted that the line route also involves permission / NOC from National Highway Authority of India (NHAI) for crossing of NH-48 and permission from Forest Department. The permission is to be applied through GETCO as the Petitioner was executing GETCO's scope of work on behalf of GETCO.

3.29. As regard to permission from NHAI, GETCO vide letter dated 03.03.2021 sought permission for highway crossing of 66 KV underground cable. However, due to outbreak of COVID-19 second wave, there was delay in communication and

compliance and the permission could be procured only on 19.11.2021 from NHAI by GETCO. In regard to NOC from Forest Department, GETCO vide letter dated 29.04.2021 applied to Deputy Conservation Office, Nadiad and permission / NOC, which was also delayed due to reasons attributable to second wave of COVID-19. The NOC from Forest Department was received vide letter dated 06.09.2021.

3.30. It is only after cooling down of second wave of COVID- 19 at the end of June 2021, the approval / clearance related work could be taken up vigorously. The list of dates with regard to communication / compliances in relation to getting approval from GETCO, NHAI and Forest Department are enlisted as under:

Date	Particulars
28-06-2021	SE GETCO Nadiad letter to EE GETCO Nadiad for approval of check survey report
05-07-2021	GETCO letter regarding clearance for dispatch of Earthing Rod
15-07-2021	NHAI letter to EE Nadiad GETCO in response to GETCO letter dated 03.03.2021 raising various technical points for grant of laying of UG cable across NH 48
27-07-2021	EE GETCO Nadiad letter to NHAI submitting compliance to the query raised by NHAI vide letter dated 15.07.2021.
02-08-2021	The letter from Petitioner's contractor to DE (Const) GETDCO Nadiad for submission of Revised route (Village Tikka Map) for 66 KV line for approval.
05-08-2021	The letter from Petitioner's contractor letter to DE (Const) GETCO Nadiad for submission of Revised route alignment drawing of 66 KV line for approval
17-08-2021	The Petitioner's letter to DE (Const) GETCO Nadiad seeking permission for start work of trench for 66 KV cable
06-09-2021	Approval letter from Dy Conservation officer (Forest) Nadiad to EE GETCO Nadiad.
08-09-2021	GETCO approval letter for allowing to execute civil work for feeder bay at GETCO 66 KV Matar S/s
14-09-2021	SE GETCO Nadiad letter to DE (Const) Nadiad conveying approval of Concrete mix Design for 66 KV UG cable ECC cable trench work
22-09-2021	GETCO letter for approval for clearance for dispatch of 66 KV feeder Control Room Panel (110v, 1 Bus)

Date	Particulars
08-10-2021	NHAI letter to EE Nadiad intimating for making payment of processing fees for grant of approval to lay UG cable across NH 48
18-10-2021	The Petitioner paid fees to NHAI through GETCO.
01-11-2021	MGVCL issued revised estimate to the Petitioner as per revised scope of work forwarded by GETCO
19-11-2021	NHAI letter of approval to EE Nadiad GETCO for laying UG cable crossing of NH 48.
21-12-2021	MGVCL letter to Virgo regarding work completion as informed by GETCO and actual release of connection after installation of CTs and PTs and submission of Test Report. (Submitted vide affidavit dated 19.09.2025)

3.31. Further, the details of material dispatch instruction from GETCO from time to time is listed as under:

Date	Particulars
22-09-2020	GETCO Dispatch Instruction for 66 KV feeder CRP (110V, 1 Bus)
29-10-2020	GETCO Dispatch Instruction for SF 6 Circuit Breaker
04-01-2021	GETCO Dispatch Instruction for 66 KV CT 300-600/1- 1-1 A 3 Core
05-06-2021	GETCO Dispatch Instruction for Earth Wire 7/3 15mm
17-07-2021	GETCO Dispatch Instruction for 66 KV 90 KN SRI

3.32. It is submitted that from above it is clear that there was delay in getting permissions/ clearances / NOC / approvals from GETCO and various other departments for execution of 66 KV line bays related work for release of connection. The last pending approval was with respect to permission from NHAI for crossing of NH-48 which was received only on 19.11.2021. Immediately upon getting the NHAI permission, the Petitioner had executed balance work of 66 KV line and bays and completed the entire work under supervision of GETCO. Upon getting intimation from GETCO regarding completion of entire project work, MGVCL vide letter dated 21.12.2021 conveyed to the Petitioner regarding physical release of connection after installation of metering CTPT. Accordingly, the connection was physically released on 31.12.2021.

3.33. It is submitted that though the delay in completion of GETCO's scope of work under Option-III was attributable to first and second wave of COVID-19 related situations and its cascading effects and the reasons for delay was not attributable to the Petitioner, the MGVCL had recovered amount of Rs. 2,30,82,881/- from the Petitioner towards bills for monthly minimum charges for 5000 KVA contract demand on deemed release basis for the period from 25.11.2020 to 31.12.2021.

3.34. It is submitted that under the provision of Supply Code, the Commission has jurisdiction and authority to grant extension of time for completion of line work for providing power supply. In the given circumstances and facts of the case as outlined in the present petition that the reasons for additional time requirement beyond 180 days for completion of 66 KV line work was not attributable to the Petitioner and when MGVCL has shown its constraint to grant further extension of time period, the Petitioner has no other alternative but to invoke the jurisdiction of the Commission seeking deemed extension of time up to December 2021 for completion of 66 KV line works on post facto basis and consequent direction to the Respondent No. 1 to refund the amount recovered from the Petitioner towards minimum demand charges for 5000 KVA on deemed release basis for the period from 25.11.2020 to 31.12.2021.

3.35. In support of the case of the Petitioner and in order to understand the true scope and purpose of present petition, the Petitioner has referred relevant provisions of the Electricity Act, 2003 (Act) and Regulations framed thereunder by the Commission, as under:

- **Electricity Act 2003:**

Section 2 (41)

"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"

Section 42 (1)

"42. (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."

Section 43

"43. (1) 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."

…….

(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."

Section 50

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; measures for preventing tampering, distress or damage to electrical plant, or electrical line 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 plants or meter and such other matters.

Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

- **GERC (Electricity Supply Code and Related Matters) Regulations, 2015:**

Procedures to Settle Disputes

1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final.

Licensee's obligation to extend the distribution system and consumer's share in the cost

***4.3** The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.*

***4.32** In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.*

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

***4.33** The demand note shall contain following details:*

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as

amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

***4.38** The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control.*

***4.42** On completion of the work, Licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days.*

- **GERC (Standards of Performance of Distribution Licensees) Regulations, 2023**

Exemptions

***15.2** Adherence to specific standards of performance may be relaxed during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, storm, lightening, earthquake, grid failure, and strike/curfew, lockout, fire affecting the licensee's installations and activities and also under wind or rainy conditions where safety of electrical equipment and personnel is not possible.*

Commission may, under specific circumstances relax provisions of Regulations in general or any specific Regulations for the period specified in its order.

The licensees shall strictly abide by the standards, benchmarks and timelines as specified in these Regulations. This shall however be subject to technical feasibility of the same. In cases where the licensee seeks extension of the timelines due to technical constraints or on any other grounds, due approval has to be taken from the Commission.

3.36. It is submitted that as per the provisions of the Section 42 (1) Electricity Act 2003, it is the duty of Distribution Licensee to maintain efficient, coordinated and

economical distribution system in his area of supply. Further, as per Section 43 (1), it is obligation on part of distribution licensee to provide supply of electricity upon demand made by the occupier of the premises within the period of one month and in case where extension of distribution mains / substation is required, the distribution licensee shall have to supply the electricity within such period as specified by the Commission. Moreover, as per Section 43 (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. The Section 43 (3) provides for consequences for failure of distribution licensee to supply electricity within the time frame specified in Section 43 (1).

3.37. In the present case, the Petitioner has been entrusted the work of 66 KV transmission line and bays for release of 5000 KVA demand, therefore the Petitioner is acting on behalf of GETCO / MGVCL. Accordingly, MGVCL / GETCO may not be absolved from its responsibility of making available the electric plant or electric lines for providing electricity simply on the ground that the responsibility of the same is entrusted to the Petitioner.

3.38. As per the provisions of Clause 4.37 of Supply Code 2015, the timeline for release of connection is within the period of 180 days and in case more time required, the distribution licensee may approach the Commission for extension of time for completion of line/ substation in cases where more time is required.

3.39. Further, under the provisions of Clause 15.2 of GERC (Standard of Performance of Distribution Licensees) Regulations, 2005, provides for relaxation in the timeline during force majeure conditions such as war, mutiny, civil commotion, flood, etc. and also under wind or rainy conditions where safety of electrical equipments and personnel is not possible. The present case of the Petitioner was also covered under the Regulation 15.2 requiring for relaxation in the time limit as the work for erection of GETCO's scope of work had affected and impeded due to COVID-19 pandemic and unprecedented situation due to upsurge in infections during first and second wave.

3.40. It is submitted that akin to the difficulties envisaged in Clause 4.38 of Supply Code 2015 and Clause 15.2 of GERC (Standard of Performance of Distribution Licensees) Regulations, 2005, the Petitioner had also faced difficulties in nature of global pandemic resulting into delay in getting approvals and physical execution of works, over which the Petitioner did not have reasonable control and cannot foreseen such exceptional and unprecedented situations.

3.41. In the background of facts and circumstances of the case as stated hereinabove, the Petitioner requests the Commission for grant deemed extension for completion of GETCO's scope of 66 KV line and bays work up to December 2021 by invoking its regulatory jurisdiction and justice to the Petitioner on the following amongst other grounds:

a. Because immediately after signing of HT power supply agreement with MGVCL on 16.01.2020, the Petitioner acted swiftly and taken immediate steps for selection and appointment of contractor, preparation of drawings for material and foundations and selection of vendors for supply of materials etc for execution of GETCO's scope of work under Option-III. Further, the Petitioner had immediately requested GETCO to arrange a kick off meeting to decide strategy and line of actions for execution of project. The kick off meeting was convened on 16.03.2020 but the Petitioner could not start any work as there was nationwide lockdown due to outbreak of COVID-19 pandemic.

b. The Petitioner could not start any activity till end of May 2020 as offices were directed to be closed. It is only after partial relaxation of lockdown norms in the month of June 2020, the Petitioner could carry out transmission line survey work by 30.06.2020. It is relevant to state that in many villages, the villagers were not allowing the survey team to enter the village being outsider.

c. In the above circumstances, other activities like getting prerequisite approvals / permissions from vendor GETCO such as drawing approvals, finalization etc. was also standstill as COVID-19 related precautionary restrictions were still prevalent even after May 2020 and it was not possible to discuss face to face

and get physical follow up with GETCO officials to understand the procedural and compliance requirements.

d. Because on account of COVID-19 pandemic and quarantine and containment zone related protocols to be followed, the offices (including the office of the Petitioner) were not functioning in full strength. This has delayed prerequisite procedures compliances. The publication of Government Gazette notification was done by GETCO only on 22.10.2020. Similarly, the public notice in newspapers for erection of line and tower was given by GETCO on 22.09.2020. Further, the approval for tower drawings was received from GETCO on 16.12.2020. Thus, evidently, the entire schedule for getting approvals and execution of work was completely disturbed and derailed till partial normalization of situation due to COVID-19.

e. In order to enable after getting approval of tower drawings etc. the Petitioner had requested to approve the original check survey report along with tower schedule. Further, based on route survey report, GETCO vide letter dated 03.03.2021 sought NHAI approval for crossing of 66 KV underground cable line across NH-48 and also sought approval of Forest Department vide letter dated 29.04.2021. It is submitted that the NOC / permission from NHAI and Forest Department requires rigorous follow up, compliances and communications.

f. It is stated that the work of approvals etc. was in full swing after overcoming and passing through a cascading effect of restriction due to COVID-19 pandemic, there was sudden upsurge of COVID-19 infections from Delta variants in the beginning of April 2021. It is undisputed that infection from Delta variant was much contagious having higher mortality rate as compared to first wave of infection. This had created atmosphere of complete chaos and fears. Further, due to increased requirement of Oxygen for medical purpose due to infection from Delta variant, there was oxygen supply restriction for industrial purpose leading to delay in supply of tower and line materials.

g. It is further to state that the infection under second wave was so contagious that

officers / personal of the Petitioner, its contractor, officers of GETCO caught infection leading to delay in getting approvals and execution of physical work of 66 KV line and bays.

h. The situation even during second wave of COVID-19 was also uncontrollable in nature and prevailed up to end of June 2021. Though application for approval of original check survey report was submitted to GETCO on 07.01.2021, the approval for the same was delayed due to compliance requirement and could be got only on 28.06.2021 from GETCO. Thus, in any event, it was not possible for the Petitioner to commence the physical work before end of June 2021.

i. The second wave of COVID-19 pandemic had also impacted the compliance requirement to get NOC / Permission from NHAI and Forest Department. It is only after June-2021, the Petitioner could approach and follow up with NHAI and Forest Department for meeting compliance requirement under the application made by GETCO vide letter dated 03.03.2021 and 29.04.2021, respectively. It is stated that after meeting the compliance requirements, the approval from Forest Department was received on 06.09.2021 and the NOC / Permission from NHAI was received on 19.11.2021.

j. Because only after getting permission from NHAI, Forest Department and balance approvals from GETCO, the Petitioner could complete the 66 KV line and bays work on 21.12.2021.

k. Because the time period involved in erection of 66 KV line and bays as per GETCO's scope of work were passed through severe phases of first and second wave of COVID-19 pandemic which had impeded the approval and physical progress of the project.

l. Under the situation when entire country and for that matter entire world was witnessing upsurge in COVID infection and medical emergencies, it was not possible to comply the procedural requirements, to follow up and get approvals / NOC / Consents for various departments in timely manner.

m. Because considering the prevailing situation during first and second wave of COVID-19, GETCO, NHAI and Forest Department were not allowing any person for execution of physical work. This has led to delay in commencement of physical execution of work by end of June 2021. Thus, considering overall prevalent situations during first and second wave of COVID-19 halting the progress of the project, the 71 days' time limit extension granted by MGVCL is inadequate and not capturing the entire impact on the progress of the project due to COVID-19 pandemic being exceptional and uncontrollable in nature.

n. The Petitioner also relies on the Office Memorandum dated 13.05.2020 issued by Ministry of Finance, Government of India to consider for extension of 3 to 6 months' time in completion of work under the contract without imposition of any cost or penalty on account of COVID-19 Global pandemics. Considering the overall impact of COVID-19 pandemic during first and second wave, the Petitioner requests the Commission to grant extension of time limit up to 31.12.2021 for completion of 66 KV line and bays works.

3.42. The Petitioner clarifies that it does not have any claim / grievances against MGVCL / GETCO in regard to time taken for procedural requirement by MGVCL / GETCO or any other departments due to prevalent situation of COVID-19 pandemic. However, in the given facts and circumstances of case, when the delay was not attributable to the Petitioner, the Petitioner by way of present petition seeking intervention of the Commission for considering deemed extension of time limit for completion of work on post-facto basis.

3.43. It is submitted that as per the provisions of Clause 4.37 of Supply Code 2015, the concerned distribution licensee is, (i) entitled for extension of time for completion of line/ substation work, (ii) shall not be held responsible for delay in completion of work in specific cases over which the licensee has no reasonable control. Therefore, it is unjustified, unreasonable and illogical to content that only distribution licensee is eligible for additional time and not to be held responsible for the delay for reasons in nature of beyond reasonable control but when the

applicant / consumer undertakes the same work on behalf of licensee and faces the difficulties which also beyond the reasonable control of the applicant, the applicant is not entitled for any relief. Contrary to this, the Petitioner is liable to pay demand charges and monthly minimum charges on deemed release basis.

3.44. In the present case, though the responsibility of creation of supply mains is vested with the Licensees, the Petitioner had been entrusted the responsibility of creation of 66 KV transmission line and bays, from far-off Matar Sub-station, which is not expertise domain of the Petitioner. Further, time period involved in the completion of works had passed through severe first and second wave of COVID-19 pandemic infections. Under severe situation of COVID-19 global pandemic, GETCO and other Government Department / private parties were not allowing physical execution of work to the Petitioner apart from delay in getting approvals and permissions.

3.45. It needs to be considered that it is the responsibility of the licensee (MGVCL/GETCO) to make available the required electrical network for providing power supply. However, in the present case, the Petitioner had been entrusted to undertake the work of 66 KV line and bays under Option-III, on the behalf of licensee. The Petitioner had shown its bonafide by acting swiftly. However, there had been delay in completion of 66 KV line and bays works for the reasons related to COVID-19 global pandemic and upsurge of infections during first and second wave and evidently the reason for delay is not attributable to the Petitioner.

3.46. It is further submitted that the Supply Code Regulations provides for specific dispensation only to the licensees to seek extension of time from the Commission in case there is delay in completion of work of line/substation. However, such dispensation is not available under Clause 4.33 (2) of Supply Code when the work is undertaken by the applicant on behalf of licensee even in case of genuine difficulties.

3.47. It is submitted that (i) the Petitioner has executed the line works under the Section 164 permission of GETCO, (ii) all the RoW proceedings and approvals also in name of GETCO, (iii) MGVCL / GETCO has recovered supervision charges from the

Petitioner for supervision of work, (iv) the physical execution of work was carried out under supervision of GETCO, and (v) the ownership of line assets is also with the GETCO. Given the facts, when work is undertaken by the consumer / applicant on behalf of licensee, the applicant is to be treated similarly entitling the applicant to the relief otherwise available to the licensee under Clause 4.37 of Supply Code.

3.48. The Petitioner has submitted that the provisions of 15.2 of Standard of Performance Regulations provides for relaxation in the Standard of Performance in the force majeure situation. The present case of the Petitioner was squarely covered by the provisions of Regulation 15.2 entitling for relaxation and extension of time limit for the period for which work was affected due to COVID-19 Global pandemic related force majeure situations specifically during the period of first and second wave of infections and its cascading effects impeding the progress of the work and delay in getting approvals / NoC etc.

3.49. It is submitted that the Clause 15.2 of GERC (SOP) Regulations clearly indicates that the timeline provided in the SoP Regulations is not sacrosanct and subject to relaxation / extension in a special circumstance such as Force Majeure event or time period attributable to Local Authority leading to non-performance.

3.50. Further, the use of word 'such as' in the clause 15.2 of the SoP Regulations shows that events mentioned at Clause 15.2 are only illustrative and not exhaustive in nature. Meaning thereby, there are other situations / events which is uncountable in nature can also be considered for extension of time period in the benefit of performing party. Such as the circumstances involved in the present case wherein delay in final execution of work under Option-III was severely impeded due to upsurge of infections during the first and second wave of COVID-19 Global pandemic. Therefore, in accordance with the provision of GERC SoP Regulations, the time period for completion of works under Option-III deemed to be extended / relaxed up to December 2021 to do end justice to the Petitioner.

3.51. It is submitted that the Petitioner had already been suffered heavily due to delay in power supply after making huge investment for the plant. Over and above to this

agony, MGVCL, as a pre-condition for physical release of connection, had recovered huge amounts towards bills for minimum demand charges for 5000 KVA demand on deemed release basis for the period from 25.11.2020 to 31.12.2021 even though the reason for delay is not attributable to the Petitioner.

3.52. The objectives of Regulations/Act in specifying time limit for providing power supply is for the benefit of consumers so that distribution licensee may not take unreasonable time to make available power supply. Thus, said provisions are to be interpreted in the interest of the consumers only. In the present case, the said Standard of Performance is acting counterproductive against the Petitioner which cannot be the objective of Act/ Regulations.

3.53. It is submitted that as per the provisions of the Supply Code, the Commission has jurisdiction and authority and vested with inherent powers/power to relax or grant extension of time limit.

3.54. In this regard, it is worthwhile to refer relevant regulations of GERC Supply Code, 2016 which read as under:

Power of Relaxation and Power to Remove Difficulties:

9.21. The Commission may, in public interest and for reasons to be recorded in writing relax any of the provisions of this Code.

9.22. If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.

Savings of Inherent Power of the Commission

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such Orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

9.24 Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

9.25 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no codes have been framed, and the Commission may deal with such matters, powers and functions in a matter it thinks fit.

3.55. It is submitted that in terms of provisions of supply code 9.21-9.22, the Commission has power to relax and power to remove difficulties. Similarly, as per Supply Code 9.23, the Commission has inherent power to pass such orders as may be necessary for end of justice to meet. Further, as per Code 9.24, nothing shall bar the Commission from adopting a procedure which is at variance with any of the provisions of Supply code, if deems necessary. Moreover, as per the code 9.25, there shall be no bar for dealing with any matter or exercising any power under the Act by the Commission, for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

3.56. The Petitioner has submitted that as per the above provisions of GERC Supply Code, the Commission has power to relax and power to exercise its regulatory jurisdiction to grant deemed time limit extension on post facto basis or otherwise and grant consequent relief thereto as sought in the present Petition.

3.57. It is submitted that the issue involved in the matter is relating to extension of time for completion of 66 KV line works under the provisions of Supply Code and therefore the Commission has jurisdiction to decide issue considering the merit of the case.

3.58. In the circumstance enumerated here in the present Petition and taking into account that the requirement of additional time period was not attributable to the Petitioner, the Petitioner requests the Commission to invoke its regulatory jurisdiction/power to relax and extend the time limit for completion of work for

period for which work was delayed due to reasons beyond reasonable control of the Petitioner. Accordingly, the Petitioner requests the Commission to allow deemed extension in time for completion of line work up to December 2021 on post facto basis and grant consequent relief thereto.

3.59. It is submitted that in support of the Petitioner's prayer seeking extension of time period in execution of work, the Petitioner would like to rely and refer the Suo-Moto judgment dated 23.09.2021 passed by Hon'ble Supreme Court for extension of limitation up to 03.10. 2021 for taking legal actions due to the outbreak of COVID-19 pandemic in March, 2020. The Hon'ble Supreme Court, vide order dated 23.03.2020, directed extension of the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. The operative part of judgment dated 23.09.2021 read as under:

> *"Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions: -*
>
> *II. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.*
>
> *In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.*
>
> *The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of 5 WWW.LIVELAW.IN LL 2021 SC 498 proceedings.*
>
> *The Government of India shall amend the guidelines for containment zones, to*

state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

3.60. It is submitted that in terms of above judgment of Hon'ble Supreme Court, the limitation period is to be counted from 03.10.2021. In present case, the 60 days' notice period is to be counted from 03.10.2021. Thus, in any case, the deemed release of connection cannot be considered before December 2021.

3.61. The Hon'ble Supreme Court has passed the above order in exercise of powers under Article 142 read with Article 141 of the Constitution of India. The Section 142 of Constitution of India provides that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

3.62. Further, Section 141 of Constitution of India stipulates that the general principles laid down, by the Supreme Court are binding on each individual including those who are not a party to an order.

3.63. The above judgment of Hon'ble Supreme Court is having general applicability to all concerned authorities / court in regard to consideration of extension of limitation period provided under the statute. Thus, the judgment of Hon'ble Supreme Court provides for deemed extension of limitation period for filing of appeal. The Petitioner respectfully submits that above judgement of Hon'ble Supreme Court is squarely applicable in the case of the Petitioner seeking for deemed extension of time period up to December 2021 for completion of work for release of 5000 KVA EHV connection.

3.64. Without prejudice to the above, as an alternate submission, the Petitioner has

submitted that the action of MGVCL to impose condition of Standard of Performance on the Petitioner is without any merit and not justified. It is submitted that the title of the Regulations itself suggests that Standard of Performance Regulations is only for Distribution Licensee. The objective of regulations is to protect the interest of consumers to make available consumer related services by Distribution Licensees in a timely manner. The same cannot be applied at the detriment to the consumer.

4. The Respondent No. 1, MGVCL, vide affidavit dated 20.08.2022, submitted its reply as under:

4.1. It is submitted that MGVCL has already issued the Notice dated 16.07.2020 under the Clause 4.3 of GERC Electricity Supply Code, 2015 for completion of work by the Petitioner within 60 days under Option III and avail the power supply within 60 days from the date of notice. It was further intimated by MGVCL that in case of failure to do so, the liability to pay demand charges and minimum monthly charges considering contract demand of 5000 KVA under HTP-I tariff would arise.

4.2. It is submitted that before dealing with the contents of the Petition, MGVCL is placing the following submissions:

4.3. The preliminary objection of MGVCL is the issue of jurisdiction and admissibility of present matter. It is submitted that the issues raised by the Petitioner will lie within the ambit of Section 42(5) to 42 (8) of the Electricity Act, 2003. The submission of MGVCL is that as the dispute is between a consumer and distribution licensee, the dispute would normally fall within the jurisdiction of the Consumer Grievance Redressal Forum (CGRF) constituted under Section 42(5) to (8) of the Electricity Act, 2003 read with the Regulations framed by the Commission. The only exception is if there is any specific power to the Commission under the Act or the Regulations. In absence of any specific provision, the jurisdiction would fall to the Consumer Grievances Redressal Forum (CGRF).

4.4. It is submitted that the Supply Code under Regulation 4.86 recognizes the

jurisdiction of CGRF which is quoted as under:

> *"4.86 If the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance."*

4.5. It is submitted that the CGRF is a specialised forum for dealing with grievances of consumers and the Petitioner is a consumer who is seeking relief against distribution company. When there is a specialised forum provided for redressal of grievances of consumers, no other forum has jurisdiction.

4.6. It is submitted that the main issue in the present Petition is related to the billing dispute between the distribution company and the consumer. Merely because the Petitioner is constructing the transmission line does not mean that it is not a consumer of the distribution licensee. In fact, the Petitioner is constructing the transmission line only due to its status as a consumer and not as a contractor or otherwise of GETCO.

4.7. Though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed.

4.8. Without prejudice to the preliminary objection on admissibility and jurisdiction, MGVCL has submitted its reply on merits also.

4.9. The Respondent No. 1 has submitted that the Petitioner had established a new manufacturing facility unit for manufacturing of aluminium sheets and coils which was falling under the supply jurisdiction of MGVCL. On 31.07.2019, the Petitioner applied to avail new connection having demand of 5000 KV for which 66 KV voltage level has to be laid down.

4.10. The Additional Chief Engineer (R&C), GETCO forwarded an estimate on 04.10.2019 to MGVCL under Option-III which involved the erection of 4.50 km 66 KV Double

Circuit Panther tower line from 66 KV Matar substation of GETCO with Single Circuit stringing on DOG conductor and partly laying of 0.20 km 66 KV, 630 mm2 XLPE power cable with aluminium corrugated sheath and erection of 1 no of 66 KV feeder bays each at 66 KV GETCO Matar substation and at 66 KV substation at Petitioner's site.

4.11. On 01.11.2019, MGVCL had issued an estimate to the Petitioner under Option-III and consequently, the Petitioner deposited the estimate amount to MGVCL on 31.12.2019. Further, as per the terms of the estimate, a HT Power Supply Agreement (herein after referred to as PSA) dated 16.01.2020 was signed between the Petitioner and MGVCL.

4.12. The Electricity Supply Code as well as Licensee power to recover Expenditure incurred in providing supply and other Miscellaneous charges Regulations recognize the option of the Applicant getting the work done itself (Option-III), as under:

a. Electricity Supply Code:

"4.33.....
.....
Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done

on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable."

b. Licensee power to recover Expenditure incurred in providing supply and other Miscellaneous charges Regulations:

"7. Manner of Accounting and Adjustments
…….
(ix) If the work is to be done by the developer or the applicant, Licensee shall charge 15% of the estimate as supervision charges to be deposited before work begins. In other cases, Licensee shall commence the work after the applicant has deposited the full amount of the estimate."

4.13. Therefore, the Option-III is a valid and legal mechanism under the Regulations framed by the Commission.

4.14. It is submitted that no Letter or communication was ever received from the Petitioner by MGVCL of any protest or objection with regard to the Option-III or any request for any other Option. The Petitioner was well aware of the Regulations and their implications.

4.15. The Petitioner had agreed on Option-III and all parties had proceeded on the said basis. Therefore, having accepted the Option-III and acting under the said Option, it is not open to the Petitioner to raise any contention to the contrary at this stage. The Petitioner is raising this issue now only because of its own delays. Such contention is clearly an afterthought to avoid the liability as provided in the Regulations.

4.16. It is further submitted that on 17.01.2020, MGVCL intimated to GETCO regarding the payment of estimate by the Petitioner and also about the execution of the PSA on 16.01.2020. Further vide letter dated 24.01.2020, GETCO informed the Petitioner to finalize the contractor and vendor from the approved list of vendors

for the execution of project. In the said Letter dated 24.01.2020, GETCO had also informed the Petitioner that it had to complete the work within 180 days to avoid billing of the minimum charges by the Distribution Company, MGVCL.

4.17. After the appointment of Contractor/Vendor, the Petitioner vide letter dated 06.03.2020 requested to GETCO for the kick of meeting. Subsequently, vide letter dated 18.03.2020, GETCO approved the appointment of HEC Infra as contractor.

4.18. The Kick off meeting with GETCO was held on 16.03.2020 wherein also Petitioner was informed of the work to be done by the Petitioner within 180 days. Even at this stage or at any time until filing of the Petition, the Petitioner had not raised any issue about Option-III.

4.19. It is further contended by the Petitioner that for the execution of 66 KV line, many approvals and permissions from different Government authorities were required and due to COVID-19, there was a nationwide lockdown from 24.03.2020 to 31.05.2020.

4.20. It is submitted that MGVCL had marked a copy to Petitioner with the information that the work should have been completed within 180 days from the date of signing of HT PSA and due to the failure of the Petitioner to complete the same, a notice dated 16.07.2020 was issued intimating that the Petitioner has to complete the GETCO's scope of 66 KV line work under Option III and avail the power supply within 60 days from the notice. It was also intimated to the Petitioner that on the completion of the 60 days, they are liable to pay demand charges and minimum monthly charges.

4.21. Even at this stage, the Petitioner had not raised no objection about Option-III despite being intimated of the timelines and the consequences. Thus, the Petitioner had accepted the Option-III.

4.22. It is submitted that there was a nationwide lockdown imposed by the Government of India due to COVID-19 in 2020 for a period of 71 days. This was an

unprecedented situation and there was a legal restriction on movement of people and goods. In view of the above, MGVCL considered an exemption of the period of 71 days of nationwide lockdown from the period of 180 days and intimidated that the Petitioner will be liable to pay the demand charges and monthly minimum charges from 25.11.2020.

4.23. The Regulation 4.33(2) of the Supply Code, 2015 deals with the case of the applicant for connection choosing to get the work done on its own.

4.24. It is further submitted that the Supply Code requires the applicant to get the work done within the time frame specified in the Standard of Performance of Distribution Licensee Regulations. The release of bulk power connections under Regulation 9.3 provides that for loads above 2500 kVA - the release of connection is within 180 days after completion of Demand Notice / formalities (Execution of necessary formal agreement) by prospective consumers:

"9.3 Bulk Power connections are to be released, in time bound manner as detailed below:

Sl. No	***ITEM/ACTITIVITY***	***TIME LIMIT (Within)***
1	***Loads up to 100 kVA /100 kW***	
	Issue of Demand Notice	*Within 10 days of receipt of application.*
	Release of connection	*Within 20 days after compliance of formalities/ demand notice, if no augmentation is required otherwise 60 days.*
2	***Loads above 100 kVA/100 kW and up to 4000 kVA for TPAL, loads above 100 kVA and upto 2500 kVA for TPSL and GEB***	
	Issue of feasibility clearance	*Within 7 days of receipt of application.*
	Issue of Demand notice	*Within 15 days of receipt of application.*
	Release of connection	*Within 45 days after compliance of Demand Notice/formalities by prospective consumers.*
3	***Loads above 2500 kVA for GEB and TPSL and load above 4000 kVA for TPAL***	
	Issue of feasibility clearance	*Within 15 days of receipt of application.*

	Issue of Demand notice	*Within 30 days of receipt of application.*
	Release of connection	*Within 180 days after completion of Demand notice/ formalities by prospective consumers.*

"

4.25. Accordingly, the Petitioner was required to complete the work by 180 days from 16.01.2020. However, the Petitioner failed to do so.

4.26. MGVCL vide Letter dated 16.07.2020 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days. If the work is not completed on expiry of 60 days' notice period, as per the Regulations, Minimum Billing as per Contract Demand would have to be commenced.

4.27. It is submitted that the issue of whether there is any power to grant extension under the Regulations to a consumer/applicant has to be considered. Though there is a provision in Supply Code for extension of time to the licensee, there is no such provision Consumer/Applicants. Even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events.

4.28. It is submitted that the requirement of payment of minimum billing of enhanced contract demand is necessary beyond a certain period as the Distribution Company is obliged to make power arrangements to be ready to supply power. Such burden should not be passed on to other consumer of the distribution companies. Therefore, such payment of minimum billing is provided for in the Supply Code 2015.

4.29. It is submitted that the Option-III is a valid option under the Regulations framed by the Commission and the requirements of Option-III are clear from the Regulations itself.

4.30. It is further submitted that there was no compulsion on the Petitioner to accept only Option-III. At no time, did Petitioner ever write or otherwise communicate to MGVCL of any issue or objections or protest on Option-III. The Petitioner has not placed on record any evidence or even assertion that it sought the Option-I and was denied the same. The Option-III of the applicant doing the work themselves is recognized under the Regulations of the Commission and there is no bar in the applicant carrying out the work themselves. Therefore, the fact that Option-III was offered to Petitioner was not illegal or otherwise incorrect. If the Petitioner had an issue, it should have immediately objected or communicated its request for other options. However, this was not done. The Petitioner had not objected to the same and had voluntarily agreed to the said Option. The Petitioner has not placed any request for the work to be carried out by GETCO/MGVCL. There is not even a single letter/correspondence by Petitioner seeking any other option. In fact, the Petitioner proceeded to deposit the estimate on 31.12.2019 i.e. 2 months after the issuance of estimate and further signed the Agreement with MGVCL on 16.01.2020.

Once the Petitioner has accepted and proceeded with Option-III and chosen not to challenge the Option-III, there cannot be any contention on the issue of Option III being given or exercised. The Petitioner having accepted to carry out the work, it has also accepted all the consequential obligations.

4.31. In the letter dated 24.01.2020, GETCO had informed the Petitioner of the requirement to complete the work within 180 days to avoid payment of minimum demand charges to MGVCL.

4.32. It is submitted that the contention of the Petitioner that they have acted swiftly in the appointment of vendor/contractor is wrong and denied. GETCO vide letter dated 24.01.2020 informed the Petitioner to finalize the Contractor and it took almost one month for them to inform back GETCO about the appointment of M/s HEC Infra Project Ltd. as contractor/Vendor.

4.33. It is denied that the Petitioner immediately upon appointment of Contractor wrote

to GETCO for arranging kick off meeting. The letter was written only on 06.03.2020 as against the letter intimating appointment written on 24.02.2020.

4.34. It is submitted that the Petitioner has sought to provide the list of permissions which are required to be taken from various departments. However, it is submitted that the responsibility of taking such permissions was of the Petitioner and the Petitioner is deemed to be aware of the same while accepting the Option-III and agreeing to complete the work on its own. In any case, the contentions that they are time consuming process or the alleged efforts required for the same is not admitted.

4.35. It is denied that the Petitioner was making all efforts to get approvals. In any case, the period of nationwide lockdown has been considered for exemption subsequently.

4.36. It is further submitted that the MGVCL has complied with GERC Supply Code 2015 and sent a default notice under 4.3 on 16.07.2020 intimating the Petitioner to finish within the period therein. It was further conveyed by MGVCL that upon the completion of further 60 days, the Petitioners are liable to pay demand charges and minimum monthly charges as per the contract demand.

4.37. It is submitted that the Petitioner itself has stated that the MGVCL has considered exemption of 71 days from the period for the execution of work considering the nationwide lockdown by the Government of India as an extraordinary and unprecedented situation. The Petitioner is liable to pay the demand charges and monthly minimum charges from 25.11.2020. It is submitted that MGVCL craves leave to refer to the same for their true scope and interpretation.

MGVCL had also specifically intimated to the Petitioner about the requirement of completion of work within 180 days and consequences of delay. The Petitioner was well aware of the timelines and MGVCL had considered the exemption for the lockdown period without any dispute.

4.38. It is submitted that the Petitioner is well aware of the Regulations of the Supply

Code, 2015, as well as the conditions for the extension of timeline as well as they have been intimated time and again that they have to get the work done within the time frame. MGVCL has acted as per the law approved by the Commission.

MGVCL has considered the period of 71 days because there was a nationwide lockdown imposed by the Government of India and there was a legal restriction on movement of people and goods. The alleged cascading effect after the period of lockdown cannot be considered by MGVCL nor are they admitted. MGVCL is not empowered to grant such extensions nor is it competent to consider the alleged justification or reasons for delays. The Office Memorandum dated 13.05.2020 is pertaining to Rule 171 of General Financial Rules 2017 Guidelines and is not a directive to MGVCL or the Commission. Even otherwise, the alleged issues of force majeure etc. cannot be considered by MGVCL as this is not a contractual issue but the time period is imposed by the Commission by way of the Regulations.

4.39. It is denied that the permissions were affected due to COVID-19 and the Petitioner has not provided any supporting documentation or proof thereof. Even assuming but not admitting that the Commission can consider extension of time, the Petitioner is required to substantiate the justification for the same. It is further submitted that it was the obligation of the Petitioner to obtain the relevant permissions and the Petitioner should have acted timely to attain the same.

4.40. It is denied that there was delay by GETCO and the GETCO may provide details of the same. The Petitioner has not demonstrated when the approvals were sought and when it was conveyed.

4.41. It is reiterated that the delay is because of the actions on the part of the Petitioner and MGVCL acted as per the provisions of law. The period for completion of work was 25.11.2020 and therefore the alleged second wave in March 2021 is not relevant. Further, there cannot be extension of time for delays by the Petitioner itself. The intimation of 180 days from 16.01.2020 is as per the Regulations and which had already informed to the Petitioner earlier. The payment was made by Petitioner in response to the estimate received. It is submitted that MGVCL cannot

grant extension. If it all there is a provision for grant of extension, the same is to be done by the Commission.

4.42. It is reiterated that the Petitioner has not completed work within 180 days of the Agreement. The approvals of drawing etc are part of the 180 days period granted and therefore there can be no claim in this regard. It is denied that the Petitioner was acting on behalf of GETCO.

There is no provision in the Supply Code for grant of extension of time to the consumer for carrying out the work. If it all there is a provision for grant of extension, the same is to be done by the Commission and not by MGVCL. Even in such scenario, the Commission is to be satisfied that there was a justifiable delay and the Petitioner had not contributed to the delay in any manner.

It is submitted that the Petitioner cannot expect an immediate response and approvals by Authorities and claim that any time taken by authorities is causing delay. It is reasonable and known that the authorities would take some reasonable time to process any request on behalf of the Petitioner. In this regard, MGVCL craves reference to decisions of the Hon'ble High Court in NTPC Vidyut Vyapar Nigam Ltd v. Precision Technik Pvt. Ltd 2018 SCC OnLine Del 13102 and Pasithea Infrastructure Ltd. vs. Solar Energy Corporation of India & Anr. 2017 SCC OnLine Del 12562 (Delhi High Court)

The Petitioner had taken 1.5 years to complete the work instead of 6 months.

4.43. It is further denied that the delay was not attributable to Petitioner. In relation to the delay due to nationwide lockdown imposed by the Government of India, the exemption of period of 71 days for the period of lockdown has already been allowed by MGVCL. However, this was an unprecedented situation wherein there were legal restrictions on movement. In general, it is not within the power of MGVCL to grant time extension but if at all, there exists any power for extension, the same is within the power of the Commission. Even otherwise, the same can only considered if the Petitioner has demonstrated based on supporting documents and evidence that the

delay was not attributable to the Petitioner.

MGVCL had validly recovered the amount as per the Regulations. Even as per the case of the Petitioner (without admitting to the same), the jurisdiction for extension lies with the Commission and since there were no orders of the Commission, MGVCL cannot be faulted for recovering the amounts.

4.44. It is submitted that it is the submission of the Petitioner that the Commission has the jurisdiction and authority to grant time extension under the Supply Code. However, the Petitioner has not referred to any provision in the Supply Code. In any case, it is clear that MGVCL has acted as per the law. It is not under the authority of the Distribution Company to grant time extensions. It is further submitted that there is no specific provision in the Regulation for extension of time for consumer/Applicants. However, even assuming that the extension can be granted, this is not a fit case for extension. The contentions of the Petitioner are denied.

4.45. MGVCL craves reference to Section 42 and 43 of the Electricity Act, 2003 for its true interpretation and scope and the interpretation of the Petitioner is not admitted. It is submitted that the Regulations as framed by the Commission provide for the consumer to do the work under Option-III and this option was accepted by the Petitioner. It is not open to the Petitioner to now seek to rely on the duty of the distribution licensee when the Petitioner has delayed its scope of work.

4.46. The Regulations of the Commission recognize that the work can be carried out by an Applicant themselves. In this case, the Petitioner had agreed to Option-III i.e., to carry out the work themselves. The Petitioner cannot now claim that the MGVCL/GETCO should have carried out the work or the Petitioner is acting on behalf of MGVCL/GETCO. The Petitioner is obligated for the completion of work and GETCO is only responsible for the supervision. MGVCL is ready and willing to supply electricity but is unable to do so because the Petitioner has not completed the work. MGVCL cannot be held responsible for carrying out the work once the responsibility has been accepted by the Petitioner. The contentions of the Petitioner are without any basis or merit.

4.47. The Supply Code recognizes the work being carried out by Applicant and further for consequences if the work is not completed within 180 days. MGVCL is acting in accordance with Regulations. Regulation 4.37 of Supply Code is with reference to the Distribution Licensee and there is no such similar provision for consumers.

4.48. It is submitted that the GERC (Standard of Performance of Distribution Licensees) Regulations 2005 does not provide for time extension for consumers/Applicants to carry out the work. Similarly, the Supply Code also provides for extension of time for licensees but not for consumers. Therefore, there is no specific provision for consumers to claim extension of time.

The alleged difficulties faced by the Petitioner is not admitted.

4.49. It is submitted that there is no provision for deemed extension. Even otherwise, there is no provision for extension of time to consumers to carry out their scope of work. The contention of regulatory jurisdiction is misconceived. The Commission cannot act contrary to the Regulations which are binding on the Commission.

Even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events. In the present case, 71 days was already considered by MGVCL with respect to nationwide lockdown.

4.50. MGVCL has submitted that it is rightly submitted by the Petitioner that they do not have any claim against the MGVCL/GETCO. However, it is submitted that there was no delay by MGVCL. The alleged delay by GETCO or other departments is not admitted. MGVCL has acted as per the regulations and guidelines approved by the Commission. There is no concept of deemed extension.

4.51. It is submitted that the Petitioner is seeking to raise issues on the Supply Code which are notified and binding. MGVCL has acted as per the Supply Code and there

is no error in the actions of MGVCL and in terms of the Supply Code, the Petitioner is liable to pay minimum demand charges.

4.52. The Petitioner cannot at this stage raise issues on the responsibility for the work to be completed by the Petitioner. The Petitioner had willingly opted and accepted Option-III. It was never disputed, protested or contested by the Petitioner that they do not wish to complete the work. The Petitioner never requested for any other option. MGVCL had not ever obligated the Petitioner to accept only Option-III. The Petitioner had signed the Agreement willingly with Option-III and cannot now raise any issue. The HT Agreement entered into between the parties was mutually agreed upon and now, at this stage, when the Petitioner failed to do the same in the stipulated time frame, they cannot ask for the refund of demand charges when MGVCL has acted as per the Regulations approved by the Commission.

The alleged delays claimed to be due to COVID-19 is not accepted and the same has already been dealt within hereinabove.

4.53. It is reiterated that the Petitioner cannot at this stage raise issues on the responsibility for the work to be completed by the Petitioner or claim that it was on behalf of the licensee. The Petitioner had accepted the Option-III and failed to complete its scope of work within the prescribed time and as an afterthought is raising issues to avoid the consequences which cannot be permitted. It is that the Petitioner had acted swiftly or that the delay is not attributable to the Petitioner.

In any case, even assuming but not admitting that there can be any consideration of extension of time for Applicants, the same can only be by the Commission and even on merits, the Petitioner has to demonstrate the reasons for delay and substantiate the same with supporting documentation and evidence. The present case is not a fit case for such extension, even if they can be granted.

4.54. With The Petitioner itself has admitted that there is no provision for Petitioner as an applicant to seek extension of time. It is denied that the Petitioner as applicant can be treated similar to licensee. The Supply Code treats the licensee and applicant

(being consumer) differently and it cannot be assumed that the Applicant can seek extension when there is no specific provision for the same.

4.55. MGVCL craves reference to the Standard of Performance Regulations. It is reiterated that the provisions of Standard of Performance Regulations applicable to the distribution licensees cannot be applied to a specific reference and the applicants without incorporation. It is denied that the Petitioner's case is covered under Regulation 15.2. Further, the present issue is governed by Supply Code wherein the consequence for delay in completion of scope of work by the Applicant is provided.

Even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events. In the present case, 71 days was already considered by MGVCL with respect to nationwide lockdown. The Petitioner has not justified the alleged force majeure situation. Mere existence of COVID-19 is not sufficient unless the Petitioner can demonstrate the impact on its scope of work and that there was no other cause of delay.

4.56. It is submitted that MGVCL is ready to supply electricity and it is the Petitioner who has not completed the scope of work. MGVCL is entitled to the recovery of minimum demand charges as per the Regulations and this is necessary since MGVCL had made necessary arrangements to ensure supply to the Petitioner and other consumers should not bear the burden of the same. Further, the Petitioner was fully aware of the minimum demand charges in case of failure of completion of work in stipulated timeframe. It is denied that the reason for delay is not attributable to the Petitioner.

4.57. It is submitted that the Supply Code notified by the Commission specifically incorporates the timelines provided for distribution licensees to apply to Applicant who do the work itself. It is well settled principle that the Regulations are binding. The contention of the Petitioner is therefore baseless and without merit. The

objective of timelines has to apply even to applicants who do the work themselves as the distribution licensees have to be ready to supply power at a particular date and in case the Applicant does not take power, it still has to compensate the distribution licensee. The provision in the Regulations is not for benefit of the consumers but to ensure that the consumer completes the work within time. Further, it is necessary for the consumer to bear the charges since the distribution licensee would have made necessary arrangements to ensure supply to the consumer and the other consumers of distribution licensee should not bear the burden of because the Petitioner was not ready. Such payment of charges is not for benefit of the Applicant but for the benefit of the licensee and in turn other consumers.

4.58. It is submitted that the present case is not a fit case for exercise of power to relax or remove difficulties. Further it is submitted that the powers referred in 9.23 to 9.24 are procedural in nature and do not affect the substantive rights. Further, Regulation 9.25 is for situation where no code is framed which is not the case here. In any case, the inherent powers cannot be exercised contrary to the Regulations. This has also been held by the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498.

It is well settled principle that the inherent power cannot override express provisions of law (Arjun Singh -v- Mohindra Kumar, (1964) 5 SCR 946: AIR 1964 SC 993, Gram Panchayat v. Lokesh Devi, 1998 SCC OnLine P&H 1520: (1999) 4 RCR (Civil) 313 (2): PLR (1999) 122 P&H 741, Ram PrakashAgarwal and Anr v. GopiKrishan and Ors (2013) 11 SCC 296, Power Grid Corporation of India Ltd Corporate Office -v- Green Infra Renewable Energy Limited, 2017 SCC OnLine CERC 261.

It is submitted that the above judgments clarify that a provision barring exercise of inherent power need not be express but also may be implied. The Central Commission in case of Power Grid has also held that the difficulties arising in absence of substantive provisions cannot be addresses under inherent powers which are for procedural infirmities:

"84.....From the above two judgments, it emerges that the inherent powers can be exercised in order to address the procedural infirmities in the CPC in order to achieve the ends of justice and abuse of the process. ***In the present case there are no procedural infirmities in the Conduct of Business Regulations which prevents the Commission to address the issue of connectivity to the applicants who have been selected as successful bidders in SECI conducted bids. The difficulties have arisen in the absence of substantive provisions in the Connectivity Regulations to address the issue of connectivity in of wind power case generators/developers keeping in view the peculiarity of wind energy sector. In our view, inherent power of the Commission cannot be invoked under Regulation 111 of the Conduct of Business Regulations to grant relief to the Petitioner****."*

4.59. It is denied that there is any provision for grant of extension. It is reiterated that there cannot be any regulatory jurisdiction or inherent power contrary to the Regulations. If the jurisdiction is not otherwise provided to the Commission, the same cannot be exercised by way of inherent powers. In any case cannot affect substantive rights of parties (Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1 and Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498.

The power to relax cannot be exercised in the manner sought by the Petitioner. It is further submitted that when the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The non licensees cannot then under power to relax seek to act contrary to the regulations.

It is reiterated that even assuming but not admitting that there can be any grant of extension, the present case is not a fit case for extension. It is denied that the delay was not attributable to the Petitioner. It is denied that even with consideration of the claim of the Petitioner as to the reason of delay, the extension can be granted. The Petitioner is seeking extension for more time than contemplated by the alleged reason for delay. The alleged financial loss claimed by the Petitioner is in view of the provisions in Regulations and therefore cannot be considered. On the other

hand, MGVCL being ready to supply and not supplying deserves to be compensated.

4.60. It is submitted that the Order dated 23.09.2021 relates to extension of limitation for filing petitions, appeals etc. before the Courts and does not in any manner provide for any extension for completion of work for projects / transmission lines etc. The Petitioner has completely misinterpreted the Order which specifically provides that it relates to "computing the period of limitation for any suit, appeal, application or proceeding". The 180 days for completion of work is not a limitation for filing any suit, appeal, application etc. Such Orders of the Hon'ble Supreme Court are not applicable to the present case at all. The period of 60 days would commence from 25.11.2020 as already indicated and there can be consideration of deemed extension until 03.10.2021 or any other date.

4.61. The Petitioner has failed to appreciate that MGVCL has not imposed any condition of Standard of Performance. The Supply Code notified by the Commission provides the applicant to get the work done within the time frame specified in the Standard of Performance of Distribution Licensee Regulations (Regulation 4.33(2)) namely 180 days in case of the Petitioner. Therefore, the Supply Code by reference has incorporated the timelines of Standard of Performance Regulations and the Supply Code is applicable to the Applicants such as Petitioner. The Supply Code also provides for consequences for failure of the Applicant to comply with the time frame. MGVCL has only followed the Supply Code. The Petitioner cannot now challenge the provisions of the Regulations or challenge its applicability at this stage.

The objective of these Regulation is not only to protect the interests of the Applicant Consumers but also Distribution Licensee who may make arrangements for supply of electricity to the Applicant but the Applicant fails to take the supply due to delay in completion of its work. The Distribution licensee or its other consumers cannot suffer for the delays of the Applicant.

4.62. The Respondent No. 1, MGVCL, has submitted that the Petitioner is not entitled to the reliefs as claimed or otherwise.

4.63. Even assuming but not admitting that there is any power of extension or that the Petitioner is entitled to any extension, there cannot be any interest sought by the Petitioner. Admittedly, MGVCL cannot grant extension and such issue could only be considered by the Commission. In such case, it is the fault on part of the Petitioner for failing to approach the Commission in time. In absence of any order, MGVCL had no option but to recover the amounts. The Petitioner has delayed the filing of the present Petition till 20.04.2022. MGVCL is not responsible for such delay. Further, the claim of 15% interest is incorrect. There cannot be any penal rate of interest on MGVCL even assuming but not admitting that there can be any interest.

4.64. It is submitted that in view of the above, the Petition filed by the Petitioner is without merits and deserves to be dismissed with costs.

5. The Respondent No. 2, GETCO, vide affidavit dated 03.12.2022, submitted its reply as under:

5.1. It is submitted that though the Petitioner has cleverly projected the matter to be related to relaxation of the time period of 60 days' notice period provides for in the GERC Electricity Supply Code, 2015 and GERC (Standard of Performance of Distribution Licensee) Regulations, in effect, the Petitioner is seeking to challenge the bills issued by MGVCL, which is in the nature of a billing disputes and needs to be decided by the Consumer Grievances Redressal Forum (CGRF) and the Ombudsman constituted and functioning under Sections 42 (5) to (7) of the Electricity Act, 2003.

5.2. It is submitted that MGVCL has already issued the Notice dated 16.07.2020 under the Clause 4.3 of GERC Electricity Supply Code, 2015 for completion of work by the Petitioner within 60 days under Option-III and avail the power supply within 60 days from the date of notice. It was further intimated by MGVCL that in case of failure to do so, the liability to pay demand charges and minimum monthly charges considering contract demand of 5000 KVA under HTP-I tariff would arise. Having accepted the above position, the Petitioner cannot challenge the same and use the

present proceeding to circumvent the jurisdiction of the CGRF, which decides all billing disputes.

5.3. Save as specifically admitted herein, all contentions of the Petitioner are wrong and denied. Before dealing with the contents of the Petition, Respondent No. 2, GETCO, is placing the following submissions:

5.4. The preliminary objection of Respondent No. 2 is the issue of jurisdiction and admissibility of present matter. It is the submission of Respondent No. 2 that the issues raised by the Petitioner will lie within the ambit of Section 42(5) to 42 (8) of the Electricity Act, 2003. That the subject dispute is between a consumer and distribution licensee, the dispute would normally fall within the jurisdiction of the CGRF constituted under Section 42(5) to (8) of the Electricity Act, 2003 read with the Regulations framed by the Commission. The only exception is if there is any specific power to the of the Commission under the Act or the Regulations. In absence of any specific provision, the jurisdiction would fall to the CGRF

5.5. It is submitted that the Supply Code under Regulation 4.86 recognizes the jurisdiction of CGRF which is quoted as under:

> *"4.86 If the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance."*

5.6. It is submitted that CGRF is a specialised forum for dealing with grievances of consumers and the Petitioner is a consumer who is seeking relief against distribution company. When there is a specialised forum provided for redressal of grievances of consumers, no other forum has jurisdiction.

5.7. It is pertinent to mention herein that the main issue in the present Petition is related to the billing dispute between the distribution company and the consumer. Merely because the Petitioner is constructing the transmission line does not mean that it is not a consumer of the distribution licensee. In fact, the Petitioner is constructing the transmission licensee only due to its status as a consumer and not

as a contractor or otherwise of this Respondent No. 2.

5.8. Though the Petitioner has sought to claim that the Petition is for extension of time, the same is only to seek non levy of minimum demand charges which is also the prayer in the Petition. By clever drafting, the intent and ultimate relief of the Petition cannot be changed.

5.9. GETCO has relied on the following Judgments:

a) Maharashtra State Electricity Distribution Company Limited v. Lloyds Steel Industries Limited AIR 2008 SC 1042

"A complete machinery has been provided in Section 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/Ombudsman have been created, the consumers can only resort to these bodies for redressal of their grievances. In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose."

b) Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd., (2007) 8 SCC 381 : 2007 SCC OnLine SC 1009

"13. It may be noted from a perusal of Section 86(1)(f) of the Act that the State Commission has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f)."

c) BSES Rajdhani Power Ltd. v. Delhi Electricity Regulatory Commission & Anr (Judgment dated 30.3.2009 in Appeal No. 181 of 2008)

"A. When a specific remedy is available for the consumer regarding wrong billing under Sections 42 (5) and 42 (6) of the Act i.e. to approach authorities like the Grievance Cell and Ombudsman and when the award passed by the Ombudsman is final and no appeal is provided against the said award, the complainant cannot approach the State Commission for the said remedy.

Whenever the complainant approached for such a remedy, Commission should have rejected the said complaint and directed the consumers to seek for the said remedy for wrong billing etc to approach the Grievance Cell mechanism. Without doing this, the State Commission entertained this complaint of the consumer and after hearing the consumers and the licensee passed the impugned order imposing penalty and compensation. This order in our view is not in consonance with the ratio decided by this Tribunal in 2005 APTEL 356 and 2005 APTEL 764 and Supreme Court in AIR 2008 SC 1042."

d) M/s Polyplex Corporation Limited v. Uttaranchal Power Corporation Limited (Judgment dated 30.03.2007)

"27. No provision has been brought to our notice under which a consumer can file a petition before the Regulatory Commission against the award of the Ombudsman. The same also applies to the orders of the Consumers' Grievances Redressal Forum and the Appellate Committee. Therefore, we hold that a Regulatory Commission has no jurisdiction to entertain a cause arising from the orders of the Ombudsman, Consumers' Grievances Redressal Forum and the bodies like Appellate Committee."

e) Dakshin Haryana Bijli Vitaran Nigam Limited v. DLF Services Ltd 2007 APTEL 356

"The State Commission in law cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman. In respect of the grievance of the consumers, the specific forum of Redressal and representation to a higher authority are provided and the regulatory commission has no jurisdiction apart from the fact that it is either the appointing authority or the authority conferred with the powers to frame Regulations, and not even an appeal power has been conferred on the State Commission with respect to consumer grievance."

f) Dakshin Haryana Bijli Vitaran Nigam Limited v. Princeton Park Condominium 2007 APTEL 764

"The regulation commission could exercise jurisdiction only when the subject matter of an adjudication falls within its competence and the order that may be passed is within its authority and not otherwise on facts and in the law. All these statutory provisions conferring jurisdiction on the redressal forum, thereafter to approach the Ombudsman, it follows that the State Commission

has no jurisdiction to decide the dispute raised by the consumers."

5.10. Without prejudice to the preliminary objection on admissibility and jurisdiction, GETCO has submitted its reply on merits also.

5.11. It is submitted that a party which accepts a contract cannot then change its mind about certain provisions in the contract. In support of this, GETCO has relied on the following decisions:

a. New Bihar Biri Leaves Co. and Ors. v. State of Bihar and Ors. (1981) 1 SCC 537

"48. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is qui approbate non reprobate, (one who approbates cannot reprobate). According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (Per Scrutton L.J. Verschures Creameries, Ltd. v. Hull & Netherlands Steamship Co. [1921] 2 K.B. 608; See Douglas Menzies v. Umphelby [1908] A.C. 224 at P. 232; See also Stroud's Judicial Dictionary, Vol. I, page 169, 3rd Edn.)."

"55. Since we have held that the aforesaid Condition 13 is valid, this contention must fail. We, therefore, dismiss this appeal. The case shall now go back to the Sub-Divisional Magistrate for disposal in accordance with law. We advisedly abstain from making any observation with regard to the merits of the case."

b. The Rajasthan State Industrial Development and Investment Corporation and Anr. v. Diamond and Gem Development Corporation Ltd. and Anr., (2013) 5 SCC 470

"15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good

conscience."

c. State of Punjab v. Dhanjit Singh Sandhu 2014 SCC Online SC 232

"25. ***It is evident that the doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity.*** *By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."*

d. Suresh Chand Jain v. M/s. Phalphor Builders P. Ltd AIR (2012) DEL 73 SCC Online DEL 1056.

"16. Here the plaintiff has approached the Court for equitable relief of cancellation of documents executed in favour of third parties. The basis for the action is that such conveyance was affected on the strength of unregistered documents. The plaintiff, further, is not disputing some portions of the agreement, which were finalized by the parties and which are not in question in these proceedings. These are inter alia the steps taken by the first three defendants, to construct upon the property; including obtaining sanctions and completion certificate; depositing the compounding fee; spending their money etc. and what is most important, the plaintiff's acceptance of 5000 sq.ft. of the constructed portion in early March 1994. The plaintiff has also not established that the amount of 39 lakhs, payable as construction fee (. 300/-per sq.ft.) was ever offered or tendered to the first three defendants at the relevant time. ***Having accepted an important and substantial part of the obligations arising out of the very same documents, i.e Ex.PW-1/6, and not having performed their part of the bargain, this Court is of the opinion that the plaintiff cannot approbate and reprobate. In other words, the plaintiff having accepted the performance in respect of the documents cannot question the consequence flowing from the other part, particularly arising out of its non- adherence to the contract. In this regard, the doctrine of approbate and reprobate has been explained as a species of estoppel, where, a party to a contract, elects to appropriate benefits out of it, after which, he would not be allowed to repudiate other parts.****"*

"21. We find no merit in the appeal which is dismissed and since the respondents are not before us, there shall be no order as to costs."

e. Uttam Bhikaro Naik v. Goa University & Ors. (2008) SCC Online Bom 981

"14. In this view of the matter, it is crystal clear that the challenge of excessive delegation is devoid of any merit and wholly unsustainable. As a matter of fact, the petitioner cannot be permitted to challenge the action on the part of the respondents in so called termination of his services for the reason that termination of the petitioner from the Post of Finance Officer is under the terms of appointment order. The appointment order categorically stipulates the term of the office to be of 5 years, renewable for the same period up to age of 60 years. Knowing fully well that the term is of 5 years stipulated in the appointment order itself, the petitioner has chosen to accept the appointment and only at the fag-end of the term has, in the first place, requested for a renewal and thereafter filed the present petition, calling in question the vires of Section 23(2) of the University Act. The learned Counsel for the respondent University is justified in contending that the petitioner is blowing hot and cold at the same time and cannot be permitted to approbate and reprobate. The petitioner *has taken advantage of the benefit provided by the appointment order and after availing of the benefit in full, he is questioning the authority of the respondents in issuing the said order.* ***The principle of approbation and reprobation is based on the doctrine of election, which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage****". To substantiate the said proposition, the respondent has placed reliance on a judgment in the case of R.N. Gosain v. YashpalDhirf reported in MANU/SC/0078/1993MANU/SC/0078/1993 : AIR1993SC352.*

We accept the submission made on behalf of the respondents that the petitioner cannot be permitted to question the so called termination which is consequent upon the expiry of the term for which the petitioner was appointed. In this regard, the learned Counsel for the petitioner has submitted that there cannot be an estoppel against the statute. *Though the proposition of law is correct, its application to the fact situation is wholly misplaced. In the facts of the present case, the petitioner cannot be permitted to question the action of the respondents in discontinuing the services of the petitioner on expiry of the term for which he was appointed and which he had accepted.*

".....In the result, there being no merit in the petition, the same deserves to be dismissed and we dismiss the petition with no order as to costs".

5.12. The submission of the Respondent No. 2, GETCO, which are already covered above by MGVCL are not repeated again for the sake of brevity.

5.13. It is submitted that the Petitioner is not entitled to the reliefs as claimed or otherwise.

5.14. In view of the above, the petition filed by the Petitioner is without merits and deserves to be dismissed with costs.

6. The Petitioner, vide affidavit dated 05.01.2023, submitted its rejoinder to GETCO's reply, as under:

6.1. It is submitted that the reply filed by the Respondent No. 2, GETCO, is generic in nature, without dealing with the issue raised by the Petitioner leading to delay in completion of transmission line and bays works for providing power supply.

6.2. It is submitted that before rejoinder para wise, the Petitioner would like to make following preliminary submission for better appreciation facts by the Commission.

6.3. It is to clarify that the Petitioner is not making any specific allegation against Respondent No. 1 or Respondent No. 2. In the fact and circumstances of the case, the Petitioner is only seeking relief from the Commission in terms of extension of time for completion of Transmission line and bays work for the reasons not attributable to the Petitioner and consequently non levy of demand charges and other minimum charges on deemed release basis. It is also open for the Respondent and it is also the duty of the Respondent to undertake thorough examination of the case and verify the delay claimed by the Petitioner which was attributable to first and second wave of COVID-19 related situations and its cascading effects and delay in getting permission / permits / consents / approvals from various departments for laying of transmission line.

6.4. The Respondent has repeatedly sought to portray that under the Option-III, the Petitioner is not entitled for any relief for whatsoever grounds. In this context, it is

submitted that undisputedly there was uncontrollable factors related to COVID-19 situations, delay in getting consents / approval / permits from concerned authorities leading to delay in completion of line work. It is not the case of the Respondent that such issues would have not arisen in case work is undertaken by GETCO under Option-I. Meaning thereby, such issues and consequently the reasons for delay would have remained the same irrespective whether work is undertaken by GETCO under Option-I or by the Petitioner under Option-III. Therefore, the important aspect in the matter is, how much time GETCO would have taken to complete the works in the given facts and circumstances. It is not expected that the applicant has to complete the works within the stipulated time irrespective of encountering difficulties such as RoW, approval leading to delay, which otherwise would have been faced by the Respondent also.

6.5. In regard to contention of Respondent GETCO that the issue of the present matter is billing dispute and only CGRF has jurisdiction to deal with the issue, it is submitted that before dealing with the above contentions, it is imperative to refer relevant provisions of the Act, 2003 and the provisions of CGRF Regulations.

Section: 42 (5) and (6)

> *(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*
>
> *(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*

The relevant provisions of GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 is read as under:

1.5 Definitions:

> *d) "Complaint" means any complaint made by a Complainant, either in writing, including e-mail and facsimile modes, or verbally over phone if such numbers*

are specified by a Licensee for lodging complaints, or by visiting personally to such offices of the Licensee which are designated by the Licensee for registering the complaints, to a Licensee, which may, without limitation, include complaints relating to:

i. any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by the Licensee in pursuance of a licence and/or any contract or agreement or under the Electricity Supply Code or in relation to Standards of Performance of Licensees, as specified by the Commission;

ii. any unfair trade practice or restrictive trade practice which has been adopted by the Licensee in providing Electricity Service; or

iii. Electricity Services which are being offered for use to the public in contravention of the provisions of any applicable law including safety code, rules and regulations, as prescribed by the competent authorities under the relevant laws or established through prudent industry practices, and as a result whereof the life and safety of the human beings, livestock or property is put at risk and endangered.

e) "Electricity Service" includes supply, billing, metering and maintenance of electrical energy to the Consumer and all attendant sub-services and also any other service which a Licensee is required to provide pursuant to his licence or under any applicable law.

……..

h) "Grievance" shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint

6.5.1. It is submitted that as per the above provisions the Act and CGRF Regulations, there are two ingredients which are to be fulfilled for CGRF having jurisdiction under GERC (CGRF) Regulations, 2019, namely, (i) there has to complaint against concerned Distribution Licensee, and (ii) the nature of complaint shall be as defined in the definition of the complaint in the CGRF Regulations.

6.5.2. Now, it is imperative to refer the facts and issues involved in the present matter. In the present case, the work of erection of transmission line is undertaken by the

Petitioner under Option-III on behalf of Respondent GETCO. The Petitioner has been experiencing / has experienced delay, reasons for which are not attributable to the Petitioner / Distribution Licensee MGVCL. As per the provisions of Supply Code, the Petitioner has to complete the work as per the SoP timeline failing which the Distribution licensee can commence billing on deemed release basis after issuance of 60 days' notice. Further, under the provisions of Supply Code and Sop Regulations, only the Commission has authority to grant extension of time.

6.5.3. As per the case of the Petitioner, there is no complaint against Respondent MGVCL considering the facts that under the provisions of Supply Code and SoP Regulations, when Respondent MGVCL do not have any power / authority to grant extension of time, there cannot be any complaint/ claim against Respondent MGVCL seeking redressal of complaint before CGRF.

6.5.4. Further, it is submitted that there are no any explicit / implicit provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time or call upon GETCO being transmission licensee to appear before it (CGRF). Only the Commission has authority to call upon the transmission licensee and inquire into for deciding the delay claimed by the Petitioner.

6.5.5. It is further submitted that in case the Commission deny the extension of time considering the merit of the case, MGVCL is entitled to commence billing on deemed release basis and there cannot be any complaint against this action before CGRF being action of MGVCL is in accordance with the provisions of Supply Code. Therefore, issue involved in the present Petition cannot be considered as billing dispute.

6.5.6. Under the circumstances, what expected from MGVCL is assistance to the Commission in deciding the claim of the Petitioner with regard to delay in completion of line works. However, after analyzing the matter, if the Commission comes to the conclusion that there is genuine difficulty in completion of line and

delay is not attributable to the Petitioner (as in case of KP Energy) in that case, the Petitioner is entitled to consequent relief.

6.5.7. In the present case, there is no dispute with Respondent MGVCL let alone billing dispute and therefore CGRF cannot have jurisdiction. Further, there is no any explicit / implicit provisions in the CGRF Regulations which can authorize the forum to grant extension of time. In its submission, Respondent GETCO has also failed to point out that under which clause of CGRF Regulations, the forum has jurisdiction to grant extension of time.

6.5.8. It is the contention of the Respondent GETCO that the Commission cannot exercise the regulatory power to grant time limit extension to the applicant under the provisions of Supply Code and SoP Regulations. If these contentions are accepted, in that case, it is not understood as to how CGRF can grant extension of time because CGRF has limited jurisdiction within the purview of CGRF Regulations only. It is further submitted that when there is no complaint against Respondent MGVCL and when there is no claim of compensation against MGVCL for violation of SoP timeline, the issue involve in the present Petition cannot be entertained by CGRF. It is submitted that in the present case, the applicant is constructing the transmission line on behalf of Respondent GETCO and therefore the present case does not involve the consumer - Distribution Licensee relationship having jurisdiction of CGRF.

6.5.9. It is further submitted that as per the provisions of the Act, 2003 and CGRF Regulations, the CGRF is having jurisdiction to entertain complaint against the concerned Distribution Licensee and not complaint against transmission licensee. Therefore, under Option-III, in case the delay in construction of transmission line is attributable to Respondent GETCO, the complaint of the same will not fall within the jurisdiction of CGRF and in that case, the issues of the applicant will be remained unresolved for want of jurisdiction, this could not be the intention of the statute.

6.5.10. It is further submitted that it is also the contention of the Respondent that the present Petition is filed only after issuance of 60 days' notice by Respondent MGVCL

for commencement of billing on deemed release basis and therefore it is billing dispute. As per this contention, if a person has filed petition before issuance of 60 days' notice for commencement of billing on deemed release basis, CGRF would not have jurisdiction since billing issue is not involved. For instance, in another case of Concord Bio, the Petition was filed before the Commission even before issuance of 60 days' notice for commencement of billing on deemed release basis. Thus, if above contention of the Respondent is accepted in that case, the issue involved in Concord Bio case, would not be considered as billing dispute and therefore the Commission would have jurisdiction whereas in other case if petition is filed after issuance of 60 days' notice, this would considered as billing dispute and therefore CGRF would have jurisdiction though the nature of issues involved in both the case are same. This would lead to unknown result as the jurisdiction issue cannot be decided based on timing of filing of petition.

6.5.11. It is submitted that the various judgments relied by the Respondent No. 2 is on the different facts and has no relevance in the facts of the present matter.

6.5.12. On the contrary, the as per the catena of judgements of Hon'ble Appellate Tribunal, the Commission has jurisdiction over the matter involving interpretation of Supply Code. In this context, the Petitioner has referred to following judgments of Hon'ble Tribunal:

(a) <u>Appeal No. 264 of 2016: Paschim Gujarat Vij Company Limited v/s Gokul Agro Resources Ltd:</u>

In the above judgment, the Hon'ble Tribunal has disguised the judgments of Hon'ble Supreme Court as referred by the Respondent No. 1 in its reply as under:

"14. In Lloyds Steel Industries Limited, on which the Appellant has placed reliance, the dispute was regarding demand raised for reinstatement of contract demand. The Supreme Court held that the matter should have been left to CGRF and the State Commission had no jurisdiction to entertain such a dispute. In our opinion, this judgment will not be applicable to the present case

because that case covered a pure consumer grievance. It did not involve issues like A-264.16 merger of two connections and additional charge over and above the energy bills. Besides, it appears from the judgment of the Supreme Court that the issue whether a particular consumer grievance involving complex issues requiring interpretation of tariff orders, relevant regulations, conditions of supply can be raised before the State Commission was not argued before the Supreme Court. It appears that no submissions were advanced on Section 42(8) of the said Act. The said judgment is, therefore, not applicable to the present case.

15. Judgment of this Tribunal in Dakshin Haryana Bijli Vitaran Nigam Ltd., is also not applicable to this case. Firstly, this judgment is based on concession....

16. Judgment of this Tribunal in BSES Rajdhani Power Limited also does not help the Appellant. In that case, the Appellant had admitted before the State Commission that it was a case of wrong double billing and submitted to the jurisdiction of the State Commission. This Tribunal, in the circumstances, held that when a specific remedy is available for the consumer regarding wrong billing under Section 42(5) and 42(6) of the said Act, the consumer cannot approach the State Commission for redressal and the State Commission should direct the consumer to approach CGRF. Undoubtedly, simple billing disputes have to go before CGRF. This case, in our opinion, does not involve a simple billing dispute.

17. On this point, we may usefully refer to the judgment of the Supreme Court in Maharashtra Electricity Regulatory Commission v. Reliance Energy Limited. In that case the Supreme Court decided two appeals - one relating to Reliance Energy Limited and another relating to Lloyds Steel Industries Limited. In appeal relating to Reliance Energy Limited, the Supreme Court was concerned with the State Commission's order inter alia directing that the supplementary / amended bills sent to the consumers by the distribution companies be withdrawn and the amounts collected be refunded to the consumers. This order was passed pursuant to the notice issued by the State Commission to the licensees / distribution companies on the basis other than the actual meter reading. On an appeal being preferred to this Tribunal, this Tribunal set aside the said order and directed the consumers to approach CGRF. It was urged before the Supreme Court that the State Commission has power to give a general direction to its consumers. While dealing with this question the Supreme Court considered the Statement of Objects and Reasons of the (2007) 8 SCC 381 A-264.16 said Act and the relevant provisions thereof. The Supreme Court observed that the State Commission cannot adjudicate disputes relating to individual consumers. But the Supreme Court added that a comprehensive reading of all the provisions of the said Act leaves no manner

of doubt that the State Commission is "empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced and also power to enforce the conditions of licence under sub- section (6) of Section 128." ***The Supreme Court further observed that the contention that the State Commission has no such power is wrong. We may quote the relevant paragraph which clears all doubts about the State Commission's powers.***

22…… Thus, a consumer will be entitled to approach the State Commission in cases where there is a violation of the provisions of the said Act or the regulations framed by the State Commission or orders passed by the State Commission or in complex cases, which are not pure and simple billing disputes but which involve interpretation of the provisions of the said Act, relevant regulations and tariff orders.

(Emphasis supplied)

(b) Appeal No. 48 of 2013: Paschim Gujarat Vij Company Limited v/s Rolex Rings Pvt Limited:

"9 In regard to the First Issue regarding jurisdiction, ***the State Commission held that the issue raised by the consumer is not a mere dispute between the consumer and the Distribution Licensee which could only be decided by the Consumer Grievance Redressal Forum, but it relates to the issue relating to the interpretation of the relevant provisions of the Regulations of the State*** *Commission for granting permission to the consumer to utilize the power from his existing connection at a premises for extending the supply to his adjoining premises by allowing him to lay down underground cables across the public road and that therefore, the State Commission has got the jurisdiction. Thus, the First Issue was decided in favour of the consumer holding that the State Commission has the jurisdiction.* ***We are in agreement with the State Commission on the jurisdiction issue. As pointed out by the State Commission, since the matter is relating to interpretation of the provisions of the Electricity Act, 2003 and the Regulations, the State Commission has the jurisdiction to decide the matter"***

(Emphasis supplied)

6.5.13. In view of above submission, under the circumstances even when there is no

dispute with MGVCL, if the issue involved in the present petition is to be considered as billing dispute with MGVCL in that case there cannot be any complaint against MGVCL before CGRF as delay in completion of line is not attributable to MGVCL or the Petitioner. In substance, the Petitioner would be penalized for no fault which is against principle of natural justice and cannot be the intension of any statute.

6.6. In regard to contention of Respondent GETCO that under the provisions of Supply Code and SoP Regulations, the applicant is not allowed to approach the Commission and the Commission cannot exercise the regulatory power to grant time limit extension, it is submitted that it is relevant to refer proviso to Clause 4.33 (2) of the Supply Code which states that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005. Therefore, it is relevant to consider as to why Supply Code provides for applicability of SoP timeline to the consumer which is otherwise applicable to Distribution Licensee. The answer is straight and simple namely, when applicant is undertaking the erection of line work by its own, the same of SoP otherwise applicable to licensee is to be followed by applicant also. Meaning thereby, the applicant is acting in the shoe of licensee and therefore has to follow the SoP timeline.

6.6.1. It is submitted that since, applicant has to follow SoP timeline, which is otherwise applicable to licensee, it is imperative to refer Sop Regulations, 2005 which provides that timeline stipulated in the Regulations is not sacrosanct and subject to relaxation / extension by the Commission due to time taken by local authority and other factors affecting the performance of Distribution licensee. Therefore, contention of the Petitioner is that in case the SoP timeline for completion of line is made applicable to the applicant, the other relaxation / extension in time otherwise available to licensee is also available to the applicant also. If not, in that case it is tantamount to asking the applicant to perform the impossible task. It is further submitted that take an example that the applicant of new connection has acted swiftly and taken timely actions for completion of line. However, there is delay in completion of line due to reasons beyond reasonable control of applicant such as stay order of competent court on Right of Way on the line route or there is abnormal

delay in getting clearance / approval of Local Authority or there is abnormal delay from Respondent GETCO in giving line route / material permission etc, the applicant could not complete the line work within SoP time line. Therefore, in such a case, when delay is not attributable to the applicant and same delay would have otherwise been experienced by the licensee, if time limit extension is not granted, the applicant would be punished with no fault. This cannot be intension of the statute. The provisions of Supply Code are harmoniously to be read with SOP Regulations for meaningful interpretation. Otherwise, this would lead to a situation that when licensee is carrying out the line work, they are entitled for relief / extension of time from the Commission but when the applicant is carrying out the same work and experiencing difficulties in nature of beyond reasonable control, he will not be entitled for the relief. This could not be the intention.

6.6.2. It is submitted that nowhere in the SoP Regulation is stated that the applicant is barred from approaching the Commission for seeking relief otherwise available to Distribution Licensee.

6.6.3. It is further submitted that the reliance placed by Respondent GETCO on the provisions of Clause 4.37 of Supply Code to state that only licensee is entitled for extension in timeline and not the consumer. It is submitted that in Clause 4.37, nowhere it is mentioned that only licensee can approach the Commission for time limit extension and consumer cannot approach for extension of time. Therefore, the contention of Respondent GETCO that in no case time limit extension is to be granted to the applicant is tantamount to denial of justice to the applicant and punishment with no fault. Accordingly, the said contention of Respondent GETCO is without any merit and against the principle of natural justice. This will also become a tool to abstract money from the consumers on deemed release basis by delaying approval / process by Respondent GETCO in case Supply Code is to be interpreted to mean that in no case the applicant is entitled for time limit extension for whatsoever reasons.

6.6.4. It is submitted that on the principle of natural justice and as per the provisions of Supply Code and read with Sop Regulations, the Commission can grant time limit

extension by exercising regulatory powers available under the provisions of Supply Code and Sop Regulations which is also the intention of Hon'ble High Court in the order dated 07.01.2020 in case of Surya Roshni. It is submitted that the Commission should play its role and exercise regulatory powers to protect the interest of applicant and give justice.

6.6.5. It is also imperative to consider the plea made by the Petitioner in the Petition namely, to excuse the delay not attributable to the Petitioner. It is in the interest of justice that the applicant should not be punished for not his fault. Therefore, it is expected that Respondent MGVCL / GETCO should also play constructive role in the matter by placing on record the factual aspects of the case for deciding the claim of delay by the Commission.

6.6.6. It is submitted that apart from powers available under the SOP Regulations, the Commission has authority and jurisdiction to grant extension of time limit to the Petitioner for completion of work for the delay not attributable to the Petitioner.

6.6.7. It is submitted that under the provisions of Regulations 9.21 and 9.22, the Commission has power to relax and power to remove difficulty. It is submitted that since there is no explicit provision in the Supply Code allowing consumer to approach before the Commission for extension of time limit, the consumer interest is badly affected in case of delay not attributable to consumer. Therefore, in the interest of public / general consumer who are undertaking extension of line works under Option-III and experiencing delay not attributing to such consumer, the Commission may exercise its regulatory power and grant relaxation to the effect that in case of delay not attributable to the applicant for erection of line work, such applicants are entitled to extension of time limit, in the best interest of justice.

6.6.8. It is also submitted that under the Clause 9.23 of Supply Code, the Commission has inherent powers to pass orders as may be necessary for end justice to meet or prevent abuse of process of Commission. In case the Commission does not exercise its jurisdiction and not grant time limit extension, it will cause to injustice to the consumer if delay is not attributable to consumer and issues will remain

unresolved since issue involved in the present matter is not related to dispute with distribution licensee and therefore CGRF has no jurisdiction over this. This is a substantial provision and the Commission should exercise the same in interest of justice.

6.6.9. It is submitted that as per Code 9.24, the Commission can adopt procedure which is at variance with any provision of Supply Code in a special circumstance. Further, as per the Code 9.25, there shall be no bar for the Commission for dealing the matter or exercising any power under the Act for which no code has been framed. In the present case, there is no explicit provision in Supply Code allowing consumer for extension of time even though delay is not attributable to consumer. Under special circumstances, the Commission has jurisdiction and authority to deal with issue raised in the Petition and decide the prayer made thereto.

6.6.10. It is submitted that as per the above provisions of GERC Supply Code and as held by Hon'ble High Court in Order dated 07.01.2020 in case of Surya Roshni, the Commission has regulatory jurisdiction to grant time limit extension and grant consequent relief thereto. The Petitioner would also like to submit that since the issue involved in the matter is relating to extension of time for completion of line works under the provisions of Supply Code and non-levy of demand charges on deemed release basis is only a consequent relief, such matter could not be raised before CGRF and the Commission is the authority to decide the time limit extension considering the merit of the case and consequent relief thereto.

6.6.11. It is submitted that in its reply, the Respondent GETCO has fairly conceded that the power of extension of time is within the power of the Commission and not within the power of Respondent MGVCL. Thus, the Respondent GETCO has consented to the jurisdiction of the Commission to decide on the extension of time considering the merit of the case.

6.7. In regard to various judgments referred by Respondent GETCO to contend that once contract is accepted by the party, he cannot change its mind, the Petitioner has submitted that none of the judgments referred by GETCO in its reply is

applicable in the facts of present case. The judgment referred by GETCO is related to disputes arising out of contractual obligations and change of mind after entering into a contract.

6.7.1. The facts of present case are not related to contractual disputes between two private parties but related to statutory obligations on part of the Respondents to make available power supply to the consumer by extending electricity network and delay in completion of transmission line work entrusted to the consumer by the Respondents and reasons for delay is not attributable to the Petitioner. The Petitioner seeks extension of time in completion of transmission line under the provisions of Supply Code. By no stretch of imaginations, the issue involved in present case can be said to be contractual disputes between parties or change in mind after execution of contracts. The present case of the Petitioner involves totally different factual matrix and in the given facts and circumstances of case, the judgments referred by GETCO is misplaced and not relevant.

6.7.2. It is submitted that the issue of change in mind or change in stand after signing of contract is a matter to be decided on merit once the issue of jurisdiction is decided by the Commission, it is submitted that in the Supply Code there is no explicit/implicit provision which bar the consumer for seeking extension of time line, therefore, the issue of change of mind do not arise. Further, GETCO has failed to indicate as to how even by implication it can be construed that consumer is not allowed for extension of time. This contention is nothing but asking the applicant to perform impossible task and punish the applicant with no fault. On the contrary, provisions of Supply Code read with SoP Regulations allows for time limit extension for reasons for delay which are beyond reasonable control. Since no explicit provision is there in Supply Code, the Commission can exercise inherent powers under the Supply Code.

6.7.3. In case, the Commission does not exercise its inherent powers, the Petitioner would be deprived of the justice and will be punished with no fault. Under the circumstances, there is fit and proper case for exercise of inherent powers and regulatory jurisdiction by the Commission in the best interest of justice.

6.8. With regard to contention of the Respondent GETCO that there was no protest from the Petitioner in regard to grant of Option-III by the Respondent, it is submitted that as per provisions of Electricity Act, 2003, it is the duty and responsibility of Respondents to make available electrical network for supply of power. However, in present case the Respondents have granted Option-III to the Petitioner without seeking consent or giving any choice for selecting option for erection of transmission line and bays.

In any case, as stated in preliminary submission, the Petitioner has challenged actions of the Petitioners in grant of Option-III. The Petitioner is seeking extension of time for completion of line and bays works due to Force Majeure situations.

6.9. It is submitted that there is delay in completion of line works due to uncontrollable factors and therefore the Petitioner has approached the Commission to grant extension of time in completion of work.

6.10. It is wrong and denied that the Petitioner has not acted swiftly or there was any delay in selection and appointment of GETCO approved vendors. The time taken by the Petitioner for selection and appointment of contractor cannot said to be abnormal and such time always required to identify, select and appoint the contractor.

6.11. It is also wrong and denied that the Petitioner has not made diligent efforts for getting consents / approvals from various authorities. It is to state that time taken in getting approvals are not within the hand of the Petitioner and therefore the Petitioner is entitled to seek extension for delay in getting consents / permits from the authorities.

6.12. It is submitted that the time period of 71 days granted by the Respondent No. 1, MGVCL, is not adequate and not capturing the cascading effect of COVID-19 lockdown on the progress of works due to disturbance of entire supply chain for the material required in transmission line and bays. The intimation of Respondent No. 2, GETCO, to compete the work within 180 days was without appreciating the

difficulties faced by the Petitioner due to prevailing extraordinary situations on account of COVID-19 pandemic. The prevalence of COVID-19 related situations and quarantine related guidelines / norms issued by Government Authorities from time to time is known to all and no proof is required to substantiate the claim for delay in completion of work.

6.13. Further, it is denied that there was no delay on part of GETCO. The details of approval sought by the Petitioner and receipt of same etc are available on record. The delay was attributable to COVID-19 related situation which is not in the hands of any party. The second wave of the COVID-19 was much serious than first wave which has severely impacted the work progress due to difficulties in getting man and material resources in timely manner. It is to state that the time period of 71 days granted by the Respondent No. 1 is not adequate and not capturing the cascading effect of COVID- 19 lockdown on the progress of works due to disturbance of entire supply chain for the material required in transmission line and bays. The intimation of Respondent No. 2 to compete the work within 180 days was without appreciating the difficulties faced by the Petitioner due to prevailing extraordinary situations on account of COVID-19 pandemic. The prevalence of COVID-19 related situations and quarantine related guidelines / norms issued by Government Authorities from time to time is known to all and no proof is required to substantiate the claim for delay in completion of work.

6.14. It is denied that the delay in completion of work is attributable to the Petitioner. It is denied that the Petitioner was not acted on behalf of the GETCO. In fact, GETCO is responsible to lay required transmission line and bays work for providing power supply. The Petitioner had undertaken the work on behalf of GETCO by virtue of Option-III offered to the Petitioner. In any case, the delay is due to reasons beyond reasonable control of the Petitioner.

6.15. It is wrong and denied that the Commission do not have jurisdiction to decide the extension of time. As stated by the Respondent No. 2 in its reply, only this the Commission has jurisdiction to decide the extension of time. The relevant provisions Supply Code is already referred in the Petition.

6.16. The Petitioner has reiterated that the it is not disputing with regard to the Option-III offered to the Petitioner. What petitioner is seeking is for extension of time in completion of work due to factors not attributable to the Petitioner. The Commission has jurisdiction and authority to grant extension of time otherwise it would tantamount to ask someone to perform impossible task, which could not be intention of any statue.

6.17. It is wrong and denied that the Commission has no power under the Supply Code regulations to grant extension of time even delay is not attributable to force majeure related situation. It is wrong and denied that power available to the Commission under Supply Code 9.23- 9.25 are procedural in nature. It is submitted that under provisions of Supply Code and SoP regulations, the Commission has jurisdiction and authority to grant extension of time considering the merit of the case.

6.18. In view of above, the Petitioner has requested the Commission to admit the Petition and allow the prayer made by the Petitioner.

7. The Petitioner vide affidavit dated 01.05.2023, filed its submission on the factual and legal aspects of the Petition including the issue of jurisdiction, as directed by the Commission vide Daily Order dated 15.04.2023.

7.1. It is submitted that as far as jurisdictional and legal issues are concerned, the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time in compliance to daily orders passed by the Commission in the subject Petition. Same are not reiterated for sake of brevity.

7.2. Regarding the factual aspects, it submitted that the Petitioner has already placed on record the factual aspects and relevant documents as part of memo of present Petition for consideration of the Commission. Same are also not reiterated for sake of brevity.

7.3. The Petitioner has requested the Commission to take on record above submissions

of the Petitioner and decide the Petition.

8. The Respondents MGVCL and GETCO, vide affidavits dated 06.06.2023, filed their submissions as under. The submissions already made by both the Respondents are not repeated here for the sake of brevity.

8.1. The Respondent GETCO has submitted it is not the main contesting party in the present Petition and that no relief has been sought from GETCO. However, the Petitioner has contended that delay caused by it in completion of 66 kV line and bay works is on account of alleged delays by GETCO. Therefore, GETCO is filing the present submission to place on record correct factual situation and clarify allegations raised against it.

8.2. The Respondents have submitted that the Commission vide order dated 15.04.2023 had directed the parties to file their submissions including factual and legal aspects of the Petition including the issue of jurisdiction. It is submitted that the Respondents have already filed their submission in this regard which are not repeated herein.

8.3. It is submitted that the preliminary question to be considered is as to whether the issues is within the jurisdiction of the Consumer Grievance Redressal Forum (CGRF) under Section 42(5) to 42(8) of the Electricity Act, 2003 being a dispute between a consumer against the distribution licensee or whether there is any specific power under the Supply Code for the Commission to entertain and consider the issue of extension. Unless otherwise specifically recognized under the Supply Code, by virtue of being dispute of a consumer, the issue is within the jurisdiction of the CGRF.

8.4. The Respondent GETCO has submitted that under Section 42 of Electricity Act, 2003, a specialised forum is provided for redressal of grievances of the consumers being the CGRF is a specialised forum for dealing with grievances of consumers and the Petitioner is a consumer who is seeking relief against distribution company. When there is a specialised forum provided for redressal of grievances of

consumers, no other forum has jurisdiction.

8.5. The Respondent MGVCL has submitted that as per the decisions of the Hon'ble Courts, such disputes are to be agitated before the CGRF with further representation to Ombudsman and cannot be maintained by way of a Petition before the Commission. In this regard Section 86(1)(f) of the Electricity Act, 2003 restricts the adjudicatory jurisdiction of the Commission to disputes between licensees and generating companies or between two licensees and not disputes raised by a consumer on matters of invoices, billing etc.

8.6. In this regard the Commission has notified the GERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019. It is submitted that the Ombudsman has dealt with similar issues, as raised in the present Petition, in Case No. 72 of 2019 vide Order dated 27.11.2019 in M/s. RSPL Limited -v- Executive Engineer, Paschim Gujarat Vij Company Limited, which was a representation made by the concerned consumer under Section 42(6) of the Electricity Act, 2003 in regard to the decision made by CGRF. The decision of the Ombudsman was in favour of the Distribution Company.

8.7. Further, it is submitted that under Section 86 of the Electricity Act, 2003, a State Commission can only adjudicate disputes between a licensee and a generating company. The Commission can exercise both adjudicatory and regulatory functions under Section 86. The present Petition is adversarial in nature, which falls under Section 86(1)(f), which does not cover the case of the Petitioner. in this regard, the Respondent has relied on the following decisions:

a. Maharashtra Electricity Regulatory Commission -v- Reliance Energy Limited, (2007) 8 SCC 381

b. BSES Rajdhani Power Limited -v- Delhi Electricity Regulatory Commission in Appeal No. 181 of 2008 decided on 30.03.2009

c. Rashmikaban Navinbhai Patel & Others -v- Uttar Gujarat Vij Company Limited in SCA No. 18138 of 2016 dated 11.07.2022

d. Chhattisgarh State Electricity Board -v- Raghuvir Ferro Alloys Ltd., [2006] APTEL 134 Appeal No. 125, 126 and 127 of 2006 dated 28.11.2006

8.8. Regarding the current status of the Petitioner, it is submitted that the Respondent MGVCL has already issued the Notice dated 16.07.2020 under the Clause 4.33 for completion of work and availing of power supply by the Petitioner within 60 days and intimated that in case of failure to do so, the liability to pay demand charges would arise. However, due to situation of nationwide lockdown, MGVCL had not considered period of 71 days in the 180 days for completion of work. This was duly informed to the Petitioner vide letter dated 04.09.2020 and further the Petitioner was informed that the Petitioner shall be liable to pay demand charges and monthly minimum charges under HTP-I tariff from 25.11.2020. In accordance with this communication, MGVCL has raised the bills for the months commencing from 25.11.2020. It is submitted that the billing is as per the Tariff orders of the Commission as applicable to the consumer category of the Petitioner. The Petitioner has paid the bills. The Petitioner has completed the work and the actual supply has commenced with effect from 31.12.2021

8.9. Regarding the contentions / allegations on the Option-III, it is submitted that the Petitioner cannot at this stage now raise any issue on the Option-III. Such contentions is clearly an afterthought and an attempt to whitewash its own delays.

8.9.1. It is submitted that there was no compulsion on the Petitioner and any attempt of the Petitioner to portray that it was compelled to accept Option-III is incorrect and mischievous. The Petitioner never raised any objection against Option-III and in fact readily paid the amount estimated by MGVCL towards application of Option-III. Even after the appointment of vendor when the Petitioner was informed about the timeline for completion of work, 180 days, it never once expressed its hesitation in completion of work in the given timeline. Clearly, the present issue has arisen on account of delay caused by it in completion of the work. The Petitioner has not placed on record any evidence or even assertion that it sought the Option-1 and was denied the same. In fact, there was no such request. If the Petitioner had expressed its desire for another option, GETCO would have done so. Having

exercised on other choice, the Petitioner cannot claim that it was never given any other option.

8.9.2. Therefore, having accepted and acted upon the Option III, it is not open to the Petitioner to now raise any contention to the contrary or claim that the Respondent GETCO should have done the work.

8.9.3. The Respondents have submitted that it is well settled principle that a party cannot approbate and reprobate. In this regard, the Respondents have relied on the following decisions:

a. State of Rajasthan v. Union of India, (2018) 12 SCC 83

> *"3. After hearing the arguments of the learned counsel for the parties, we find substance in the aforesaid submission of the defendants. Even if we presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals, etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The doctrine of election would, therefore, become applicable in a case like this. After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action."*

b. Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435

> *"11. In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683: AIR 1993 SC 352] this Court observed as under: (SCC pp. 687- 88, para 10)*
>
> > *"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."*
>
> *12. The doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by*

election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily. [Vide Babu Ram v. Indra Pal Singh [(1998) 6 SCC 358], P.R. Deshpande v. Maruti Balaram Haibatti [(1998) 6 SCC 507] and Mumbai International Airport (P) Ltd. v. Golden Chariot Airport [(2010) 10 SCC 422 : (2010) 4 SCC (Civ) 195].]"

8.9.4. The Petitioner is raising this issue now only because of its own delays. Such contention is clearly an afterthought to avoid the liability as provided in the Regulations.

8.9.5. The reliance on Section 42 and 43 for distribution system/transmission system is not correct. It is submitted that the Petitioner after making a choice of undertaking the work cannot claim that the distribution system has to be maintained by the distribution licensee or transmission licensee. It is not open for the Petitioner to now claim that it was acting on behalf of GETCO/MGVCL. Further, even otherwise, having accepted and agreed to carry out the work; the Petitioner cannot pass on the blame or responsibility to GETCO. GETCO cannot be required to construct the line once the Petitioner had accepted/agreed to do it.

8.9.6. It is submitted that the Petitioner cannot at this stage raise issues on the responsibility for the work to be completed by the Petitioner or claim that it was on behalf of the licensee. The Petitioner had accepted the Option-III and failed to complete its scope of work within the prescribed time and as an afterthought is raising issues to avoid the consequences which cannot be permitted.

8.10. Regarding the issue of consequences of delay by the Petitioner, the Respondent MGVCL submitted that Petitioner was required to complete the work by 180 days from 16.01.2020 which comes to 15.07.2020 but in view of the lockdown conditions, the Petitioner was required to commence supply from 25.11.2020. However, the Petitioner failed to do so.

8.10.1. It is submitted that MGVCL had proceeded on the basis of ensuring prompt connection to the consumer and had made necessary arrangements. MGVCL vide Letter dated 16.07.2020 issued a Notice under Regulation 4.33 of Supply Code 2015 to complete the work and avail power supply within 60 days. The Supply Code recognizes that if the work is not completed within 180 days, a notice can be issued and therefore MGVCL had issued notice. MGVCL does not have to inquire into the status of the line work which is being carried out by the Petitioner.

8.10.2. It is submitted that MGVCL was ready to commence supply and in absence of consumer taking supply, there is a loss to MGVCL which is passed on to other consumers. MGVCL is ready to supply electricity and therefore MGVCL has to be compensated for the same.

8.10.3. The Respondent GETCO submitted that even assuming but not admitting that there is any consideration of extension of time, it is up to the Petitioner to demonstrate the delay. The issues of delay has to be considered by the Commission and GETCO has no role.

8.10.4. However, it is submitted that there was no delay by GETCO and GETCO had processed all approvals/requests expeditiously and in reasonable time. The Petitioner has not placed on record any document to substantiate its allegation that GETCO caused delay.

8.10.5. It is submitted that the contention of the Petitioner that GETCO delayed in giving approvals is misplaced. It is common knowledge that authorities take some reasonable time to process any request and therefore, the Petitioner could not have expected an immediate response and approval by the authorities including GETCO.

8.10.6. It is further submitted that the Petitioner was not carrying out the work on behalf of GETCO but was carrying out the work under Option-III. It was the responsibility of the Petitioner to carry out the work and GETCO was only supervising the work. Further GETCO cannot be made liable to coordinate with MGVCL on behalf of the Petitioner.

8.10.7. Further, GETCO cannot affirm to the claims of the Petitioner on the alleged delay. It is up to the Petitioner to demonstrate and substantiate its claim to the Commission. GETCO had processed approvals in time and there was no delay on part of GETCO.

8.11. Regarding contentions on grant of additional time, the Respondents MGVCL submitted that there is a time frame provided for completion of work by the Petitioner and the consequences of the delays are also provided in the Supply Code. Admittedly, the Petitioner has failed to complete the work within time period as per the Regulations. Therefore, the Respondent MGVCL was entitled to take the appropriate steps.

8.11.1. It is submitted that the Petitioner has sought additional time in the present petition. The issue of whether there is any power to grant extension / additional time under the Regulations to a consumer / applicant has to be considered by the Commission. Though, there is a provision in Supply Code for extension of time to the licensee, there is no such provision for Consumer / Applicants. It is erroneous on part of the Petitioner to state in rejoinder that it is not denied that the Commission has the authority and jurisdiction to grant time limit.

8.11.2. Any waiver of the demand charges to be paid by one consumer by the Respondent MGVCL would affect the other consumers. MGVCL being a distribution licensee is entitled to its aggregate revenue requirement and therefore any shortfall due to waiver of charges for one consumer would have to be compensated by higher charges on remaining consumers. Merely because supervision charges are paid by the Petitioner for the work to be carried out does not mean that the Petitioner can claim that it is not required to pay the demand charges as per the Supply Code 2015 and Agreement.

8.11.3. It is submitted that the distribution licensees make arrangement of power in order to supply to applicant and in case the applicant does not take the power, the distribution licensees still incur the costs associated with such arrangements. This cost has to be compensated and that is why Regulations provides for billing by the distribution licensees in case of delays by Applicants. There are timelines even

when the Applicant does not do the work. This is to ensure seriousness of Applicants and to compensate for the cost of arrangement of power made by the distribution licensee and to prevent such costs being borne by other consumers of distribution licensees.

8.11.4. The requirement to pay monthly charges is recognized in the Supply Code and is provided to compensate the distribution licensee who is otherwise ready to supply power to the consumer.

8.11.5. The Respondent MGVCL submitted that even assuming but not admitting that the extension of time can be granted, the same can be only by the Commission and not the distribution licensee. The Respondent MGVCL / GETCO cannot grant any extension as it is not within its jurisdiction. Further, the extension can only be granted if the Petitioner has proved that the delay was beyond its control/due to force majeure events.

8.12. Regarding reliance on Regulation 4.37 and 4.38 of the Supply Code and 15.2 of the Standard of Performance, the Respondent MGVCL has submitted that the issue of whether the referred Regulation which relate to licensees would apply to a consumer/applicant and whether it can be considered in the facts and circumstances of the present case has to be considered by the Commission.

8.12.1. It is submitted that the Regulation 4.37 regarding extension of time refers to the Licensee and do not refer to the consumers as such.

> *"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:*
>
> *Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."*

Similarly, Regulation 4.38 of Supply Code also refers only to licensee.

"4.38 The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control."

8.12.2. When the Regulation refers only to licensees, no reliance can be placed on the same by a non-licensee. When the Regulations provide for extension for the licensee but do not provide for such extension for non licensees, then this is a deliberate decision not to provide such extension. The others are deemed to have been excluded. The non licensees cannot then under power to relax seek to act contrary to the regulations.

8.12.3. Similarly, even in case of Regulation 15.2, the reference is to licensee. The Supply Code only incorporates the specific timelines and does not incorporate Regulation 15.2 for the consumers/applicants.

8.12.4. In any case, the Petitioner has to justify and substantiate the alleged force majeure condition such as flood etc. with evidence and supporting documentation.

8.12.5. Further, when the work is done by the Applicant/consumer itself, the distribution licensee cannot seek extension under Regulation 4.37. In the present case, further, the Petitioner itself had not provided any reasons for delay until after issuance of notice and even then, there is no substantiation of the same.

8.13. Regarding contentions on inherent powers of the Commission raised by the Petitioner, the Respondent submitted that it is misconceived and erroneous. It is submitted that in the present case, there is a Supply Code and all parties and the Commission are bound by it.

8.13.1. The Respondent MGVCL submitted that it is well settled principle that the Regulations are binding. In this regard, the Constitutional Bench of the Hon'ble Supreme Court in PTC India Limited v. Central Electricity Regulatory Commission (2010) 4 SCC 603 has held as under:

"57..... Making of a regulation in that regard is not a pre- condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. ..... .

58. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)."

8.13.2. It is submitted that in Haryana Power Generation Corporation Limited -v- Haryana Electricity Regulatory Commission, in decision dated 01.03.2012 in Appeal No. 131 of 2011, the Hon'ble Tribunal has held as under:

"5. Bare reading of section 61 would make it clear that the State Commissions have been mandated to frame Regulations for fixing tariff under Section 62 of the Act and while doing so i.e. while framing such Regulations, State Commissions are required to be guided by the principles laid down in by the Central Commission, National Electricity Policy, Tariff Policy etc. It also provide that while framing the Regulations, the State Commissions shall ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safe guard consumer's interest. Once the State Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations while fixing Tariff under Section 62 of the Act and the Central Commission's Regulations have no relevance in such cases. However, the State Commission may follow the Central Commission's Regulations on certain aspects which had not been addressed in the State Commission's own Regulations. The Haryana Electricity Regulatory Commission has framed Terms and Conditions for determination of tariff for generation in the year 2008 and the State Commission is required to fix tariff as per these Regulations. However, as per Regulation 33 the State Commission has power to relax any of the provisions of these Regulations after recording the reasons for such relaxation."

8.13.3. It is well settled principle that the inherent power cannot override express provisions of law. The inherent powers cannot be exercised contrary to the

Regulations. It is well settled principle that the inherent power cannot override express provisions of law.

a. Arjun Singh -v- Mohindra Kumar, (1964) 5 SCR 946 : AIR 1964 SC 993

> *"20. On this submission, which we might mention has been urged for first time in this court, the first question that arises is whether the Court has the inherent jurisdiction which learned counsel contends that it has. For the purpose of the discussion of the question in the context of the relevant provisions of the Code, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction.* ***It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates.*** *We shall confine our attention to the topic on hand, namely applications by defendants to set aside exparte orders passed against them and reopen the proceedings which had been conducted in their absence....."*

b. Gram Panchayat v. Lokesh Devi, 1998 SCC OnLine P&H 1520: (1999) 4 RCR (Civil) 313 (2) : PLR (1999) 122 P&H 741

> *"3. It is a settled principle of law that in the administration of justice, Civil Courts, as a necessary corollary to its very existence, must be deemed to possess inherent powers and jurisdiction. This is more so where the power is exercised by the Court to achieve the ends of justice or to undo the wrongs during the pendency of proceedings before the Court. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under the provisions of the Code. It is also an equally settled principle of the law that if*

express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court. The jurisdiction vested in the Court under the provisions of Section 151 of the Code of Civil Procedure and a jurisdiction ex debito justitial are certainly not ousted merely on the existence of another remedy (see (1997) 2 SCC 387: AIR 1997 SC 1348. AIR 1966 SC 1899, AIR 1987 Bombay 182, AIR 1944 Lahore 165 and 1946 Punjab Law Reporter 111)."

c. Ram Prakash Agarwal and Anr v. Gopikrishan and Ors (2013) 11 SCC 296

"13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. similarly, inherent powers cannot be used to re-open settled matters. ***The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied.*** *Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited."*

d. Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498.

"37. The Commission being a creature of statute cannot assume to itself any powers which are not otherwise conferred on it. In other words, under the guise of exercising its inherent power, as we have already noticed above, the Commission cannot take recourse to exercise of a power, procedure for which is otherwise specifically provided under the Act."

e. Power Grid Corporation of India Ltd Corporate Office -v- Green Infra Renewable Energy Limited, 2017 SCC OnLine CERC 261

"84.....From the above two judgments, it emerges that the inherent powers can be exercised in order to address the procedural infirmities in the CPC in order to achieve the ends of justice and abuse of the process. ***In the present case there are no procedural infirmities in the Conduct of Business Regulations which prevents the Commission to address the issue of***

connectivity to the applicants who have been selected as successful bidders in SECI conducted bids. The difficulties have arisen in the absence of substantive provisions in the Connectivity Regulations to address the issue of connectivity in case of wind power generators/developers keeping in view the peculiarity of wind energy sector. In our view, inherent power of the Commission cannot be invoked under Regulation 111 of the Conduct of Business Regulations to grant relief to the Petitioner."

8.13.4. It is submitted that the above judgments clarify that a provision barring exercise of inherent power need not be express but also may be implied. The Central Commission has also held that the difficulties arising in absence of substantive provisions cannot be addresses under inherent powers which are for procedural infirmities. In any case cannot affect substantive rights of parties. In this regard, the Hon'ble Supreme Court in Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1 has held as under:

"27. We will next examine whether the power to make such an order can be traced to Section 151 of the Code, which reads:

"151. Saving of inherent powers of court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court"

28. As the provisions of the Code are not exhaustive, section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognize rights, or to create liabilities and obligations not contemplated by any law.

29. Considering the scope of Section 151, in PadamSen v. State of Uttar Pradesh, this Court observed (AIR p.219, paras 8-9),:

"8. ....The inherent powers of the court are in addition to the powers

specifically conferred on the court by the Code. They are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature....

9. ...The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the courts for passing such orders which would affect such rights of a party."

8.13.5. It is further submitted that the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others (2017) 16 SCC 498, concurring judgment has relied on the judgments of Hon'ble Supreme Court. The Concurring judgment reads:

"58. By a reading of Regulation 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers preserved under Regulation 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-
.... .
Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296,"

8.13.6. Further, it is submitted that the Regulations 9.21 and 9.22 of the Supply Code relates to power to relax and power to remove difficulties. Even otherwise, the

reason to delay has to be substantiated. When the Regulations provide for extension for the licensee but do not provide for such extension for non-licensees, then this is a deliberate decision not to provide such extension. The non licensees cannot then under "power to relax" or "power to remove difficulty" seek to act contrary to the regulations. Power to relax are for general public interest and it is not only the interest of the specific consumer in question. The interests of consumers at large would also have to be considered who now have to bear the burden of the power arrangements made by the distribution company for the Petitioner, if the Petitioner is exempted from paying the minimum demand charges. This would not serve the public interest. The entire purpose of minimum demand charges is to ensure that the other consumers do not bear the burden and to ensure that the consumer like Petitioner acts in time.

8.13.7. Even assuming but not admitting that there can be any exercise of such powers, the Petitioner has to substantiate that there is delay beyond its control which has not been done.

8.13.8. Without prejudice to the above contentions and even assuming but not admitting that the Petitioner has justified the delay, it is submitted that any such extension of time could be considered only by the Commission and MGVCL had no powers to grant any extension nor waive the demand charges, Therefore, MGVCL was correct and valid in its actions and in raising the invoices. The Petitioner did not approach the Commission in a timely manner. In such circumstances, the refund of such charges would be inequitable and would require adjustment of past arrears as MGVCL has to be assured of its aggregate revenue requirements. Therefore, whether this is a fit case for refund of charges also has to be considered. Even assuming but not admitting, there has to be any refund, there cannot be any interest as claimed by the Petitioner or otherwise. MGVCL had acted in the accordance with Regulations and there cannot be any default attributable to MGVCL. In such circumstances there cannot be any interest let alone interest at 15%.

9. The Petitioner, vide affidavit dated 19.09.2025, filed its consolidated submissions in pursuance to the Daily Order dated 08.09.2025.

9.1. It is submitted that the Petitioner has already made elaborate submissions in the various affidavits filed before the Commission from time to time including submissions on the issue of jurisdiction and maintainability of the Petition.

9.2. The Petitioner has made its submission on the issue of jurisdiction as well as on the merit of the case for grant of additional time for completion of 66 KV transmission line and bays.

9.3. The submission already covered above are not repeated for sake of brevity.

9.4. The Petitioner has requested the Commission to consider the submissions made by it and allow the present Petition and prayers made therein.

10. During the hearing of the matter, Ld. Advocate appearing on behalf of the Respondents argued that the preliminary issues including the issue of jurisdiction and powers of the Commission needs to be decided. The Commission needs to first decide whether the Commission can exercise its power to grant any extension because only if there is such power conferred on the Commission in law and/or the Clauses, then only the Commission can exercise the same and then only it has jurisdiction to exercise its powers, but if the statute/Clause itself does not have any such provisions which empowers the Commission to grant extension of time, then every grievance of the consumer including billing dispute or extension of time limit or any other issues of the consumers against the distribution licensee shall necessarily fall within the jurisdiction of the concerned CGRF of the distribution licensee and is required to be dealt by the concerned CGRF.

10.1. It is argued that the 60 days' notice issued by Respondent MGVCL under Clause 4.33 of Supply Code is in accordance with the provisions of Supply Code 2015 and therefore the said notice cannot be treated as arbitrary or *void ab-initio.*

10.2. It is submitted that the submissions made by Petitioner on inherent powers of the Commission relying on Clause No. 9.23 to 9.25 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 are misplaced and the Respondents do not

agree with the interpretation of the judgments done by the Petitioner because it is well settled principle that the inherent power cannot override express provisions of law. It is submitted that the judgments referred by the Respondent have very clearly held that the provision has to be express but it has to be implied also. Thus, if there are specific provisions dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court, in this case the Commission or the jurisdiction that may be exercised in relation to a matter, the inherent powers cannot be invoked to cut across the powers conferred and the prohibition need not be express but may be implied or be implicit from the very nature of the provision. In this regard referring to para 20 of the judgment of Hon'ble Supreme Court in case of Arjun Singh V/s. Mohindra Kumar (AIR 1964 SC 993) which reads as under:

> *"……..*
> *20. ……. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words if there are specific provisions of the Code dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code. The prohibition contained in the Code, need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates……*
> *….."*

Thus, it is not only an express provision but even by necessary implication the Court cannot override provisions of law through inherent powers. It is submitted that for example if a provision is given to extend timelines for a licensee but the same provision does not refer to the consumer and there is no other provision for the consumers, then there is a necessary implication that the Court / Commission does not want to extend the power for a consumer. It cannot be interpreted that the provision needs to expressly exclude the consumer or use of word 'only' is required to mean it is only for licensee and in absence of word 'only' it automatically extends to consumers. It is submitted that assuming there is a provision in a Clause which provides that the Commission can exercise power if certain conditions are met, then the Commission can exercise powers only when those conditions are met.

However, as per the submissions advanced by the Petitioner, they say that though the Petitioner has not satisfied those conditions as provided in the Clause, but since the Clause does use the word 'only' to say that only when such conditions are met then only the powers can be exercised and therefore, in absence of use of word 'only', the Commission may exercise its inherent powers and still provide the relief sought. In such a case, then what's the point of that Clause or need to have such Clause at all because if everything can be done on the basis of inherent powers then whether anything is provided in the Clauses or not, then there is no purpose of having such Clause. It is submitted that when a Clause says that the Commission can extend the power for a licensee but does not give that same right to a non-licensee what it means that by necessary implication that Clause is excluding Non-Licensee. It is submitted that as the Clause stands today irrespective of whether it is right or wrong or there is lacuna in the Clause is altogether a different issue. The fact of the matter is that the Clause which is prevailing as on date cannot be changed simply for any of such issues. It is for the Commission to amend the Clause as and when deemed appropriate to include similar provision for consumer by following the due process and procedure for amending the Clause, inviting public comments, holding public hearing etc. for the future. The Clauses prevailing as on date have no provision entitling granting time-limit extension to consumers.

10.3. It is submitted that Petitioner has not shown any provision within the Clause which says that the power to grant extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 to a licensee is coextensive for consumers then only the Commission can exercise its powers. But exercise of inherent power to read something into a Clause which is not provided in the Clauses is not correct. It is further submitted that when a Clause provides for one thing but excludes the other person then by necessary implications it means that it was intended to exclude that other person.

10.4. It is submitted that similarly in the judgment of Gram Panchayat v. Lokesh Devi it is held that:

> *"……. The inherent powers also do not confer on the Court any additional jurisdiction to amplify the powers specified in the Code. These are the powers which are in addition to complementary powers expressly conferred upon the Court under*

the provisions of the Code. It is also an equally settled principle of the law that if express provisions are provided for directing a particular act in a particular manner, inherent powers cannot be used to frustrate such limitations of the Court….."

10.5. It is submitted that if the express provision clearly says that extension can be granted to a licensee by the Commission then inherent powers cannot be used to say that now Commission may grant extension to a 'Non-Licensee'. Since, there is express provision to grant extension only to a licensee and clearly chosen not to grant that power for 'Non-Licensee'. Similarly, in the judgment of Ram Prakash Agarwal and Anr vs. GopiKrishan and Ors it is very clearly held that:

"… A provision barring the exercise of inherent power need not be express, it may even be implied…"

It is submitted that when a provision expressly says that it applies to 'licensee', it is implied that it does not apply to 'Non-Licensee'. Therefore, the reliance placed by Petitioner that Clause 4.37 impliedly empowers the Commission to grant the extension as prayed by the Petitioner as a consumer is incorrect because the said Clause clearly is with reference to the licensee and when 'consumer' is not mentioned in the said Clause, it is clear that the intention while drafting the same, 'consumer' was consciously excluded and therefore, the same cannot be read to co-extensively exist for consumers also. It is submitted that the present Clauses as they stand today only provide that the licensee can approach the Commission seeking extension of time i.e. extension can only be granted to the licensees.

10.6. It is submitted that inherent powers are exercised for correcting procedural infirmity but cannot be used for granting any substantive relief. Thus, in case there is any procedural infirmity, the same can be corrected by the Commission by exercising its inherent power. However, in the present case, the submission of the Petitioner is that though the Clauses don't have any substantive provision to address the issue for granting relief of extension of timelines to a consumer and despite that the Commission may exercise its inherent powers to grant the substantive relief as prayed by the Petitioner in the present matter. It is submitted that other judgments have also been relied by the Respondent on the aspect that inherent powers cannot be exercised to affect substantive rights of a party or to

grant relief of substantive nature but are meant for correcting procedural infirmity only. Even, in the case of Gujarat Urja Vikas Nigam Limited v. Solar Semi Conductor Private Limited and Others, Hon'ble Supreme Court has relied on such judgments and given a concurring judgment, the relevant portion reads as under:

"……

58. By a reading of Clause 80, it is clear that inherent powers of the State Commission are saved to make such orders as may be necessary:- (i) to secure the ends of justice; and (ii) to prevent abuse of process of the Commission. The inherent powers being very wide and incapable of definition, its limits should be carefully guarded. Inherent powers preserved under Clause 80 (which is akin to Section 151 of the Code) are with respect to the procedure to be followed by the Commission in deciding the cause before it. The inherent powers under Section 151 CPC are procedural in nature and cannot affect the substantive right of the parties. The inherent powers are not substantive provision that confers the right upon the party to get any substantive relief. These inherent powers are not over substantive rights which a litigant possesses.

59. The inherent power is not a provision of law to grant any substantive relief. But it is only a procedural provision to make orders to secure the ends of justice and to prevent abuse of process of the Court. It cannot be used to create or recognize substantive rights of the parties. In Vinod Seth v. Devinder Bajaj and Another (2010) 8 SCC 1, it was held as under:-

…..

Same view was reiterated in Ram Prakash Agarwal and Another v. Gopi Krishan (dead through LRs.) and Others (2013) 11 SCC 296."

10.7. As regards the 'Power to Relax', referring to Clause 9.21 of the GERC Supply Code wherein the Commission may in public interest and for reasons to be recorded in writing, relax any provisions submitting that 'public interest' as referred in the aforesaid clause does not mean interest of one single consumer only. Public interest has a wider connotation and also involves public interest as regards to the distribution licensee as well as the general body of consumers at large. In the present case, the Petitioner has demanded additional load and the distribution licensee has made arrangements for such power supply, the Petitioner signed Agreement / contract with licensees for additional load and now if Petitioner is not consuming but saying not to raise demand charges then who is going to pay for such capacity. It is submitted that obviously the remaining consumers will be burdened for the same and therefore, this issues also need to be considered by the

Commission in public interest. Moreover, the 'Powers to Relax' cannot be used when the Clause is very specific and the basic contention of the Petitioner is that the said Clause is wrong and therefore, the Commission may relax the same. It is not open for the Petitioner to say that the Clause is not correct because the Clause stands as it is as on date and if in the opinion of the Petitioner, the said Clause was not proper or wrong or 180 days is not sufficient, they ought to have challenged the said Clause or ought to come before the Commission seeking an amendment of the Clauses, which the Commission, if deemed appropriate may have suitably amended after following due process of law. Instead of following the aforesaid proper procedure, the Petitioner is relying on inherent powers or powers to relax. It is submitted that apart from the issue of interpretation, there is an issue of Clause 4.37, which applies to a licensee can be read to coextensively apply to a consumer, needs to be decided by the Commission. As regards Clause 9.22, It is submitted that the Petitioner has not addressed the issue that the Commission may refuse to entertain the reference filed beyond three months' delay without sufficient cause because in the case of the Petitioner, the present Petition is filed before the Commission in May-2022 whereas the due date was in July-2020. Thus, the Petitioner has approached the Commission after delay of 2 years and thus it clearly appears that the Petitioner had no issues until the Respondent issued notice, where after it was realised that the line with associated work is not completed in time. It is submitted that the Commission had also raised the issue of delay during the previous hearing and recorded the same in its Daily Order dated 24.12.2019 questioning the delay in approaching the Commission. However, the Petitioner in its additional submissions filed has not addressed this issue. The issue in the present matter is not delay in prescribed timelines because only when the notice is issued to complete the work in 60 days otherwise the billing will be started by the Respondent distribution licensee. Hence, the issue only arose after completion of 180 days' and issuance of notice by distribution licensee.

10.8. As regards the submissions made by the Petitioner relying on GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, It is submitted that Clause 9.3 of the said Clauses provides for the time limits and as per Clause 4.33 of GERC Supply Code the consumer has the option to carry out the works in which case the timeframe specified in GERC Standard of Performance Clauses will apply.

It is submitted that in the present case the Petitioner opted to carry out the work of 220 kV transmission line on its own and therefore, the timelines as per Clause 9.3 of the SOP Clauses will apply. Moreover, there is a 'Note' below Clause 9.3 of SOP Clauses which reads as under:

> *"…….*
> *Note: The time mentioned in the schedule would be reckoned after presentation of completed application and compliance with formalities (including granting of space for installation of transformers, if required, and meters) is completed.*
>
> *The above time limit for release of connection after receipt of demand note amount will be subject to the condition that connection is technically feasible and will meet with safety requirements. This duration would exclude the time attributable to the consumer / local authority. Further, any such extended period should also be conveyed to the Commission for its record.*
> *……."*

10.9. As per above 'Note', the time duration attributable to the consumer or local authority to be excluded from the prescribed timelines. Since, in the present case the Petitioner is constructing the line on its own the duration attributable to the consumer does not arise and cannot be considered but only the delay in time attributable to local authority to be considered. Thus, any delay attributable to local authority is permissible and cannot be expanded to Right of Way issues or other issues. The Petitioner is required to demonstrate through documentary evidence duration attributable to local authority and which had to be informed to the Commission because the above note clearly says that the same should also be conveyed to the Commission. The Petitioner cannot come after two years before the Commission saying there were issues with local authority, if any, for laying of transmission line.

10.10. Therefore, for exercising Clause 9.22, which has very limited application and Petitioner is required to prove that the delay beyond 3 months is on account of local authority. The scope cannot be extended for any delay on account of other factors or reasons because the same is limited to local authority only. The Petitioner has to satisfy this limited aspect because there is no reasoning as regard to local authority

10.11. As regards the contention raised by the Petitioner and communication of Respondent No. 1 that as per Clause 4.37 if the powers have to be exercised for any

extension of time, it has to be exercised by the Commission because Clause 4.37 says that the licensee may approach the Commission for extension of timelines. It is submitted that the Respondents in their replies have clearly said that the aforesaid Clauses do not refer to a consumer. It is submitted that the Respondents have never admitted that there is any power under the Clauses of the Commission to grant any time limit extension to a consumer and the Respondents have only stated that if there is any power under the Clauses then the same may be exercised by the Commission. It is further submitted that when the issue of jurisdiction arises in any matter the same can be raised at any time and has to be decided by the Court/Commission. Even, if the parties in dispute agree that the Commission has jurisdiction it does not mean that the Commission has jurisdiction. So irrespective of what is said or submitted by the Respondents, the jurisdiction issue has to be decided by the Commission and that the issue of jurisdiction can be raised at any time. It is submitted that if a court does not have jurisdiction irrespective of what parties say, jurisdiction cannot be given by parties to a court which otherwise does not have the jurisdiction to decide a particular matter. It is submitted that the issue of jurisdiction can be raised right from a lower court till even when the matter reaches the Hon'ble Supreme Court.

10.12. It is submitted that if the consumer feels aggrieved by the licensee's action or omission, the consumer may file his representation to the concerned Consumer Grievances Redressal Forum for redressal of his grievance in terms of Clause 4.86 of the GERC Supply Code.

10.13. It is further submitted that the Commission, given the legal provisions and case laws, first needs to decide as to whether the Clauses of the Commission provides any such power to the Commission for granting extension of any time limit as may be sought by the consumer or not? It is submitted that the Commission may consider the submissions made on behalf of the Respondents in the present Petition including on the issues of admissibility, jurisdiction and whether Commission can exercise its 'Power to relax' or 'Inherent power' to grant the relief prayed in the Petition.

10.14. It is further submitted that in case the Commission decides that it has the

jurisdiction to decide the issues as raised in the present matter and has powers to grant any time limit extension, then the Commission may list the matter for further hearing on the merits based on individual facts involved in the case. It is submitted that if the Commission holds that it is having no jurisdiction then the parties may approach appropriate Forum and argue the matter on merits before the Forum.

11. We have considered the submissions and arguments advanced by the parties. The Petitioner is seeking extension of time limit for completing the work of 66 kV transmission line and bays for release of 5000 kVA EHT connection undertaken under Option III. We also note that the Respondents have questioned the admissibility of the present Petition on the issues of jurisdiction of this Commission to consider the present matter and as to whether the Commission has powers to decide the matter or the Petitioner needs to approach the CGRF since the issue involved is related to billing dispute. Per contra according to the Petitioner, this Commission has the jurisdiction to decide this matter since it involves interpretation of the provisions of the Electricity Act and the Clauses framed thereunder by the Commission. The Respondents have argued that as such there is no provision under the Clauses of this Commission which empowers the Commission to exercise jurisdiction and to grant the extension of time limit sought by the Petitioner. Therefore, the matter first needs to be decided on the issues of admissibility, jurisdiction and whether the statute or Clauses / rules framed thereunder by the Commission empowers the Commission to decide the relief sought.

11.1. Since the Petitioner and the Respondents have submitted that the Commission first needs to decide preliminary issues of admissibility, maintainability, jurisdiction and power of this Commission as to whether the present matter is admissible and maintainable before this Commission and that the Commission has jurisdiction to consider the matter for granting extension of any time limit sought by the consumer Petitioner. Accordingly, the Commission hereinafter proceeds to decide the preliminary issues of admissibility, maintainability, jurisdiction and powers of the Commission to admit this matter.

11.2. The present Petition is filed by the Petitioner seeking extension in time period for

the completion of work of transmission/distribution network undertaken by it for receiving 5000 kVA EHT connection from Respondent No. 1 MGVCL. It is an admitted fact the Petitioner is a company incorporated under the provisions of Companies Act 1956. The Respondent No. 2, GETCO is the Transmission licensee and engaged in creating necessary transmission system and infrastructure in the State of Gujarat. The Respondent No. 1 MGVCL is engaged in distribution and supply of electricity within its licence area. It also an admitted fact that the Petitioner desires to avail 5000 kVA EHT connection from Respondent No. 1 MGVCL, which is permissible on utilisation of transmission network only, which is in the domain of Respondent No. 2 GETCO as part of transmission planning at intra state level. The work of construction of transmission line and associated activities may be carried out by the Transmission Licensee or in the alternative a person at its own cost who desires in utilising such network may construct on its own as per approved design, drawings, transmission route and network planning including materials and contractor(s) approved by the Respondent No. 2. In such case the person who desires to set up the transmission line requires to pay supervision charges etc. to Respondent No. 2 who is otherwise responsible for planning, construction and commissioning of the transmission network / lines, bays etc. and to maintain the same with consideration of continuous power supply to the consumers within the State.

11.3. We note that the Respondent No. 1, MGVCL is a Distribution Licensee in the State of Gujarat within the meaning of Section 2 (17) of the Electricity Act, 2003 and the Respondent No. 2, Gujarat Energy Transmission Corporation Limited is the transmission licensee in the State of Gujarat and also holding the status of 'State Transmission Utility' (STU) under Section 39 of the Electricity Act 2003.

11.4. According to the submissions made by the Respondent No. 2, GETCO, in case of a consumer seeking supply of electricity from the concerned distribution licensee requiring erection and commissioning of transmission network, options are available to the person/consumer whereby either the transmission licensee may create the necessary transmission network or the person / consumer may carry out the necessary creation of transmission network by paying necessary charges to the distribution licensee and supervision charges to the Respondent No. 2 GETCO.

In case of the transmission licensee undertaking the construction of such transmission network the responsibility i.e. material purchase, route survey, designing, drawing, selection of contractor etc. has to be carried out by the Respondent No. 2 GETCO, whereas under the other option where the person / consumer who desire to set up the transmission network on its own or by itself, the work associated for creation of such network i.e. purchase of material, engagement of agency approved by GETCO to carry out the work, route survey of transmission line, drawing approval from GETCO, RoW issues, designing, testing and commissioning of transmission line etc. has be carried out by such person and the Respondent No. 2 GETCO is not responsible for any such activity. The Respondent GETCO only provides support wherever necessary and supervision. In the present case as the Petitioner was desirous of 5000 kVA EHT power supply from Respondent No. 1 MGVCL being the distribution licensee which is feasible only through 66 KV transmission line.

11.5. The Petitioner vide letter dated 17.09.2019 intimated the Respondent No. 2, GETCO, about selection of Option for carrying put the work of erection of EHV transmission lines and bays. According to this letter, the Petitioner selected to take up the work under Option II/III i.e. work of transmission line and feeder bay to be carried out by themselves. The Relevant portion of the letter dated 17.09.2019 of the Petitioner to the Respondent GETCO is reproduced below:

> *"……*
> *On completely understanding the procedure of carrying out the work, we M/s. VIRGO ALUMINUM LIMITED have voluntary selected to take up the work under option- II/III i.e. work of transmission line and feeder bay will be carried out by us (COMPANY).*
> *……"*

11.6. It is admitted by the Petitioner that Option III was opted despite not having the expertise in laying of 66 kV transmission line for which the Respondent No. 2 has the experience and expertise.

11.7. Thus, it is an admitted fact that the Petitioner preferred to carry out the aforesaid work through the agency engaged by it for the said work and there is delay in the time taken for completion of such work. We also note that the Petitioner and the

Respondent No. 1 MGVCL have executed an agreement dated 16.01.2020 in this regard.

11.8. Since delay had occurred in erection / construction of the transmission network with associated works, the Respondent MGVCL issued 60 days' notice to the Petitioner, on 16.07.2020, purportedly under Clause 4.33 of the GERC (Electricity Supply code and Related Matters) Regulations, 2015 to complete the work of 66 KV Transmission Line and Bays and avail power supply within 60 days from the date of notice, failing which the Petitioner shall be liable to pay demand charges and minimum monthly charges as applicable, the Respondent MGVCL commenced billing on 5000 kVA contract demand to the Petitioner with effect from 25.11.2020.

11.9. Per contra, it is submitted by the Petitioner that difficulties on account of time taken by various authorities such as NHAI, Forest Dept., Respondents and others for processing and granting the requisite approval for laying transmission network and Covid-19 outbreak were faced by the Petitioner in completion of 66 KV transmission line. The Petitioner had approached Respondents requesting to grant additional time for completion of work of transmission line and bays considering above stated difficulties.

11.10. Eventually, the present Petition has been preferred by the Petitioner before this Commission. As noted earlier the Petitioner has sought following prayers:

(a) "In the facts and circumstances of the case, the Commission may please to take on record the present Petition,

(b) In the facts and circumstances of the case, the Commission may please to admit the petition and grant the opportunity of being heard to the Petitioner,

(c) In the facts and circumstances of the case, the Commission may please to invoke its powers to relax / inherent power for allowing deemed extension of time period up to December 2021 for completion of 66 KV line and bays work on post facto basis, and

(d) Consequently, direct the Respondent No. 1 to refund the amount recovered by it from the Petitioner with interest of 15% per annum towards bills for minimum

demand charges for 5000 KVA on deemed release basis for the period from 25.11.2020 to 31.12.2021.

(e) The Commission may please to allow to amend / alter / modify the contents of the Petition as and when required in the given facts and circumstances of the case.

(f) The Commission may please to pass such further order or orders as the Commission may deem just and proper in the circumstances of the case."

11.11. Since, the genesis of the issues that have arisen between the Petitioner and the Respondents is pursuant to new EHT connection sought by the Petitioner from the Respondent No. 1 MGVCL being the distribution licensee, it is necessary to refer the definition of the 'distribution licensee' under Section 2(17) of the Electricity Act, 2003 which reads as under:

"distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;"

As per above definition the distribution licensee needs to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply

11.12. The Petitioner has also referred to definition of "local authority" under Section 2(41) of the Electricity Act 2003 (Act) which reads as under:

"local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;"

11.13. The Petitioner has relied on Section 42(1) which is reproduced below:

Section 42 (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 aforesaid section provides that it is the duty of the distribution licensee to

develop and maintain an efficient, coordinated economical distribution system in its area of supply. In the present case as referred above the Respondent MGVCL on receipt of an application from the Petitioner for 5000 kVA EHT connection referred the matter to the Respondent GETCO for the Technical Feasibility Report. Thereafter, pursuant to voluntary selection by the Petitioner to take up the work under Option II/III, the Respondent No. 1 MGVCL has furnished an estimate to the Petitioner along with copy of letter of GETCO stating that Petitioner shall undertake the work of power demand under Option III i.e. consumer will carry out the entire work and necessary expenses payable by the Petitioner which require to be recovered as per provisions of Section 43 read with Section 46 of the Electricity Act, 2003 which are reproduced below:

Section 43 (Duty to supply on request)

"43. (1) 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."

…….

(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."

"Section 46 (Power to recover expenditure)

46. The State Commission may, by Clauses, 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."

Section 43 (1) provides that pursuant to an application by the owner or occupier of any premises, the licensee shall provide supply of electricity at the premises of the consumer within one month from the date of application given by owner or occupier of any premises. The first proviso provides that where supply requires extension of distribution mains or commissioning of new sub-station, the licensee shall supply the electricity to such premises immediately after extension or commissioning of the system or within such period as specified by the Commission.

As per Section 43 (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).

Section 43 (3) provides that failure on part of the distribution licensee to supply electricity within the time period specified in Section 43(1), the distribution licensee is liable to pay penalty which may extent to one thousand rupees per each day of default. Thus it is the duty of the licensee to construct the necessary distribution system which may include transmission system and supply the power within one month from the date of an application made by the consumer. Thus the distribution licensee is mandated to supply electricity within specified period as provided in aforesaid Section. Moreover, the work related to distribution network creation is of the licensee.

Section 46 permits the distribution licensee to charge from a person requiring 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 as per the Clauses notified by the State Commission.

11.14. Section 50 the Electricity Act, 2003 empowers the Commission to specify Electricity Supply Code. The said Section reads as under:

"Section 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; measures for preventing tampering, distress or damage to electrical plant, or electrical line 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 plants or meter and such other matters."

Aforesaid Section provides that the State Commission shall specify an Electricity Supply Code which provides for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment of electricity charges, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on its behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

11.15. Section 57 the Electricity Act, 2003 provides for 'Standard of Performance of licensee' which reads as under:

"Section 57. (Consumer Protection: Standards of performance of licensee):

(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination."

Aforesaid Section provides that the Commission after consultation with the licensees and persons likely to be affected, specify Standards of Performance of a licensee or a class of licensees and if a licensee fails to meet the standards specified under sub-section (1), it shall be liable to pay such compensation to the person affected as may be determined by the Commission without prejudice to any penalty

which may be imposed or prosecution be initiated,

11.16. We also note that the parties have referred to relevant provisions of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 as amended and advanced extensive submissions /arguments thereon. It is therefore necessary to refer the same.

11.17. Since, this matter pertains to 'Consumer', Distribution Licensee' and 'Transmission Licensee', the definitions provided under the GERC Supply Code of the Commission are relevant which read as under:

Clause 2.3 (18) Consumer

'Consumer' refers to any person who is supplied with electricity for his/her own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. A consumer is specified as a:

(i) 'Low Tension Consumer (LT Consumer)' if he obtains supply from the licensee at low or medium voltage;
(ii) 'High Tension Consumer (HT Consumer)' if he obtains supply from the licensee at High Voltage;
(iii) 'Extra High Tension Consumer (EHT Consumer)' if he obtains supply from the licensee at Extra High Voltage;

Clause 2.3 (26) Distribution Licensee

'Distribution Licensee' refers to a person granted a license under Section 14 of the Act authorising him to operate and maintain a distribution system for supplying electricity to the consumers of his area of supply.

Clause 2.3 (41) Licence

'Licence' refers to a licence granted under Section 14 of the Act;

Clause 2.3 (64) Transmission Licensee

'Transmission Licensee' refers to a person who has been granted a licence under Section 14 of the Act authorising him to establish or operate transmission lines;

11.18. From the aforesaid definitions it is clear the consumer is a person who is supplied electricity by a licensee or Government or any other person engaged in the business of supplying electricity to the public under the Act or any other law. The said definition also specifies different category of consumers viz. LT, HT and EHT. The definition of distribution licensee states that a person who has been granted license under Section 14 of the Act authorising to operate and maintain a distribution system for supplying electricity to the consumer of his area. Licence is defined as licence granted under Section 14 of the Act. Transmission Licensee is a person granted a licence under Section 14 of the Act to establish and operate transmission lines.

11.19. From the aforesaid definitions it is clear that the consumer, distribution licensee and transmission licensee are different and distinct from each other and their functions, duties, role, activities, are different and distinct. Therefore, the interpretation is very clear that where the word consumer, licence, distribution licensee or transmission licensee are referred in the Clauses, the same needs to be interpreted as per their respective definition in the Clause. It is not permissible to add, amended or alter the words where consumer, licence, distribution licensee or transmission licensee are used or read them as interchangeably. It is also not permissible to add any additional words which are not mentioned in the said Clause.

11.20. Clause 1.14 of the GERC Supply Code provides for Procedure to Settle Dispute which reads as under:

> *"1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

11.21. Clause 4.3 of the GERC Supply Code provides for Licensee's obligation to extend the distribution system and consumer's share in the cost which reads as under:

> *"4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension/ up-gradation of the system up to the point of supply for meeting demand of new consumers and*

the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."

11.22. Clause 4.32 of the GERC Supply Code reads as under:

"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 5 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

11.23. We note that Clause 4.33 of the GERC Supply Code, 2015 deals with the case of the Petitioner opting to undertake the work of construction, erection, commissioning, testing etc. of the transmission system on its own. The relevant portion is extracted herein below:

"4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and

amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof."

11.24. We also note that the Petitioner referring to Clause 4.37 and 4.38 of the GERC Supply Code has submitted that in the said provisions the word 'licensee' has been mentioned. The proviso in Clause 4.37 of the GERC Supply Code permits the licensee to approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 in cases where extension of distribution mains requires more time. Even, as per Clause 4.38 of the GERC Supply Code, the licensee is not responsible for delay in extending supply of electricity if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control. It is argued by the Petitioner that as per the provisions of the Electricity Act, 2003 and the Clauses framed by this Commission in this regard, it is the duty of the distribution licensee to lay down the distribution system / network

for providing additional contract demand. Clause 4.37 of the GERC Supply Code permits the distribution licensee to approach this Commission for time extension in case of delay and Clause 4.38 stipulates regarding exclusion of delay arising on account of problems relating to right of way, acquisition of land etc. Since, in the present case, the Petitioner consumer has undertaken the responsibility of setting up transmission network for supply of electricity and has encountered with issues which are beyond the reasonable control of the Petitioner / Consumer. Hence, the 'consumer' also needs to be allowed to approach this Commission for extension of time limit on account of delay and exclusion of time period of delay arising on account of unforeseen reasons because even the consumer has by way of an agreement with the licensee agreed to lay down the network necessary for supply of electricity.

11.25. As per the provisions of Clause 4.37 and 4.38 of the GERC Supply Code 2015, the concerned distribution licensee is (i) entitled for extension of time for completion of line / substation work, (ii) shall not be held responsible for delay in completion of work, if the same is on account of reasons related to RoW, Approvals etc. over which the licensee has no reasonable control. However, such dispensation is not available under Clause 4.33 (2) of the GERC Supply Code when the work is undertaken by the Petitioner / Applicant consumer even in case of genuine difficulties.

11.26. The Petitioner has further submitted that the time period of 180 days provided in the GERC Standard of Performance Clauses can be relaxed by the Commission on basis of unforeseen reason. The provisions of Clause 4.37 for extension of time limit needs to be extended to the consumer also who have undertaken the obligation for completion of line / substation work on behalf of the licensee. It is also submitted that, it is unjustified, unreasonable and illogical to consider that only distribution licensee is eligible for extension of time and not to be held responsible for the delay for reasons in nature of 'beyond reasonable control'. However, when consumer like the Petitioner undertakes the same work and faces identical difficulties akin to those specified in Clause 4.38 of the GERC Supply Code which would otherwise been faced by the licensee in the event when same work was undertaken by it, but in such case the consumer is not entitled for any relief which is unfair and

unreasonable.

11.27. The Petitioner has also persuaded the Commission to exercise 'Inherent Power' and 'Power to Relax' while submitting that the Commission has 'Inherent Power' and 'Power to Relax' as provided under Clause 9.21 to 9.25 of the GERC Supply Code which are reproduced below:

Power of Relaxation and Power to Remove Difficulties

9.21 The Commission may, in public interest and for reasons to be recorded in writing, relax any of the provisions of this Code.

9.22 If any difficulty arises in giving effect to any of the provisions of this Code or there is a dispute regarding interpretation of any provision, the matter may be expeditiously referred to the Commission. The Commission shall pass necessary orders after consulting the parties concerned, provided that the Commission may refuse to entertain the reference filed beyond 3 months' delay without sufficient cause.

Savings of Inherent Power of the Commission

9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

9.24 Nothing in this Code shall bar the Gujarat Electricity Regulatory Commission from adopting in conformity with the provisions of the Act a procedure, which is at variance with any of the provisions of this Code, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

9.25 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

11.28. Clause 9.21 says that where there is any public interest involved with regard to any provisions of the Supply Code, the Commission may by recording the reasons in writing relax the provisions of the Code. In the present case it is clear that the

dispute is between a consumer seeking extension in time and the distribution licensee which has expressed its inability to grant the same. Thus, it does not qualify as a case of public at large where public interest is involved. Failure to carry out the work of distribution / transmission system required for catering additional contract demand opted by the consumer itself instead of assigning the same to the licensee(s) who had in the first instance agreed to carry out the same is not a case involving public interest. It is a case of failure of performing the work in timely manner accepted by the Petitioner / consumer and does not qualify as public interest. Further, power to relax provided in this Clause is also subject to verification of the provisions of the Electricity Act, 2003. It is also necessary to see as to whether it is a case of any discrepancy between the provisions of the Act and the Clauses in which case the provisions of the Act will prevail and therefore, the contention of the Petitioner that under Clause 9.21 the Commission has power to relax the provisions of Supply Code is available is not applicable in present case.

11.29. Clause 9.22 states that in case any difficulty arises in giving effect to any of the provisions of the Supply Code or there is a dispute regarding interpretation of any provision the matter may be referred to the Commission and the Commission has power to interpret any provisions of the Supply Code and pass necessary order after consulting the parties. Further, the Commission may refuse to entertain such reference filed beyond delay of 3 months without sufficient cause.

11.30. We also note that relying upon Clause 9.23, 9.24 and 9.25 the Petitioner has submitted that the Commission has inherent powers provided in said Clauses. On the other hand, the Respondents have objected and stated that the Commission has inherent powers only in consonance with the provisions of Act and Clauses framed thereunder. We note that the Inherent powers in aforesaid Clauses are permitted to be utilised only when there is no clarity on any provision of the Supply Code. The said Clauses also provide that when the Inherent power is desired to be utilised by the Commission, it requires to be seen that the process of such utilisation of power must be in consonance with the Electricity Act, 2003.

11.31. We also note that 'Removal of Difficulty Power' provided in the aforesaid Clauses need to be applied where there is ambiguity in the interpretation or no clarity on

interpretation. It is also necessary to see that while exercising the power of Removal of Difficulty, the preliminary issue is that whether any difficulty has arisen in the case before the Commission. If any difficulty has arisen for interpretation of the provision of the Clause or not. As noted in this case, the difficulty has arisen between the parties with regard to the provisions of the GERC Supply Code with regard to grant of extension in time period for completion of the transmission network within the specified time by the consumer and whether the consumer is liable to pay the bills raised by the Respondent MGVCL for new EHT connection of 5000 kVA on deemed release basis.

11.32. The Petitioner has also submitted that there is no provision in the GERC Supply Code which provides for redressal of the difficulty faced and that in case of any problem as stated by the Petitioner occurs where to get the remedy for same. We note that as recorded in earlier paragraphs the disputes arose due to failure of the consumer i.e. the Petitioner to construct and lay down the transmission / distribution system from the sub-station of the Respondent No. 2 GETCO to the place of consumption / premises of the Petitioner.

11.33. It is noteworthy that the genesis of the issue which has arisen in the present case is the delay in completion and testing of the transmission / distribution network that the Petitioner consumer itself decided to carry out. However, the Petitioner was not able to complete the said work in the stipulated time period. As a consequence, thereof, the Respondent No. 1 MGVCL commenced raising monthly bills with 5000 kVA new EHT connection on deemed release basis. The Petitioner approached the authorities of the Respondent No. 1 MGVCL for extension of time limit for construction of transmission line on account of difficulties faced by the Petitioner. However, the Respondents did not extended the time limit in view of the stipulations provided in GERC Supply Code.

11.34. It is submitted by the Petitioner that the Clauses 4.37 and 4.38 of the GERC Supply Code provide for the licensee to approach this Commission for seeking extension in time and exclusion of the time period for Right of Way, land acquisition. However, when same work is undertaken by the consumer, the same relaxation ought to be available to such consumer like the Petitioner in present case. The Petitioner has

also pressed upon the Commission to exercise the powers available under provisions of Clauses 9.21 to 9.25 of the GERC Supply Code. We also note that 'Removal of Difficulty' power available under Clause 9.22 is applicable in the case where any dispute regarding any provision of Clause has arisen.

11.35. In the present case, in so far as allowing extension of time in completion of work has arisen between the parties. The submission of the Petitioner is that on one hand there is no clear cut provision in the GERC Supply Code akin to that available to a 'Licensee' under Clause 4.37 of approaching the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time as well as similar to Clause 4.38 whereby licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control whereas on the other hand there is no express bar for a consumer which has undertaken the work which otherwise was the responsibility of the licensee to undertake to approach this Commission for similar reliefs as provided to the licensee in Clauses 4.37 and 4.38 of the GERC Supply Code. Therefore, the Commission also needs to allow the consumer having opted to lay transmission network / distribution system on its own, reliefs as available to a licensee under Clauses 4.37 and 4.38 of the GERC Supply Code.

11.36. Above submissions of the Petitioner are opposed by the Respondents resulting in dispute between the parties. Therefore, the relevant Clauses of the Supply Code requires interpretation.

12. We note that in the present Petition, the Respondent is relying on various provisions of the Act, Regulations framed under it by the Commission, and order of the Commission in various petitions as well as the decision of the Hon'ble High Court of Gujarat in various cases, and also the judgment/ orders of the Hon'ble APTEL and apex courts, contended that the subject matter of the present Petition does not fall under the jurisdiction of the Commission.

Per contra, the Petitioner submitted that the subject matter falls within the jurisdiction of the Commission. Further, it is not only having issue of consumer billing but also having an issue of interpretation of provisions of Regulations, contract between the parties and also prayed for allowing the consumer at equity with the licensee whenever they are carried out the work on behalf of the licensee.

12.1. As the Petitioner and the Respondents have referred various provisions of Regulations, and also referred the provisions of Act, it is necessary to refer the same.

Now, we deal with the various provisions of the Rules and Regulations one by one as stated below:

12.1.1. It is necessary to refer Regulations 1.14 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

> *"**Procedures to Settle Disputes***
>
> *1.14 In the event of dispute regarding any provisions in the Supply Code between any User and the Distribution Licensee, the matter shall be referred to Gujarat Electricity Regulatory Commission and its decision shall be final."*

The aforesaid provision provides that in the event of any dispute regarding any provision of Supply Code between any users and the distribution licensee, the matter shall be referred to the Commission and the Commission's decision shall be final. The aforesaid provision specifically recognizes that whenever any dispute between the user and licensee, the same can be referred to the Commission and the concerned decision shall be final.

Here, we note that the user is defined in the GERC (Electricity Supply Code and Related Matters) Regulations as under:

> "……
>
> *2 (67) 'User' refers to any person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code is applicable."*

The aforesaid definition provides that user is a person having electrical interface with, or using the distribution system of the distribution licensee to whom this Code

is applicable.

The person is defined in the Electricity Act, 2003 in Section 2 (49) of the Act read as under:

> *"*
> *2(49) "person" shall include any company or body corporate or association or body of individual, whether incorporate or not or artificial judicial person;"*

The aforesaid definition provides that person is inclusive definition consist of any company or body corporate or association or body of individual, whether incorporate or not or artificial judicial person. Thus, individual is also qualified as person under the provisions of Electricity Act, 2003.

The person defined in the Regulation 2 (51) of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 is as under:

> *"....*
> *2(51) 'Person' refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person;"*

The aforesaid definition provides that Person refers to any individual or company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person. Thus, person consist of individual also.

12.1.2. It is also necessary to refer Regulation 4.3 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which is reproduced below:

> ***"Licensee's obligation to extend the distribution system and consumer's share in the cost***
>
> *4.3 The licensee is responsible for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof."*

The aforesaid provision provides that it is the responsibility of the licensee i.e. distribution licensee for ensuring that its distribution system is upgraded, extended and strengthened to meet the demand for electricity in its area of supply. The cost of extension of distribution mains and extension / up-gradation of the system up to the point of supply for meeting demand of new consumers and the cost of extension of service connection from the distribution mains to the point of supply shall be levied as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005 and amendments thereof.

The aforesaid provision mandated to the distribution licensee to carry out the work related to laying the distribution system for supply of electricity to the consumers by way of extension/ upgradation of distribution main up to point of supply to the consumer to meet his demand and recover the charges for it from such consumer as per the GERC (Licensee's Power to Recover Expenditure incurred in providing Supply and Other Miscellaneous Charges) Regulations, 2005.

12.1.3. It is also necessary refer the Regulation 4.32 of the GERC Supply Code Regulation which reads as under:

Procedure for providing New Electricity Service Connection Application Form

……

"4.32 In case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Provided that the time taken by applicant in securing the compliance as provided in Clause 4.29 above and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof."

The aforesaid provision provides that in case of application for HT/EHT supply the licensee shall forward the application to the Transmission Licensee within three days of its receipt for its further processing in terms of provisions in the Grid Code. The Transmission Licensee within 7 working days of receipt of the application from distribution licensee, shall intimate the distribution licensee regarding feasibility or otherwise of the application. Comments of the Transmission Licensee shall be communicated to the applicant within three days thereafter.

In case the application is found feasible and subject to compliance as provided in Clause 4.29 above, the Distribution Licensee shall issue a demand note in writing, under acknowledgement, within the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

The proviso in the said Regulation provides that the time taken by applicant in securing the compliance as provided in Clause 4.29 of GERC (Electricity Supply Code and Related Matters) Regulations, 2015 and time taken by Transmission Licensee in giving feasibility report shall not be included in the timeline specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof.

Thus, the aforesaid regulation provides for time limit for consideration of application received from the consumer by the distribution/ transmission licensee and carry out the activities in a stipulated time as stated in the said Regulation.

12.1.4. It is also necessary to refer Regulations 4.33 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

"…..

4.33 The demand note shall contain following details:

(1) Details of the works (including service line) to be undertaken for providing electricity supply;

Provided that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken.

(2) Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

Provided that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

Provided further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

Provided further that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

(3) Amount of security deposit as specified in the GERC (Security Deposit) Regulations, 2005 and amendments thereof.

……."

The aforesaid provision provides that the licensee issue demand notes to the person/ consumer with regards to the works (including service line) to be undertaken for providing electricity supply.

The proviso to the said regulation provides that where the estimates are issued on the basis of per kW of demanded load, the estimate need not contain details of works to be undertaken

Clause (2) of the said regulation provides that Charges for the above mentioned works to be paid by the applicant in accordance with GERC (Licensees Power to

Recover Expenditure incurred in providing supply and Other Miscellaneous Charges) Regulations 2005 and amendments thereof.

The first proviso to said regulation provide that if the applicant wishes to carry out the works himself, he shall be permitted to do so under supervision by the licensee's officer. Adhering to the estimate and layout approved by the licensee, the applicant can get the work of drawing of service line from the licensee's distribution mains up to his premises extension of HT/EHT line, Distribution or HT substation and LT line through Licensed Electrical Contractor (LEC). In such case, the consumer himself shall procure the materials. The material should conform to relevant BIS specifications or its equivalent and should bear the ISI mark wherever applicable. The licensee may ask for documentary evidence to verify the quality of materials used.

The second proviso to said regulation state further that if the applicant chooses to get the extension work done on his/her own, only supervision charges on the cost of material and labor charges shall be payable to the licensee.

The third proviso to said regulation state that if the applicant chooses to get the extension work done on his own, he shall get the work done within the timeframe specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, failing which the licensee shall issue notice to complete work and avail power supply within 60 days from such notice, on completion of notice period, he shall be liable to pay demand charges and minimum monthly charges as applicable.

The aforesaid provision provides from issuance of demand note by the distribution licensee to the consumer as and when such consumer carry out the work of laying down LT/EHT line on behalf of the respondent licensee i.e.. distribution licensee/ transmission licensee and recover the charges from the licensee.

Thus, the aforesaid provision recognizes that the consumers itself eligible to carry out the work of laying down distribution / transmission network for receiving the power supply from the licensee by way of new connection or extension of load. Further, it is also provided that failure to complete the work within the stipulated

period by the consumer, the distribution licensee by way of issuance of notice prior to 60 days of completion of work specified in the letter / notice to the consumer the licensee start recovery of demand charges

12.1.5. It is also necessary to refer Regulations 4.37 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"4.37 The overall timeline for releasing new electricity connection, from the date of receipt of application, shall be as per GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amendments thereof:*
>
> *Provided that the licensee may approach the Commission for extension of time specified in GERC (Standard of Performance of Distribution Licensee) Regulations, 2005, as amended from time to time, in specific cases where extension of Distribution mains requires more time, along with details. In such cases, the licensee shall inform the consumer about the likely time of completion of works."*

The aforesaid provision provides that the timeline for release of new connection from the date of receipt of application shall be as per the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 and amended thereto.

The proviso made in the aforesaid clause provides that the licensee may approach to the Commission for extension of time specified in the Standard of Performance of Distribution Licensee Regulations, 2005 and amendments made in it from time to time in specific cases where extension/ distribution main requires more time along with the details. In such cases, the licensee shall inform the consumer about the likely time to completion of works. Thus, the aforesaid provision recognizes that the licensee may approach to the Commission whenever there is extension of distribution mains required to it.

12.1.6. It is also necessary to refer Regulations 4.38 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"4.38 The licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control."*

The aforesaid provisions provide that the licensee shall not be held responsible for delay, if any, in extending supply if the same is on account of problems relating to right of way, acquisition of land, or delay in consumer's obligation over which licensee has no reasonable control.

12.1.7. It is also necessary to refer Regulations 4.42 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"4.42 On completion of the work, Licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The Distribution Licensee may, in special circumstances, extend the above period of sixty days."*

The aforesaid provision provides that on completion of the work, the licensee shall inform to the applicant for availing the power supply and if the applicant fails to avail of the power within the period of sixty days from such intimation, he shall be liable to pay the demand charges and minimum monthly charges as applicable. The distribution licensee may, as a special circumstances, extend the period of sixty days specified in the said regulation. Thus, the aforesaid regulation recognizes that the distribution licensees has power to extend the time limit of sixty days in case of non-completion of the work.

12.1.8. It is also necessary to refer Regulations 9.23 and 9.24 of the GERC (Electricity Supply Code and Related Matters) Regulations, 2015 which reads as under:

> *"**Savings of Inherent Power of the Commission***
>
> *9.23 Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission."*

The aforesaid regulation provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Gujarat Electricity Regulatory Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission.

"9.24 Nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit."

The aforesaid regulation provides that nothing in this Code shall, expressly or impliedly, bar the Gujarat Electricity Regulatory Commission dealing with any matter or exercising any power under the Act for which no Codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit.

12.2. On combined reading of aforesaid regulations notified by the Commission, it is clear that the said regulations state the duties cast upon the licensee under the provisions of the Electricity Act, 2003 and these regulations that the licensees are mandated to provide the electricity supply to the consumers by carrying out various activities which needs to do by it. It provides while dealing with the consumer applications for electricity supply, extension of power supply, load, etc. the various activities which requires to be carried out by the licensee in specified time frame and also are eligible to recover the charges/ expenses if any, incurred by them while complying with the aforesaid provisions of the regulations. The aforesaid regulations are silent with regard to the activities for construction of distribution system, if any, required to carry out by the licensee, the same if any, done by the consumer on behalf of the licensee because the duties cast upon the licensee to lay down the distribution network in its license area with consideration of safety aspects as well as other aspects. Hence, whenever the licensee assigned its duties to the consumers by way of an option then in that case, the licensee is mandated to supervise the work also require to approve the necessary distribution system network with consideration of the technical parameters, materials, etc. In such situation, if the delay caused by the licensee while carrying out the aforesaid work and it affect the consumers in creation of distribution network, it cannot be ignored, and consumers are eligible to get relief with regard to delay if any occurred on account of licensee. Hence, we are of the view that the Petitioner, who is a consumer is eligible to approach the commission as and when there is dispute with regard to delay in laying down distribution network by the consumers for getting

power supply or extension or variation in the existing load on contract demand supplied by the licensee the Commission has jurisdiction to deal with such issues and decide the same.

12.3. We note that the 'User' defined in the Electricity Supply Code which is subject matter in the present case as referred to above, the consumers who fall in the definition of person and User are eligible to approach the Commission in case of any grievance arising with regard to Supply Code either for interpretation of the regulations or dispute arose between consumer and licensee to the Commission. Hence, we decide that the prayer sought by the petitioner in the present case for deciding fall within the jurisdiction of the Commission. Hence, the present Petition is maintainable.

12.4. The Petitioner has contended that the issue involved in the present Petition is billing issue is concerned, we note that there are other issues also. Further, the billing issue is also challenged by the Petitioner on a ground of the same of the said bill is not in accordance with the provisions of regulations notified by the Commission and it requires for the Commission to interpret and decide the same. On this ground also, the present Petition is admissible and maintainable.

13. Now we proceed with analyzing the reasons for delay in construction of network by the Petitioner required for release of new EHT connection by MGVCL.

13.1. As per Regulation 9.3 *(supra)* of the GERC (Standard of Performance of Distribution Licensee) Regulations, 2005 the timeline for release of bulk power connection for the average load of above 2500 kVA is within 180 days after completion of demand notice / formalities by the prospective consumer.

13.2. It is pertinent to note that neither the Petitioner nor the Respondents have placed on record any table / chart showing the planned vis-à-vis actual timeline / dates of various activities required for execution of the work. In the absence of the planned vis-à-vis actual dates of each such activity, it cannot be ascertained as to whom the delay in completion of the work is attributable.

13.3. To understand and analyze the time period elapsed in releasing the new EHT

connection of the Petitioner, a summary, based on the records submitted by the Petitioner and the Respondents in the present Petition, have been prepared as under:

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
1.	Petitioner selected the Option-II/III through letter dated 17.09.2019 to GETCO	17.09.2019	-	Petitioner
2.	Estimate payment to MGVCL by the Petitioner	31.12.2019	-	Petitioner
3.	Agreement executed between Petitioner and MGVCL	16.01.2020	-	Petitioner
4.	GETCO wrote to Petitioner to select execution agency and material from GETCO approved vendor	24.01.2020	-	Respondent No. 2 - GETCO
5.	Petitioner applied for vendor approval to GETCO	24.02.2020	39 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
6.	Petitioner requested GETCO to arrange kick off meeting	06.03.2020	50 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
7.	Petitioner's letter to GETCO seeking approval for civil contractor	09.03.2020	53 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
8.	Kick off meeting convened by GETCO	16.03.2020	10 days from receipt of request letter for kick off meeting from petitioner	Respondent No. 2 - GETCO
9.	Petitioner's contractor wrote letter to GETCO seeking standard	16.03.2020	60 days from Date of execution of Agreement between Petitioner and	Petitioner

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	approved drawings of various equipments and approval of vendor for various materials		MGVCL	
10.	GETCO's letter to Petitioner granting approval for engaging contractor for execution of work	18.03.2020	9 days from date of receipt of application for approval of contractor	Respondent No. 2 - GETCO
11.	Petitioner's contractor wrote to GETCO seeking standard approved drawings for civil foundation	19.03.2020	63 days from Date of execution of Agreement between Petitioner and MGVCL	Petitioner
12.	Outbreak of Covid-19 up to 31.05.2020	24.03.2020	-	-
13.	MNRE vide Office Memorandum dated 13.08.2020 granted 5 months' extension up to 24.08.2020 to RE projects on account of Covid-19	13.08.2020	25.03.2020 to 24.08.2020 i.e. 152 days remained unutilized on account of Covid-19	-
14.	During period of 13.05.2020 to 24.08.2020 Petitioner and GETCO exchanged various communications related to approval of line, underground cable and sharing of standard drawings	13.05.2020 to 24.08.2020	-	-
15.	MGVCL granted time limit extension of 71 days up to 31.05.2020	04.09.2020	-	Respondent No. 1 - MGVCL
16.	SE Nadiad GETCO's letter to EE Nadiad for conveying	15.09.2020	180 days from request of Petitoner's	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	drawing approvals		contractor to GETCO seeking standard approved drawings for civil foundation (i.e. from 19.03.2020)	
17.	Petitioner wrote to MGVCL seeking time limit extension up to 15.01.2021 citing reference of Office Memorandum issued by Ministry of Finance	21.09.2020	-	Petitioner
18.	GETCO Dispatch Instruction for 66 KV feeder CRP (110 V, 1 Bus) and GETCO's Public Notice in newspapers for laying 66 KV lines in various areas	22.09.2020	Dispatch instruction given by GETCO does not depict the date on which Inspection Call was received by GETCO. Hence, delay liability cannot be ascertained.	-
19.	SE GETCO Nadiad letter to EE GETCO Nadiad for approval of original profile, route alignment, topo sheet, tower schedule, tower summary village tikka map for 66 KV line	15.10.2020	109 days from Date of approval of check survey report by GETCO on 28.06.2020	Respondent No. 2 - GETCO
20.	Public notice in Govt. Gazette for line laying	22.10.2020	116 days from Date of approval of check survey report by GETCO on 28.06.2020	Respondent No. 2 - GETCO
21.	GETCO Dispatch Instruction for SF 6 Circuit Breaker	29.10.2020	Dispatch instruction given by GETCO shows date of Inspection Call as 29.09.2020. Thus,	Petitioner

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
			the Petitioner delayed the inspection of material by 257 days from Date of execution of Agreement between Petitioner and MGVCL.	
22.	MGVCL commenced billing of minimum charge	25.11.2020	314 days from Date of execution of Agreement between Petitioner and MGVCL	Respondent No. 1 - MGVCL
23.	GETCO's letter to Petitioner's contractor giving clearance for dispatch	03.12.2020	Dispatch instruction given by GETCO does not depict the date on which Inspection Call was received by GETCO. Hence, delay liability cannot be ascertained.	-
24.	GETCO letter to Petitioner for conveying variable drawing standardized by GETCO for 66 KV Panther Tower foundation	16.12.2020	Petitioner sought details of standard drawing for Panther tower foundation on 14.12.2020 i.e. after delay of 333 days from Date of execution of Agreement between Petitioner and MGVCL.	Respondent No. 2 - GETCO
25.	GETCO Dispatch Instruction for 66 KV CT 300-600/1- 1-1 A 3 Core	04.01.2021	Dispatch instruction given by GETCO does not depict the date on which Inspection Call was received by GETCO. Hence, delay liability cannot be ascertained.	-

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
26.	Petitioner's contractor letter to GETCO submitting original check survey report and requesting for approval of the same	07.01.2021	Petitioner's contractor submitted the original check survey report along with tower schedule on 07.01.2021 i.e. after delay of 357 days from Date of execution of Agreement between Petitioner and MGVCL.	Petitioner
27.	GETCO's application to NHAI for permission of highway crossing	03.03.2021	Petitioner did not submit the date on which it applied to GETCO for highway crossing. Hence, delay liability cannot be ascertained.	Respondent No. 2 - GETCO
28.	MNRE vide Office Memorandum dated 29.06.2021 granted 2.5 months' extension up to 15.06.2021 to RE projects on account of second surge of Covid-19.	01.04.2021 to 15.06.2021	01.04.2021 to 15.06.2021 i.e. 75 days remained unutilized on account of Second surge of Covid-19	-
29.	GETCO letter regarding clearance for dispatch of Earthing Rod	05.07.2021	Dispatch instruction given by GETCO does not depict the date on which Inspection Call was received by GETCO. Hence, delay liability cannot be ascertained.	-
30.	NHAI letter to EE Nadiad GETCO in response to GETCO letter dated 03.03.2021 raising	15.07.2021	NHAI responded to GETCO's letter 03.03.2021 after a delay of 134 days.	NHAI

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	various technical points for grant of laying of UG cable across NH 48			
31.	EE GETCO Nadiad letter to NHAI submitting compliance to the query raised by NHAI vide letter dated 15.07.2021.	27.07.2021	GETCO satisfied the queries of NHAI after a delay of 12 days	Respondent No. 2 - GETCO
32.	The letter from Petitioner's contractor to DE (Const) GETCO Nadiad for submission of Revised route alignment drawing of 66 KV line for approval	05.08.2021	The route revised on account of proposed godown plan of Gujarat State Seed Corporation between location no. 6/0 and 7/0. This has resulted in delay of 567 days from Date of execution of Agreement between Petitioner and MGVCL.	Gujarat State Seed Corporation
33.	The Petitioner's letter to DE (Const) GETCO Nadiad seeking permission for start work of trench for 66 KV cable	17.08.2021	Petitioner started RCC cable trench work in its own premises after a delay of 579 days from Date of execution of Agreement between Petitioner and MGVCL.	Petitioner
34.	GETCO letter for approval for clearance for dispatch	17.08.2021	Dispatch instruction given by GETCO does not depict the date on which Inspection Call was received by GETCO. Hence, delay liability cannot be ascertained.	-

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
35.	Petitoner's contractor letter to GETCO seeking approval of TMT bar	27.08.2021	Petitioner sought approval of TMT bar vendor after a delay of 589 days from Date of execution of Agreement between Petitioner and MGVCL.	Petitioner
36.	Petitioner's letter to GETCO seeking approval of civil contractor	01.09.2021	Petitioner sought approval for civil contractor after a delay of 594 days from Date of execution of Agreement between Petitioner and MGVCL.	Petitioner
37.	Approval letter from Dy Conservation officer (Forest) Nadiad to EE GETCO Nadiad.	06.09.2021	Forest Dept. granted approval after a delay of 130 days i.e. from 29.04.2021 to 06.09.2021.	Forest Dept.
38.	GETCO approval letter for allowing to execute civil work for feeder bay at GETCO 66 KV Matar S/s	08.09.2021	GETCO approved civil contractor of the Petitioner after a delay of 7 days from date on which the Petitioner sought approval for the same.	Respondent No. 2 - GETCO
39.	Petitioner's contractor letter to GETCO seeking approval of concrete mix design	10.09.2021	Petitioner's contractor sought approval of concrete mix after a delay of 603 days from Date of execution of Agreement between Petitioner and MGVCL.	Petitioner
40.	SE GETCO Nadiad letter to DE (Const) Nadiad conveying approval of Concrete	14.09.2021	GETCO granted approval for concrete mix after a delay of 4 days from	Respondent No. 2 - GETCO

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	mix Design for 66 KV UG cable ECC cable trench work		date on which the Petitioner sought approval for the same.	
41.	GETCO letter for approval for clearance for dispatch of 66 KV feeder Control Room Panel (110v, 1 Bus)	22.09.2021	Petitioner has mentioned about this correspondence in the Petition but no document in this regard is submitted. Hence, responsibility of delay, if any, cannot be ascertained.	-
42.	NHAI letter to EE Nadiad intimating for making payment of processing fees for grant of approval to lay UG cable across NH 48	08.10.2021	NHAI issued estimate for highway crossing after delay of 73 days from 27.07.2021 on which GETCO satisfied the queries of NHAI.	NHAI
43.	Petitioner paid fees to NHAI through GETCO.	18.10.2021	Petitioner paid fees to NHAI after a delay of 631 days from Date of execution of Agreement between Petitioner and MGVCL.	NHAI
44.	MGVCL issued revised estimate to the Petitioner as per revised scope of work forwarded by GETCO	01.11.2021	Petitioner has mentioned about this correspondence in the Petition but no document in this regard is submitted. Hence, responsibility of delay, if any, cannot be ascertained.	-
45.	NHAI letter of approval to EE Nadiad GETCO for	19.11.2021	NHAI granted approval for highway crossing	NHAI

Sr. No.	Particulars	Date	Time period elapsed	Within Scope of
	laying UG cable crossing of NH 48.		after delay of 32 days from 18.10.2021 i.e. date of payment of necessary charges by the Petitioner.	
46.	Connection of the Petitioner physically released	31.12.2021	Connection of the Petitioner released after delay of 715 days from Date of execution of Agreement between Petitioner and MGVCL.	-

13.4. From the above details, it is clear that the Petitioner paid the estimate to MGVCL on 31.12.2019 and signed the necessary agreement on 16.01.2020 after completing the formalities. Accordingly, the start date for the Petitioner to commence the work execution is considered by the Commission as 16.01.2020. As per SoP Regulations, the connection of the Petitioner ought to be released within 180 days, i.e. latest by 14.07.2020, from date of signing the agreement. The Petitioner completed the work and connection was physically released on 31.12.2021 resulting into total time period of 715 days from date of execution of agreement. The connection which was required to be released on 14.07.2020 got released on 31.12.2021 resulting into delay of 535 days. It is necessary to scrutinize the reasons for such delay and identify whether the Petitioner or the Respondent/s or any other authority/ies are responsible for such delay. From the above Table, it can be observed that the Petitioner has not submitted specific documents based on which delay and authority responsible for such delay can be ascertained. Leaving such claim / contention of the Petitioner, we now calculate the delays which cannot be attributable to the Petitioner. From the Table above, it can be seen that the liability of the Petitioner to commence the work starts from 16.01.2020 i.e. the date on which Petitioner and MGVCL executed the requisite agreement. It can also be seen from the above Table that on 10.09.2021 the Petitioner's contractor submitted a letter to the Respondent GETCO seeking approval for the concrete mix design. This

establishes that the Petitioner itself took 603 days for seeking its last approval for the completion of work. Further, it can also be observed from the above Table that on 19.11.2021 the Respondent GETCO got approval from NHAI for laying underground cable. Thus, the days from 10.09.2021 (the day after the Petitioner sought approval for concrete mix design from the Respondent) till 19.11.2021 (70 days) can only be attributable exclusively to the authority / organization other than the Petitioner. Since, the Petitioner itself spent period from 16.01.2020 to 10.09.2021 to complete the tasks which were on its account, the time period taken by various authorities during this period (i.e. from 16.01.2020 to 10.09.2021) cannot be attributable to the Respondent / other organizations because as per Supply Code, 2015 and SOP Regulations, 2005, it is the responsibility of the Petitioner to complete the work during the stipulated time limit of 180 days. However, we note that the MNRE has issued O.M.s dated 13.08.2020 and 29.06.2021 recognizing the period from 25.03.2020 to 24.08.2020 (152 days) and 01.04.2021 to 15.06.2021 (75 days), respectively, as period of disruption in supply chain on account of restrictions imposed by Central as well as State Governments due to Covid-19 outbreak. Though the present case is not related to erection of transmission line for renewable projects but the Commission is of the view that the difficulties faced by the Petitioner for erection of transmission line is akin to the difficulties faced by the renewable project developers for erection of transmission network on account of Covid-19 outbreak. Accordingly, the Commission finds it appropriate to consider the delay of 227 days on account of unforeseen reason i.e. Covid-19 outbreak and cannot be attributable to the Petitioner. We also note that the Respondent MGVCL has granted 71 days to the Petitioner on account of Covid-19 outbreak. Thus, the total days which can be considered as unforeseen reason for Covid-19 outbreak works out to 156 days (227 days - 71 days). During this period of 156 days it can be reasonably concluded that the Petitioner could not have progressed its work, out of 603 days it spent for various activities pertaining to itself. Accordingly, we add the 156 days with the 70 days of delay attributable to the Respondent / other authorities over which the Petitioner was not having reasonable control.

14. In view of the above discussion, we conclude that there is a delay of 226 days (156 days + 70 days) for which the Petitioner is not considered responsible and hence is not liable to pay the minimum charges for this number of days.

15. The prayer of the Petitioner seeking interest is rejected by the Commission.

16. With the above directions, the present Petition stands disposed of accordingly.

17. Order accordingly.

Sd/-	Sd/-	Sd/-
[Jatin N. Thakkar]	**[Hiren Shah]**	**[Pankaj Joshi]**
MEMBER	**MEMBER**	**CHAIRMAN**

Place: Gandhinagar

Date: 23/07/2026