

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

LICENCE APPLICATION NO. 1 of 2021

In the matter of:

Application for Grant of Distribution License in the Area of Mandal Becharaji SIR, Villages in the Taluka - Mandal, Detroj and Becharaji, District - Ahmedabad and Mehsana, State - Gujarat.

Applicant : Torrent Power Limited,
Samanvay, 600, Tapovan,
Ambawadi,
Ahmedabad 380 015.

Represented by : Advocate Ms. Deepa Chawan,
Advocate Ms. Reshmarani Nathani,
Advocate Ms. Ruchi Patil, and
Mr. Chetan Bundela,
Mr. Jignesh Langalia and Ms. Luna Pal

Objector No. 1 : Gujarat Urja Vikas Nigam Limited

Represented by : Sr. Counsel Mr. M. G. Ramachandran,
Advocate Ms. Ranjitha Ramachandran,
Advocate Ms. Srishti Khindaria,
Mr. K. P. Jangid and
Mr. V. T. Patel

Objector No. 2 : Uttar Gujarat Vij Company Limited

Represented by : Sr. Advocate Mr. M. G. Ramachandran,
Advocate Ms. Ranjitha Ramachandran,
Advocate Ms. Srishti Khindaria,
Mr. P. B. Pandya,
Mr. R. P. Patel and
Mr. K. B. Chaudhari

CORAM:

**Shri Mehul M. Gandhi, I/c Chairman and Member
Shri S. R. Pandey, Member**

Date: 14/12/2021

ORDER

Brief Facts of the Application

1. The Applicant, Torrent Power Limited (TPL), is a Company incorporated under the Companies Act, 1956 carrying out the business of generation and distribution of electricity in the State of Gujarat.
 - 1.1. Torrent Power Limited has filed an application before the Commission on 21.05.2021 for grant of Distribution License in the area of Mandal Becharaji Special Investment Region (MBSIR), villages in the Taluka - Mandal, Detroj and Becharaji, District - Ahmedabad and Mehsana, State - Gujarat, under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry (R&R) Act, 2003.
 - 1.2. It is submitted that the Government of India has envisaged the development of Delhi Mumbai Industrial Corridor (DMIC) along the alignment of proposed Multi-modal High Axle Load Western Dedicated Freight Corridor (DFC) between Delhi and Mumbai, covering an overall length of 1483 km. The Delhi Mumbai Industrial Corridor Development Corporation Limited (DMICDC), a Special Purpose Company, is incorporated to establish, promote and facilitate development of the DMIC project.
 - 1.3. Mandal Becharaji, one of the Special Investment Regions (MBSIR) is a part of DMIC project in the State of Gujarat. MBSIR will have high class infrastructure and facilities comparable to any smart city in the world. It will have best quality of life with state of art facilities.
 - 1.4. It is submitted that the MBSIR Area is divided into two clusters (Cluster A and Cluster B) wherein Cluster A covers 3 villages (approx. 50.59 sq.km.) and Cluster B covers 5 villages (approx. 51.50 sq.km.) of Ahmedabad and Mehsana district. The proposed SIR area is to be developed through 5 Town Planning Schemes in two clusters. Cluster A comprises of Town planning schemes - TPs-1, TPs-2 & TPs-3 whereas Cluster B comprises of TPs-4 & TPs-5 along with GIDC. The Mandal Becharaji Special Investment Regional Development Authority (MBSIRDA) has the responsibility of planning and development

of MBSIR and will encompass the function of administering government land within MBSIR.

- 1.5. It is submitted that the MBSIRDA intends to develop MBSIR as futuristic smart city with 'state-of-the-art' power distribution infrastructure and the Applicant has agreed to create a world class power distribution network at Mandal Becharaji SIR matching the high overall standard of development planned for the SIR.
- 1.6. The Applicant has submitted the detailed application with required supporting documents for the grant of distribution license for the Mandal Becharaji SIR area under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry (R&R) Act, 2003.
- 1.7. The Applicant has submitted the copies of the notification dated 24.09.2012 and 14.08.2013 and the map showing the geographical area for and within which the Applicant proposes to undertake distribution.
- 1.8. The Applicant has also submitted Chartered Accountant's certificate for Capital Adequacy as per the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.
- 1.9. The Applicant has submitted duly filled in application in the prescribed format as specified in the GERC (Licensing of Distribution of Electricity) Regulations, 2005 along with following documents:
 1. Notifications and map showing the Geographical Area within which Applicant proposes to undertake distribution. (Notification No. GHU/2012/22/SIR/112012/1276/I dated 24th September, 2012 read with GHU/2013/16/SIR/112012/1276/I dated 14th August, 2013 notified by the Government of Gujarat specifying Geographical area of SIR)
 2. Certificate of Registration / Incorporation
 3. Memorandum of Association and Articles of Association
 4. Original Power of Attorney authorising Shri Chetan Bundela to file the Application.
 5. Details of Income Tax Registration
 6. Draft license
 7. List of Local Authorities: MBSIRDA
 8. Statement of capital proposed: Rs. 458 Crore during first 5 years.

9. Annual Reports of Torrent Power Limited of last three years.
10. Receipt for payment of specified Application fees as per Commission's Regulations.
11. An affidavit by the Applicant verifying the correctness of the information disclosed in the application.
12. Details of group Companies engaged in the business of Generation, Distribution, Transmission or Trading of Electricity.
13. Brief history of promoters.
14. Brief note on technical qualification and past experience of the Applicant Company to discharge the obligations under the distribution license.
15. Details of Financial Data of the Applicant of last 5 years: Net worth and Annual Turnover.
16. Certificate of credit rating.
17. Certificate of Standard Borrowal Account.
18. Certificate stating that RBI has not classified the Applicant as a "willful defaulter"
19. Organizational & managerial capability of the applicant.
20. Approach & Methodology.
21. Five-year Business Plan for transmission or distribution of electricity for which the application is being made and funding arrangements for meeting its obligation under proposed license for maintenance, operation, improvement and expansion for future load growth.
22. Five-year annual forecasts of costs, sales, revenues and project financing stating the assumptions underlying the figures provided.
23. Certificate of chartered accountant in compliance to Additional Requirements of Capital adequacy, Creditworthiness and Code of Conduct Rules,2005.

Public Notice

2. The Commission had, vide letter no. GERC/Legal/2021/0672 dated 02.06.2021, directed the Applicant to comply with the procedures of Public Notice in accordance with the provisions of Section 15 (2) of the Electricity Act, 2003 read with Regulation 5 of the GERC (Licensing of Distribution of Electricity) Regulations, 2005 and to invite comments and suggestions from the stakeholders/objectors and also to host the application on its website.

- 2.1. In compliance, the Applicant issued a public notice dated 14.06.2021 in Gujarati Newspapers viz. NavGujarat Samay and Sandesh (Ahmedabad editions) and English Newspaper viz. Indian Express (Ahmedabad edition) and also hosted the application on its website for inviting objections/suggestions on their License Application within 30 days.

Objections Received

- 2.2. In response to the public notice, the Commission has received objection/suggestion from Gujarat Urja Vikas Nigam Limited (GUVNL) and Uttar Gujarat Vij Company Limited (UGVCL) on 07.07.2021.
3. The Objectors, Gujarat Urja Vikas Nigam Limited (GUVNL) and Uttar Gujarat Vij Company Limited (UGVCL), submitted that the said Special Investment Region (SIR) is already within the distribution license area of UGVCL. Therefore the grant of parallel licence under Sixth Proviso to Section 14 in this area is to be considered only subject to fulfilment of criteria as may be specified by the Central Government from time to time for grant of second license in the area. It is submitted that there is no issue or default in the functioning of or otherwise for revocation or amendment of the status of UGVCL as existing distribution licensee in the area where the applicant has sought distribution license.
 - 3.1. It is submitted that the Applicant has sought to rely on the agreement between the Applicant and Mandal Becharaji Special Investment Region Development Authority (MBSIRDA) in regard to development of distribution network by the Applicant in the Special Investment Region. However, no letter of communication or consent or document of Government of Gujarat in this regard has been annexed to the Application. It is also not clear as to how the MBSIRDA can have any arrangement with any person in regard to the distribution licence which can be granted only by the Commission. MBSIRDA is not the appropriate authority to select any distribution licensee or provide support for the same. Moreover, there is nothing clear as to the criteria considered by MBSIRDA for selecting TPL as distribution licensee in the MBSIR specifically when UGVCL has already developed and has been developing required distribution network in the area including underground cable network.
 - 3.2. Further, it is submitted that the MBSIRDA should extend support to any distribution licensee, including UGVCL which is the existing distribution licensee to make available the electricity supply to the consumers located in the area. There cannot be any special or exclusive support to the Applicant. It is submitted that the claim of the Applicant in

regard to the support of MBSIRDA should be ignored and no consideration can be given to such claims to decide the application for grant of distribution license in the MBSIR.

Objections regarding non-fulfilment of requirement

3.3. The Objectors submitted that the License Application of the Applicant cannot be accepted as it fails to meet the requirements of the distribution license.

3.4. It is submitted that the Applicant has not considered the minimum area required as per the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and as per National Electricity Policy, 2005.

a. As per the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005:

“3. Requirements of capital adequacy and creditworthiness

.....

Explanation .-For the grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243-Q of the Constitution of India or a revenue district shall be the minimum area of supply.”

b. As per National Electricity Policy, 2005:

“5.4.7..... For grant of second and subsequent distribution license within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (74th Amendment) may be considered as the minimum area.”

3.5. It is further submitted that the Applicant has not made any statement or assertion to demonstrate that the area of distribution license is a revenue district or a municipal council or a municipal corporation. As per SIR Act, 2009 or as per MBSIR notification dated 24.09.2012, MBSIR is not declared / qualified as revenue District / Municipal Council / Municipal Corporation.

3.6. It is further submitted that there is a purpose and reason for the consideration of minimum area for the parallel distribution license area. It is to prevent the distribution licensees to take a parallel licence by cherry picking customers in specific area. In the present case, UGVCL is the incumbent distribution licensee having Universal Service

Obligation (USO) in the supply area where the Applicant has applied for Distribution License. By availing second distribution license in the MBSIR area, the Applicant would target to serve high paying cross subsidizing industrial consumers in the area resulting into loss of Cross Subsidized revenue to UGVCL. This will lead to increase in tariff of cross subsidized consumers like BPL, Agricultural consumers, etc. This will be contrary to the interest of the general body of consumers and socio-economic consideration.

- 3.7. It is further submitted that UGVCL being the existing distribution licensee has developed and is maintaining distribution network in the area and can provide the connectivity and supply of electricity for all category of consumers including the persons who may seek supply of electricity in the above SIR. On the other hand, the Applicant is seeking a distribution licence selectively in the SIR, to pick the cross subsidizing industrial consumers. The cherry picking (supplying to industrial consumers) by second licensee will not provide even playing field to UGVCL. This will lead to unviable operation for UGVCL and consequently issues related to quality of power and services for existing consumers.
- 3.8. Further, the Objectors, submitted that UGVCL has established high class overhead and underground infrastructure and facilities having objective of affordable, reliable, quality and uninterrupted power supply to their consumers. The villages under the MBSIR are already under the jurisdiction of UGVCL area and are getting continuous 24x7 power supply by UGVCL. There are many customers, including motive power industrial consumers like automobile industry, auto component vendors, logistic part, etc. are getting uninterrupted power supply. UGVCL has already established sub-stations in the area and has robust overhead and underground network..
- 3.9. It is submitted that UGVCL has established infrastructure in the MBSIR area and is capable of servicing the existing and future power requirement of MBSIR. UGVCL has already established the electrical infrastructure to feed power supply up to 220 kV level in the jurisdiction of MBSIR. UGVCL has developed underground infrastructure with Ring Main Unit along with the provision of HT Feeders for changeover arrangement from the adjacent feeders during emergency as well as maintenance purpose so as to provide them uninterrupted, quality power supply.
- 3.10. Further, it is submitted that UGVCL has established plug and play underground power distribution network having approximately 46 KM of 300 Sq. MM underground cable, 168 Ring Main Units (RMU) and 11 compact transformer cubicles for meeting the power requirement in the area. Considering the requirement for high aesthetic value distribution infrastructure in the area, UGVCL has designed and developed the locked and sealed weather-proof High-Tension Metering Cubicle (HTMC) for metering purpose

and the same is being used by almost all HT consumers for getting supply of power in the area.

- 3.11. UGVCL has established 3 Nos. 66 kV Sub-stations in the area and is in process of establishing two more 66 kV Sub-stations. Further, UGVCL is in the process for establishing a 220 kV Sub-station in co-ordination with GETCO. It is submitted that, UGVCL has already incurred huge investments and continuously making investments for development of distribution network in the MBSIR area. At present, UGVCL has no pendency to release new HT/LT consumers for want of distribution network in the area.
- 3.12. It is, therefore, submitted that there is no reason as to why UGVCL would not be able to provide the supply to the SIR, and there is not any reason why MBSIRDA would not support UGVCL as a distribution licensee.
- 3.13. Further in said area, there are severe right of way issues which have arisen / may arise for UGVCL due to creation of multiple infrastructures in the same area. There are also issues related to safety of man and material and operational constraints due to operation by UGVCL and TPL in the same area.
- 3.14. As per Section 47 of the Electricity Act, 2003, the role of distribution licensee is to develop and maintain efficient and coordinated distribution system. Thus, allowing creation of distribution network by second licensee in the same area may lack coordination and economy in development of distribution network apart from raising several issues of cherry picking of cross subsidizing consumers, duplication of network and resources, idling of huge investment made by UGVCL and Right of Way (RoW), etc.
- 3.15. The Objectors have therefore, on the above grounds requested the Commission to consider the above aspects and reject the license application of the Applicant for MBSIR area.

Rejoinder / Reply of the Applicant

4. In its response, the Applicant, vide its reply dated 20.07.2021, submitted that it denies all the allegations and the contentions raised in the objections, which are contrary to or inconsistent with what has been stated by the Applicant in the application.
 - 4.1. Regarding Objectors' (GUVNL and UGVCL) contention that MBSIRDA is not the appropriate authority to select any distribution licensee or provide support for the same, the Applicant submitted that the Objectors have ignored the development of the Dedicated Freight Corridor (DFC) of which the present MBSIR is a part. The Government of India (GoI) has initiated the development of a Dedicated Freight Corridor (DFC)

between Delhi and Mumbai covering a total length of 1483 KM which is passing through six states of India viz. Uttar Pradesh, Haryana, Rajasthan, Gujarat, Madhya Pradesh, and Maharashtra. The corridor is envisaged to influence the pattern of development and industrialization of the region. To tap the development potential of the proposed freight corridor, a band spanning 150 KM wide on both sides of the freight corridor has been identified as Influence Region and is proposed to be developed as Delhi Mumbai Industrial Corridor (DMIC).

- 4.2. It is submitted that the prospective industrial units would be attracted to the subject area upon provision of all facilities required including uninterrupted power supply and state of art technology.
- 4.3. The Applicant submitted that the Objectors are deliberately misconstruing the submissions of the Applicant. The Mandal Becharaji Special Investment Regional Development Authority (MBSIRDA) has the responsibility of planning and development of Mandal Becharaji SIR (MBSIR). MBSIRDA intends to develop MBSIR as futuristic smart city with 'state-of-the-art' infrastructure. The Applicant, being a responsible entity possessing wide experience to create a world class power distribution network, has filed the present application for grant of distribution license in MBSIR. That as per the provisions of Section 14 of the Electricity Act, 2003, the Commission is the Appropriate Authority for grant of distribution license.
- 4.4. Further, it is submitted that regarding criteria of selection of TPL as distribution licensee in MBSIR, under the 6th proviso to Section 14 of the Electricity Act, 2003, the Commission can grant a license to two or more persons for distribution of electricity subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements relating to the capital adequacy, credit-worthiness, or code of conduct. The Applicant submitted that it fulfils all the requirements for grant of distribution license under the provisions of the Electricity Act, 2003.
- 4.5. The objections regarding requirement of 'minimum area', MBSIR being not declared / qualified as Revenue District, Municipal Corporations / Municipal Council / in view of Article 243 Q of Constitution of India.
- 4.6. It is submitted that the State Government under Section 3 of the SIR Act has notified the identified area falling in Ahmedabad and Mehsana Districts to be the SIR, known as "Mandal-Becharaji Special Investment Region", vide notification no. GHU/2012/22/SIR/112012/1276/I dated 24.09.2012 read with notification no. GHU/2013/16/SIR/112012/1276/I dated 14.08.2013. Hence, Section 3 & 29(1) of SIR Act read with aforesaid notifications clearly qualify MBSIR area as an Industrial

Township under clause (1) of article 243Q of the Constitution of India and accordingly, MBSIR area meets the requirement.

- 4.7. Regarding Objectors' contention that the Applicant would resort to cherry picking / target to serve high paying cross subsidizing industrial consumers in the area resulting into loss of cross subsidization revenue, the Applicant submitted these allegations are on presumptions and conjectures without any substantiation. The Objectors erroneously seems to have presumed alleged future non-compliance of obligations under the Act including that under Section 43 of the Act by the Applicant.
- 4.8. The Applicant submitted that it would like to clarify that upon grant of distribution license, it shall be having Universal Service Obligation as provided under Section 43 of the Electricity Act, 2003. Hence, any consumer within the MBSIR area, be it BPL, Residential or Industrial, is required to be provided supply by TPL upon request. The contention of the Objectors is contrary to the provisions of Section 14 and hence, ought to be rejected summarily as Electricity Act, 2003 contemplates more than one licensee.
- 4.9. It is submitted that an apprehension is based on surmises and conjectures and is baseless. The promotion of competition and efficiency has been statutorily recognised under the Preamble as well as Sections 61(c), Proviso to Section 62(1) and Section 86(2)(i) of the Electricity Act, 2003.
- 4.10. Regarding Objectors' submission that the network is created by UGVCL and that UGVCL has incurred huge investments, the Applicant submitted that it has filed an Application for Grant of Distribution Licence in the Area of MBSIR, in accordance with the provisions of the Electricity Act, 2003 and the Objectors cannot scuttle TPL's right to apply for distribution license especially when the Electricity Act, 2003 envisages grant of license to two or more persons.
- 4.11. The Applicant submitted that it has not sought any relief against UGVCL so that UGVCL is prevented from supplying electricity to the consumers in SIR area. Hence, the objection is completely irrelevant. The Applicant refutes and does not accept any claims made by the Objectors in their objections in relation to UGVCL network and other issues. It is submitted that the submissions of Objectors would actually mean that the laudable objective of competition through multiple licensees in an area of supply does not apply to UGVCL area of supply. This proposition advanced by Objectors is untenable in law. The Applicant craves leave of the Commission to refer to and rely upon the Statutory Provisions in support of its Petition, which points to the enhancement of the objective rather than attenuating it.

4.12. Regarding Objectors' contention that severe right of way issues have arisen or may arise for UGVCL due to creation of multiple infrastructure in the same area along with issues of safety of man and material and operational constraints and allowing distribution network by second licensee in same area may lack co-ordination and economy in development of distribution network apart from severe issue of duplication of network & resources and Right of Way, the Applicant submitted that the aforesaid issues raised by Objectors are irrelevant as the Electricity Act, 2003 itself envisages that the Appropriate Commission can grant distribution license to two or more persons by laying its own network. This right conferred on the Applicant by the Statute cannot be scuttled by the Objectors.

4.13. The Applicant, therefore, submitted that there is no merit in the objections / suggestions made by the Objectors and same are liable to be rejected.

Further Comments of Objectors

5. The Objectors submitted that the Applicant has instead of dealing with the basic objections attempted to sidestep the issue by raising completely irrelevant and frivolous aspects. The contentions on development of Dedicated Freight Corridor or development of MBSIR as a futuristic smart city, etc. is not relevant to the present issue. UGVCL is a licensee in the area and is fully capable of servicing the consumers in the MBSIR. It is not as if the Applicant is the only competent distribution licensee to develop distribution license in the area and that the Applicant is only viable option for MBSIR.

5.1. The Objectors submitted that the Applicant has not produced any agreement with Government of Gujarat. Similarly, no letter of communication or consent or document of Government of Gujarat in this regard has been produced.

5.2. It is submitted that though the Applicant admits that MBSIRDA is not the appropriate authority in regard to distribution licence and the Commission is the only appropriate authority to grant distribution licence, the Applicant has still failed to answer the objection as to how the MBSIRDA can have any arrangement with any person in regard to the distribution licence. Further, the Applicant has also failed to address the aspect raised that MBSIRDA is not competent for extending support to any distribution licensee.

5.3. It is submitted that a perusal of above provisions makes it clear that there are three references to minimum area - Municipal Council or Municipal Corporation under Article 243 Q or a revenue district. There is no other reference to any other area nor does it make a reference to all areas under Article 243 Q of the Constitution.

- 5.4. The Objectors submitted that the Applicant has not claimed that the area of distribution licence is a revenue district or municipal council or municipal corporation but instead it is claiming that the area is notified as Industrial Township. It is submitted that as per SIR Act, 2009 or as per MBSIR notification dated 24.09.2012, MBSIR is not declared / qualified as revenue District / Municipal Council / Municipal Corporation. The Section 29 of SIR Act which is relied on by the Applicant reads as under:

“29. Special Investment Region to be an Industrial Township.- (1) The area within the Special Investment Region except the village site area (gamtal) of a Village Panchayat, Municipal area and Municipal Corporation area shall be deemed to be an industrial township within the meaning of the provisions of clause (1) of article 243Q of the Constitution of India from the date it is so notified in the Official Gazette by the State Government.”

- 5.5. It is submitted that the above Section refers to the SIR area to be an Industrial Township and even though it excludes the area of a Village Panchayat, Municipal area and Municipal Corporation. Therefore, the area within village panchayat, Municipal area and Municipal Corporation would not be included in Industrial Township.

- 5.6. The Article 243Q of the Constitution of India states as under:

“There shall be constituted in every State,- (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

- 5.7. The Objectors submitted that the minimum area requirement under Electricity Act, 2003 and Rules / Policy is with regard to only municipal council or Municipal Corporation under Article 243Q of the Constitution or revenue District. There is no reference to Industrial Township or any other designation of area. The Applicant cannot import any meaning merely because the Industrial Township is referred in Article 243Q and it does not mean that the same can be imported into Rules, 2005 or National Electricity Policy. The Rules and Policy deliberately only refer to Municipal Council or Municipal Corporation. In fact, the Rules and Policy do not even refer to Nagar Panchayat which is also referred to in Article 243Q. If it is not an area of Municipal Council or Municipal Corporation, it has to be a revenue district. Admittedly, the area of SIR is not a revenue district.
- 5.8. It is submitted that the Industrial Township is not equivalent to Municipal Council or Municipal Corporation is clear from the fact that while Municipal Council or Municipal Corporation are for smaller urban area or larger urban area, Industrial Township can be for part of that area also. In fact, there is a deliberate omission to refer to Industrial Township as an area for distribution licence. This is because Industrial Township are smaller in area and have a concentration of industrial consumers who are cross subsidizing consumers. This would lead to the Applicants selectively seeking such area while avoiding the cross subsidized consumers such as domestic and residential consumers and agricultural consumers.
- 5.9. It is submitted that the Industrial Township by its very nature is with regard to selected consumers. The Applicant is in effect seeking to cherry pick the area of Industrial Township with majority of consumers are high paying cross subsidizing industrial consumers which is contrary to the intention and purpose for consideration of minimum area of Municipality, Municipal Corporation or Revenue District.
- 5.10. The Objectors submitted that their contentions are not based on any apprehension or surmises or conjecture as alleged by the Applicant. The Applicant has deliberately misconstrued the submission of the Objectors and sought to deflect by claiming that it would comply with its obligations under Section 43. However, this does not change the fact that the Applicant is selectively applying for an area of Industrial Township which does not fulfil minimum area requirements for parallel licensee.
- 5.11. The Objectors submitted that UGVCL has established high class overhead and underground infrastructure and facilities having objective of affordable, reliable, quality and uninterrupted power supply to their consumers and is capable of servicing the area. Further, the Objectors have raised the issues with regard to grant of parallel licence which may be considered by the Commission. The issue cannot be considered only for

issue of competition but also economical and efficient development of distribution system and the practical impact of having multiple licensees in the area.

- 5.12. It is submitted that the grant of licence for distribution of electricity in any area and also as a parallel license under Section 15 of the Electricity Act, 2003 is in the discretion of the Commission. It is not necessary that the Commission has necessarily to grant such license once the requirement of the minimum area under the Rules get satisfied. In the facts and circumstances mentioned here in above and considering the well-developed network of UGVCL existing in the area, the Objectors submitted that there is no need for a second licensee. The interest of the consumers in the area is well served by the integrated distribution network established and operated by UGVCL in much larger area of Uttar Gujarat. Further, in terms of the provisions of the Electricity Act, 2003 the individual consumers in the area have also the option of sourcing electricity by availing open access to the UGVCL network and directly purchasing the electricity requirement from generator or trader or power exchange, in the event they consider it appropriate. It is not a case where the existing distribution licensee does not have necessary expertise or network to provide connection and make available the quantum of electricity required within the timelines specified by Section 43 of the Electricity Act, 2003.
- 5.13. The Objectors submitted that the Applicant has contended on the need for competition and promotion of multiple players, etc. in the area of supply. The same is undoubtedly the basis for considering the grant of more than one licence in a specified area but the Electricity Act, 2003 and the 2005 Rules issued thereunder do not envisage the grant of such licenses freely without any condition. The objective is also not to allow cherry picking of the consumer mix area by one and leaving the other areas to be serviced by another. The Act and Rules therefore provide for satisfaction of certain pre-conditions, which is statutorily mandatory and cannot be waived or overlooked in general arguments of promoting competition.
- 5.14. The Objectors submitted that, it is not as if the Applicant is the only viable option for the MBSIR as UGVCL is an existing licensee in the area and is fully capable of servicing the consumers in the MBSIR and it has already established substantial distribution network in the area including underground cable network.
- 5.15. It is submitted that the Rules, 2005 and provisions for minimum area of supply makes it clear that there are 3 specific references for satisfaction of the minimum area qua Municipal Council or Municipal Corporation under Article 243Q or a Revenue District. There is no other reference to any other area nor does it make a reference to all categories of areas referred under Article 243Q of the Constitution of India.

5.16. The categories of area mentioned in Article 243Q are:

- a. Nagar Panchayat;
- b. Municipal Council;
- c. Municipal Corporation; and
- d. Industrial Township

Whereas the minimum area requirement under Electricity Act, 2003 and Rules, 2005 / Policy is consciously restricted only with regard to two of the above viz. Municipal Council or Municipal Corporation. There is no reference to Industrial Township or any other designated area. The Applicant has not been able to explain the above important omission in Rules, 2005.

5.17. The Objectors submitted that the Applicant has also sought to rely on Article 243 P which provides for definitions for the Part IXA of the Constitution:

“243P. Definitions. In this part, unless the context otherwise requires -

.....

(b) “district” means a district in a State;

(c) “Metropolitan area” means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area for the purposes of this Part;

(d) “Municipal area” means the territorial area of a Municipality as is notified by the Governor;

(e) “Municipality” means an institution of self-government constituted under article 243Q;

(f) “Panchayat” means a Panchayat constituted under article 243B;”

5.18. It is further submitted that the Industrial Township is not equivalent to Municipal Council or Municipal Corporation is clear from the fact that while Municipal Council or Municipal Corporation are for smaller urban area or larger urban area, Industrial Township can be for part of such area also. In fact, there is a deliberate omission to refer to Industrial Township as minimum area for distribution license under the Rules, 2005. This is because Industrial Township has a concentration of industrial consumers who are cross subsidising consumers. This would lead to Applicant’s selectively seeking such area while avoiding the cross-subsidising consumers such as domestic and residential consumers and agricultural consumers. The cherry picking by second licensee will not provide level playing field to UGVCL. If such action is allowed, then entities would seek the license for specific areas instead of the entire areas.

5.19. The Objectors submitted that the definition of SIR as per Section 29 of the SIR Act, 2009 includes the area to be an Industrial Township and it excludes area of a village panchayat, municipal area and municipal corporation. The Objectors have relied upon Hon'ble Supreme Court Judgments in MGR Industries Associations vs. State of Uttar Pradesh and Others (2017) 3 SCC 494 on Article 243Q, which reads as under:

“15. Article 243-Q mandates constitution of a municipality in every State, constitution of Nagar Panchayat, Municipal Council and Municipal Corporation in every State respectively for a transitional area, a smaller urban area and a larger urban area respectively. The proviso to Article 243-Q(1) contemplates a circumstance where a Municipality under Article 243-Q may not be constituted in an urban area or part thereof, when such area is specified by a notification having regard to the following circumstances:

*“(i) Having regard to the size of the area,
(ii) Municipal services being provided or proposed to be provided in that area, and
(iii) such other factors as may deem fit.”*

Thus, exemption from non-constitution of Municipality is dependent upon consideration of aforesaid factors and a public notification thereof.

.....
17.....The exclusion of industrial development area from Panchayat has a serious consequence since persons residing within the industrial development area are immediately deprived of facilities and benefits extended to them by the respective Panchayats. The deprivation of the said benefits has to be thus a conscious decision in accordance with condition as contained in Article 243-Q. In the case before us, it has not been pleaded that any notification referable to proviso to Article 243(Q)(1) has yet been issued. The Division Bench of the High Court has also referred to and relied upon on earlier judgment of the Allahabad High Court in Rishipal (supra).”

Hence, the said purpose for proviso is not relevant to the aspects under Electricity Act, 2003 for parallel license and the minimum area of supply for grant of second license.

5.20. The Objectors submitted that the submission of the Applicant which is relied on the decision of the Hon'ble Supreme Court in Saij Gram Panchayat vs. State of Gujarat and Others (1999) 2 SCC 366 relates to interpretation of the Gujarat Municipality Act and Gujarat Industrial Development Act, 1962 and is not related to any interpretation of the Electricity Act, 2003 of Rules or Policies thereunder. In the present case, the issue is not whether MBSIR area can be notified as Industrial Township or the constitutionality of such notification; the issue is whether such area satisfies the requirement and

minimum area of supply requirement under the Electricity Act, 2003 read with Rules and Policies.

6. The Applicant submitted that the Objectors have made their submissions on mainly two issues:

a. Objection related to purported non-compliance of the minimum area requirement under Rule 3 of Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.

b. Lack of information related to interaction between the TPL and MBSIRDA.

6.1. Regarding issue (a), it is submitted that Rule 3 lays down the requirement of capital adequacy and creditworthiness which have to be fulfilled by the Applicant, who applies for a Distribution License in the same area where a Distribution Licensee already exists. The Explanation to Rule 3 has therefore to be construed in accordance with law to consider the said Objection. It was urged by the Objectors that the said area had to be one of the two entities mentioned in Article 243-Q of the Constitution of India in view of the Explanation. The aforesaid contention is emphatically refuted. The subject provision relied upon by the Objectors is an Explanation to a Rule. Its scope cannot be widened and it has to be read in tandem and together with the main contents of Rule 3, to which it is an explanation. Hon'ble Supreme Court in *Burmah Shell Oil Storage & Distributing Co. of India Ltd. vs. CTO*, AIR 1961 SC 315 held as under:

“20. Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles.”

(relevant extract)

It is the submission of the Applicant that the explanation has to be read with Rule 3 (1) and Rule 3 (2) of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. This would be in accordance with the dictum of the Hon'ble Supreme Court as stated above in the *Burmah Shell*.

The Applicant further submitted that the intent of the Explanation to Rule 3 is to decide the capital adequacy and creditworthiness with a minimum area of supply in mind. The explanation, therefore, does not provide for area of second / parallel licence to be that of a Municipal Corporation or Municipal Council as urged by the Objectors, GUVNL &

UGVCL but specifies that the minimum area for the purposes of Rule 3 shall be, inter-alia, the area falling within a Municipal Corporation or Municipal Council as defined in Article 243Q of the Constitution of India.

It is submitted that for the consideration of Article 243Q the Objectors has relied on Article 243Q in isolation. However, the Applicant, had relied on Article 243P being the “definition clause” which the Applicant, submitted has to be read along with Article 243Q.

The terms “Municipal Council” and “Municipal Corporation” are not separately defined in Article 243P but are defined as “Municipality”. This is also clear from rest of the contents of Chapter IX-A wherein the term “Municipality” is used to include both the Municipal Council and Municipal Corporation.

The nomenclature used in Article 243Q is as per the size of the area, for which the Municipality is established namely, the Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. Both being institutions of self-government, are municipalities.

Similarly, the proviso to Article 243Q, qualifies specific requirement, in terms of the constitutional mandate, for provision of municipal services and amenities in an Industrial Township, by stipulating that there need not be constituted any municipality (which would include both Municipal Council and Corporation) in an area wherein amongst all other services, municipal services are provided by an industrial establishment and that such area is an industrial township.

Thus, there cannot be dispute on this count. However, it is the contention of the Objectors that being an industrial township, MBSIR does not fall within the ambit of a Municipal Council or Corporation and therefore, does not meet the requirements of the explanation to Rule 3, relating to the minimum area, capital adequacy and creditworthiness.

- 6.2. It is submitted that the aforesaid interpretation of provisions is erroneous as revealed from the decision of Hon’ble Supreme Court in Saij Gram Panchayat vs. State of Gujarat and Others (1999) 2 SCC 366, in which the Hon’ble Supreme Court considered the various aspects of separate administrative units, self-government and gave a purposive and wide interpretation to the proviso to Clause 1 of Article 243Q. The relevant extracts of the judgement are as under:

“.....The industrial area thus has a separate provision for municipal services being provided by the Industrial Development Corporation. Once such an

area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IX-A of the Constitution, where municipal services may be provided by industries. We do not see any violation of a constitutional provision in this scheme.....

.....

.....Therefore, in respect of any of these three types of areas set out in clause (1) of Article 243- Q, having regard to the size of the area, the municipal services being provided or proposed to be provided by an industrial establishment in that area, and such other factors as the Governor will deem fit to consider, he may, by public notification specify such area to be an industrial township.....

As we have stated earlier creation of such a separate administrative unit is not contrary to the scheme of Parts IX and IX-A of the Constitution when Article 243-Q provides for the creation of such a separate administrative unit in the form of an industrial township..."

Thus, it is imperative, in light of the aforesaid interpretation to consider whether MBSIR would fall within the proviso to Article 243Q for the purpose of applying Rule 3 relating to Requirements of capital adequacy and creditworthiness. For the said purpose, it is imperative to consider two elements:

- Firstly, what is the import of the Proviso to Article 243Q, and
- Secondly, whether MBSIR functions as an institution of self-governance.

It is submitted that in case of the former element / aspect of construing of the proviso to Article 243Q, it is imperative to consider the contents of Part IX-A of the Constitution and the purpose for which this part was inserted in the Constitution vide 74th Amendment Act. The Part IX-A specifies the legal framework for composition, constitution, duration, functioning, powers, authorities and responsibilities of Municipalities.

This includes both the Municipal Council and Corporation. The proviso qualifies when read with the definition Clause 243P (d) and (e) that the industrial township being a self-governing area is not required to constitute a Municipal Corporation or a Municipal Council to carry out the same functions. The proviso therefore provides a qualification.

The Hon'ble Supreme Court in Dwarka Prasad vs. Dwarka Das Saraf, (1976) 1 SCC 128 while construing the construction and function of a proviso held as under:

“17. While rulings and text books bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute.

.....

.....

It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. “Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context” (Thompson v. Dibdin, 1912 AC 533).....”

Thus, with the qualification under the proviso to Article 243Q(1), it is clear that the proviso would have to be read with the parent provision namely 243Q(1) and not as a standalone and independent provision, as objected.

7. The Applicant has submitted that in their objections, the Objectors have referred to the requirement of a municipal corporation or municipal council in an area of parallel license contrary to the Scheme of the Constitution and the 6th (Sixth) proviso to Section 14 of the Electricity Act, 2003. Under the Gujarat Special Investment Region Act, 2009, the MBSIR has been granted the status of an industrial township under Article 243-Q(1) in terms of the Statutory provisions. Additionally, the various provisions of the Gujarat Special Investment Region Act, 2009 clearly reveal the administrative & management functions of MBSIRDA which include performance of Municipal functions. This is clearly evident from the Preamble of the Act, definition of terms like "amenities", "infrastructure projects", "investment region", "special investment region", Declarations under Section 3, Powers and Functions of the Authority and particularly Section 29 of the Act.
8. It is submitted that the aforesaid leads to an unambiguous conclusion that the MBSIR is covered by Article 243-Q (1) and would therefore fall within the Explanation to Rule 3, with the Explanation being read with the main portion of Rule 3 for determining the Requirements of capital adequacy and creditworthiness. The area of an industrial township does not require to have a Municipal Corporation or Municipal Council in view of it being an institution of self-governance. Therefore, the term "Municipal Council" and "Corporation" used in the Explanation to Rule 3 cannot be seen in isolation and independent of Article 243-Q (1) and its proviso and also the main content of Rule 3.
9. Further, the Explanation that the area falling within a Municipal Council or Corporation shall be the "minimum area", cannot be read in literal sense to mean only a municipal council or corporation by excluding the words "as defined in Article 243Q of the Constitution of India". In fact, the term "Municipal Council" and "Municipal

Corporation" are not particularly defined in Article 243-Q. The definition clause is contained in Article 243-P and applies to the entire Part IX-A of which Article 243-Q is also a part. In fact, Part IX-A is titled as "The Municipalities". Accordingly, an Industrial Township, in view of the proviso to Article 243-Q (1) which does not require establishment/ constitution of a Municipal Corporation / Council to perform same functions, cannot be read as an exception of the 6th (Sixth) proviso to Section 14 of the Electricity Act, 2003.

10. The Applicant submitted that Section 14 along with its proviso applies to the entire State of Gujarat without any exception. The minimum area of an industrial township therefore would fall within the Explanation to Rule 3 of the Rules 2005 for construing the Requirements of capital adequacy and creditworthiness. This is purposive interpretation advanced to further the objective of competition under Electricity Act, 2003. It is repeated that Explanation to Rule 3 qualifies the "minimum" area for considering the two conditions of creditworthiness and capital adequacy and cannot be read in isolation and as an exception to the 6th (Sixth) proviso to Section 14. The term "minimum" is inserted for computation of the two conditions of credit worthiness and capital adequacy only.

10.1. The Applicant submitted that the Objectors have wrongly contended that there is an "omission" to mention "Industrial Township" in the Explanation to Rule 3, relating to the requirement of capital adequacy and credit worthiness of the new Applicant. It is therefore, sought to be contended that the omission being deliberate there cannot be any consideration of a parallel licensee for an area which is an Industrial Township.

It is submitted that the entire premise and basis of such a contention is erroneous and flawed in law, for the following reasons:

- a) The proposition of deliberate "omission" seems to be advanced on the erroneous plea that parallel licensee can be considered and granted only in areas wherein there is a Municipal Council, Municipal Corporation or a Revenue District. Thus, the very basis of the proposition is erroneous because the contention is raised with reference to Explanation to the Rule 3 and cannot be considered as a substantive stand-alone provision.
- b) The Sixth Proviso to Section 14 applies to the entire State of Gujarat. The Explanation to Rule 3 cannot alter, restrict and limit the operation of the Sixth Proviso to Section 14. Rule 3 is a delegated legislation and it cannot limit and restrict the scope of the parent provision of the Act.

- c) The rationale to stipulate the minimum area for computing credit worthiness and capital adequacy, is completely different from the proposition that any parallel license consideration requires the area to be a Municipal Corporation or a Municipal Council. In accordance with the Proviso to Article 243 Q (1), it is clear that an Industrial Township need not have a Municipal Corporation or Municipal Council. This is to ensure that there is no duality of control in terms of management / administration of MBSIR.
- d) The contention that omission of reference of Industrial Township in the Explanation to Rule 3 is a deliberate omission and therefore necessitates that a parallel licence area has to be mandatorily a Municipal Corporation / Municipal Council, seeks to render the proviso to Article 243 Q (1) otiose and nugatory. If the contention of the Objectors were to be accepted it would render nugatory the applicability of the Sixth Proviso to Section 14 for the Industrial Townships and an areas, which do not fall within the scope of the term Municipal Corporation / Municipal Council, which would be contrary to the Electricity Act, 2003.
- e) The Objectors are seeking to contend that the MBSIR Area is imperative for cross subsidization, which contentions are contrary to the statutory objective of competition enshrined in the Electricity Act, 2003 and also contrary to the National Tariff Policy, 2016, Sections 42 and 61 of the Act, in as much as the Objectors desire that the Commission continues ensuring cross subsidy contrary to the said provisions.
- f) It is pertinent to note that the aforesaid erroneous contentions of omission of the term "IT" in the term Explanation and the continuation of cross subsidy by the subsidizing consumers is based on the wrong premise of equating an Industrial Township with a mere Industrial Area. In the instant case, the MBSIR area is a Special Investment Region of more than 100 Sq. KM, completely self-governed which is in the nature of the community comprising of consumers from residential to EHV Industrial. The MBSIR unlike an industrial area is managed and administered as a township with its Authority so functioning in various spheres..

It is submitted that the contention of the Applicant needs to be appreciated that the Explanation to Rule 3 cannot be treated as a substantive provision of law. The Applicant has stated that the aspect of minimum area is not for computing the area of supply but for considering the capital adequacy and credit worthiness. This salutary rationale can never be disregarded.

- 10.2. The Applicant further submitted that the judgement of the Hon'ble Supreme court in MGR Industries Association & Anr. vs State of Uttar Pradesh & Ors. (2017) 3 SCC 494, cited on behalf of the Objectors, is not relevant for construing and considering the objection of "minimum area", as contained in Rule 3. It deals with the issue of exclusion of any area as Industrial Development Area from Panchayat, which has serious consequences for persons residing within the said area, being immediately deprived of facilities and benefits extended by Panchayats. Therefore, it is mandatory that the declaration of the said industrial area as Industrial Township be undertaken by way of a notification.
- 10.3. It is submitted that not only has MBSIR been duly notified but the State Act namely, Gujarat Special Investment Region Act, 2009 has also been notified with the enactment itself notifying the Special Investment Region as an Industrial Township. Therefore, the decision is completely distinguishable.
- 10.4. The Objectors had relied on Paragraph 17 of the judgement in MGR Industries Assn (Supra). A bare perusal of the portion of the said judgement extracted hereinabove reveals that the said judgement is completely inapplicable to the present case. Further, this judgment also relies on the judgment of Hon'ble Supreme Court in Saij Gram Panchayat Vs. State of Gujarat, (1999) 2 SCC 366. The judgment of the Hon'ble Supreme Court in Saij Gram Panchayat (supra), is good law dealing with the controversy wherein the industrial development under the Gujarat Industrial Development Act was an issue considered and squarely applies to the present case. The decision in MGR Industries Assn (Supra) dealt with requirement of notification to be issued, which is completely distinguishable from the present case. Interpretation of the proviso to Article 243 Q (1) in MGR Industries Assn (Supra) is in the context of a different controversy and cannot be imported to explain "Municipal Corporation" or "Municipal Council".
- 10.5. The Applicant submitted that while the Objectors have not raised any dispute regarding the Gujarat Special Investment Region Act, 2009, the Objectors have relied on the provisions of Section 173 and 174 of the Electricity Act, 2003 and contended that in case of any inconsistency, the Electricity Act, 2003 shall prevail and that the Act has overriding effect. In this regard, the Applicant, submitted that there is no inconsistency between the provisions of the Gujarat Special Investment Region Act, 2009 and the Electricity Act, 2003. The present application has been filed for grant of distribution license under the provisions of the 6th (Sixth) proviso to Section 14 of the Electricity Act, 2003. Hence, the reliance placed by the Objectors is irrelevant, as no instance of any inconsistency has been stated in the objections filed by the Objectors nor even pointed out during the hearing. Thus, the Applicant is prevented from dealing with the purported "inconsistency" as it is a bald allegation without any substantiation or specific illustration of the purported inconsistency.

- 10.6. Further, it is submitted that it was the Objectors who had referred to the earlier license granted by the Commission and specifically referred to areas like GIFT City and Dahej, etc. It was erroneously sought to be contended that in the said cases the areas were SEZ and hence the view taken by the Commission could be distinguished.

It is submitted that the Applicants had not referred to the earlier licensees and made submission in their regard. However, the Objectors have indubitably erred factually on that count also. The GIFT City also comprises of the GIFT Domestic Tariff Area in addition of SEZ area. Further, in respect of Dahej, the License had been granted, even prior to the issuance of notification relating to the deeming provision by the Central Government. Thus, the objections raised by the Objectors are untenable as being contrary to the correct factual matrix.

- 10.7. The Applicant submitted that the Objectors made a grievance of the Applicant not having disclosed its interaction with the MBSIR. It is submitted that the present Petition is being considered under the Regulatory jurisdiction of the Commission relating to licensing.

Amongst the myriad functions being performed by Electricity Regulatory Commissions, grant of licenses falls within the scope of regulatory functions of the Commission as opposed to adjudicatory or advisory functions.

It is submitted that the present matter is regulatory in character and the pleadings filed by the Applicant are within the regulatory framework and regime. The Objectors cannot demand any information beyond what is stipulated by the law and the regulatory framework. The Objectors are not concerned with any aspect extraneous to the regulatory proceedings.

11. The Applicant has also submitted and confirmed on affidavit regarding compliance to Code of Conduct as per Rule 4 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and also submitted two Maps of MBSIR duly certified by authorized person of MBSIRDA.
12. The Commission has also received letter from Energy and Petrochemicals Department wherein EPD has submitted its comments on the Licence Application filed by Torrent Power Ltd. seeking for Distribution Licence for Mandal-Becharaji Special Investment Region. The comments stated in the aforesaid letter are similar to the objections raised by GUVNL and UGVCL. Hence, the same are not repeated to avoid prolixity.
13. We have considered the submissions made by all the parties.

14. After going through the submissions of the Applicant and the Objectors, the Commission has to decide the matter taking into consideration the following issues:

1. Does MBSIR fulfil the criteria of minimum area for parallel distribution license area, as per the Section 15 of the Electricity Act, 2003 and under Sixth Proviso to Section 14 read with the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005?
2. Can the distribution licensee, UGVCL, object for parallel license application to TPL in MBSIR on the fact that it is the existing licensee and is capable of servicing the area? Can the parallel license be issued to the Applicant in MBSIR, which is falling under the present licensee, UGVCL?

15. Now, we deal with the above issues in the following paras.

15.1. It is necessary to refer sixth proviso to Section 14 of the Electricity Act, 2003 which is relevant in the present case as reproduced hereunder:

“.....

Provided also that the Appropriate Commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the condition that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements [relating to the capital adequacy, creditworthiness, code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose.

.....”

The aforesaid provision provides that the State Commission may grant licence for distribution of electricity to two or more persons having their own distribution system who fulfil the necessary requirements (as stipulated in the provision of the Act) in an existing distribution license area.

Therefore, the Commission is empowered to issue second licence in the existing distribution licensee area.

15.1.1. The applicable provisions for grant of second license are as mentioned below:

- a. As per the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005:

“3. Requirements of capital adequacy and creditworthiness

.....

Explanation .-For the grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243-Q of the Constitution of India or a revenue district shall be the minimum area of supply.”

- b. As per National Electricity Policy, 2005:

“5.4.7.,... For grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (74th Amendment) may be considered as the minimum area. The Government of India would notify within three months, the requirements for compliance by applicant for second and subsequent distribution licence as envisaged in Section 14 of the Act. With a view to providing benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of section 43 of the Electricity Act 2003. The SERCs are required to regulate the tariff including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers.”

- c. The Ministry of Power has notified Distribution of Electricity Licence (Additional Requirements of capital adequacy, creditworthiness and Code of Conduct) Rules,2005, wherein Rule 3 reads as – “Requirements of capital adequacy and creditworthiness –

(1) The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under Sub-section (1) of Section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after caring the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of Section 43.

(2) The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters, in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of networth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments.

Explanation -For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the Article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply.”

15.2. According to aforesaid provisions, the Commission can grant Distribution Licence to the applicant for distribution of electricity through its own distribution system when such applicant fulfils the conditions of capital adequacy and credit worthiness as prescribed by the Central Government. From the Rules issued by Central Government on the subject matter, it can be seen that Rule 3 lays down the requirements of capital adequacy and creditworthiness which have to be fulfilled by the Applicant, who applies for a Distribution License in the same area where a Distribution Licensee already exists. The Explanation to Rule 3 has to be read with Rule 3 (1) and Rule 3 (2) of the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005. Thus, the Explanation to Rule 3 qualifies the “minimum” area for considering the two conditions of creditworthiness and capital adequacy and is to be read with 6th (Sixth) proviso to Section 14. The term “minimum” is inserted for computation of the two conditions of credit worthiness and capital adequacy only.

15.3. Article 243Q of the Constitution of India reads as under:

“Article 243Q (1) There shall be constituted in every State, - (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

15.4. The Proviso to Article 243Q of the Constitution of India states that a Municipality may not be constituted in such urban area or its part if the Governor by a public notification specify it to be an Industrial Township, having regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area as he may deem fit.

15.5. From the perusal of Article 243P of the Constitution of India, it emerges that the terms “Municipal Council” and “Municipal Corporation” are not separately defined in Article 243-P but are defined as “Municipality” as under:

“243P. Definitions.

(e) Municipality means an institution of self-government constituted under article 243Q”

15.6. The nomenclature used in Article 243-Q is as per the quantum of the area, for which the Municipality is established namely, the Municipal Council for a smaller urban area and Municipal Corporation for a larger urban area. Both being institutions of self-government, are municipalities. The proviso to Article 243-Q provides for industrial township being a self-governing area in reference to Municipal corporation or council.

15.7. Accordingly, in view of the proviso to Article 243-Q (1), industrial township cannot be read as an exception of the 6th (Sixth) proviso to Section 14 of the Electricity Act, 2003. Section 14 along with its proviso applies to the entire State of Gujarat without any exception. The minimum area of an industrial township therefore would fall within the Explanation to Rule 3 of the Rules 2005 for construing the Requirements of capital adequacy and creditworthiness. Therefore, commission is of the view that Distribution License can be provided in the said area and hence recommends the same.

15.8. The MBSIR has been notified as per the provisions of Gujarat Special Investment Region Act 2009. The Section 29 of the Act provides as under:

“29. Special Investment Region to be an Industrial Township

(1) The area within the Special Investment Region except the village site area (gamtal) of a Village Panchayat, Municipal area and Municipal Corporation area shall be deemed to be an industrial township within the meaning of the provisions of clause (1) of article 243Q of the Constitution of India from the date it is so notified in the Official Gazette by the State Government.

15.8.1. The State Government under Section 3 of the SIR Act has notified the identified area falling in Ahmedabad and Mehsana Districts to be the SIR, known as “Mandal-Becharaji Special Investment Region”, vide notification no. GHU/2012/22/SIR/112012/1276/I dated 24.09.2012 read with notification no. GHU/2013/16/SIR/112012/1276/I dated 14.08.2013.

15.8.2. The Government of Gujarat in the aforesaid Notification dated 24.09.2012 has specified in the Schedule appended thereto, the name of District, Taluka, Name of Village, Survey number and total area. The same is reproduced below:

“GUJARAT SPECIAL INVESTMENT REGION ACT, 2009.

NO. GHU/2012/22/SIR/1 12012/1276/1:-

In exercise of the powers conferred under section 3 of the Gujarat Special Investment Region Act, 2009 (Guj. 2 of 2009), the Government of Gujarat hereby,

- i. Declares the areas of the revenue villages as specified in column 4 of the Schedule appended hereto, situated in the talukas as specified in column 3 thereof in the Ahmedabad, Mehsana and Surendranagar Districts, to be the Special Investment Region which shall be known as “Mandal-Becharaji Special Investment Region”; and*
- ii. Determines the areas within the boundaries of revenue Villages specified in column 4 of the said Schedule to be the geographical area of the said Special Investment Region measuring 50884.8362 Hectares in total;*

SCHEDULE

Detail of the areas, villages and talukas of the Ahmedabad, Mehsana and Surendranagar Districts to be known as “the Mandal-Becharaji Special Investment Region”

Sr. No.	Name of the Districts	Taluka	Name of the Revenue Village			
1	2	3	4			
			Sr. No.	Name of the Village	Survey No.	Total Area of lands (In Hectares)
1	AHMEDABAD	Mandal	1	Hansalpur Becharaji	Complete	863.9680
			2	Sitapur	Complete	3672.7267
			3	Zanzarava	Complete	814.6571
			4	Anandpura	Complete	289.3522
			5	Nayakpur	Complete	1050.7719
			6	Vinchhan	Complete	536.6270
			7	Jalisana	Complete	1699.0016
			8	Dadhana	Complete	1899.6995
			9	Vithalpur	Complete	2241.1018
			10	Ughroj	Complete	1424.8351
			11	Vasna Kunpur	Complete	563.9225
			12	Ughrojpora	Complete	637.9089
			13	Ukardi	Complete	856.6835
			14	Kunpur	Complete	1180.6617
			15	Vanpardi	Complete	831.7045
			16	Dalod	Complete	1915.4384
			17	Vinzuwada	Complete	1657.0967
			18	Varmor	Complete	2199.2770
			19	Manpura	Complete	540.1060
2	AHMEDABAD	Detroj	1	Dekavada	Complete	1383.7091
			2	Umedpura	Complete	207.8275
			3	Sadatpura	Complete	1031.2478
			4	Ratanpura	Complete	119.0489
			5	Bhagapura	Complete	1243.1697
			6	Nana Karanpura	Complete	194.2097
			7	Mota Karanpura	Complete	132.0697
			8	Kanz	Complete	1623.6387
			9	Chhaniyar	Complete	1279.4819
			10	Rampura	Complete	845.7306
			11	Ghatisana	Complete	381.2566

Sr. No.	Name of the Districts	Taluka	Name of the Revenue Village			
1	2	3	4			
			Sr. No.	Name of the Village	Survey No.	Total Area of lands (In Hectares)
			12	Shihor	Complete	953.9102
3	SURENDRANAGAR	Dasada-Patadi	1	Naviyani	Complete	1507.8150
			2	Manavada	Complete	586.9082
			3	Gosana	Complete	637.6863
			4	Sushiya	Complete	1765.5706
			5	Valevada	Complete	1123.0382
			6	Vanod	Complete	3925.5497
			7	Alampura	Complete	734.0525
			8	Erwada	Complete	560.0470
			9	Echhwada	Complete	1196.4586
			10	Chhatrot	Complete	761.1464
			11	Panva	Complete	2204.0698
			12	Bubwana	Complete	1087.4358
4	MEHSANA	Becharaji	1	Chandanki	Complete	524.2176
				Total Area		50884.8362

Thereafter, the Government of Gujarat had issued GR dated 14.08.2013 vide GR No. GHU/2013/16/SIR/112012/1276/I wherein areas of certain revenue villages were deleted from the "Mandal - Becharaji Special Investment Region" declared earlier vide Notification No. GHU/2012/22/SIR/112012/1276/I dated 24.09.2012. The name of revenue villages of Taluka of Ahmedabad and Surendranagar District, survey numbers and total area deleted from the earlier revenue area of Notification dated 24.09.2012 of Mandal Becharaji Special Investment Region is specified in 'Schedule' of aforesaid GR dated 14.08.2013. The said GR is reproduced below:

"

PART IV-B

GUJARAT SPECIAL INVESTMENT REGION ACT, 2009.

No. GHU/2013/16/SIR/112012/1276/I:-

In exercise of the powers conferred under section 34(1) of the Gujarat Special Investment Region Act, 2009 (Guj. 2of 2009), the Government of Gujarat is hereby pleased to delete the following areas of revenue villages from the "Mandal -

Becharaji Special Investment Region” declared vide Notification No. GHU/2012/22/SIR/112012/1276/I, dated 24.09.2012:

SCHEDULE

Detail of the areas, villages and talukas of the Ahmedabad and Surendranagar Districts deleted from “the Mandal-Becharaji Special Investment Region”

Sr. No.	Name of the Districts	Taluka	Name of the Revenue Village			
			1	2	3	4
			Sr. No.	Name of the Village	Survey No.	Total Area of lands (In Hectares)
1	AHMEDABAD	Mandal	1	Zanzarava	Complete	814.6571
			2	Anandpura	Complete	289.3522
			3	Nayakpur	Complete	1050.7719
			4	Vinchhan	Complete	536.6270
			5	Jalisana	Complete	1699.0016
			6	Dadhana	Complete	1899.6995
			7	Vithalpur	Complete	2241.1018
			8	Vasna Kunpur	Complete	563.9225
			9	Kunpur	Complete	1180.6617
			10	Vanpardi	Complete	831.7045
			11	Dalod	Complete	1915.4384
			12	Vinzuwada	Complete	1657.0967
			13	Varmor	Complete	2199.2770
			14	Manpura	Complete	540.1060
2	AHMEDABAD	Detroj	1	Dekavada	Complete	1383.7091
			2	Umedpura	Complete	207.8275
			3	Sadatpura	Complete	1031.2478
			4	Ratanpura	Complete	119.0489
			5	Nana Karanpura	Complete	194.2097
			6	Mota Karanpura	Complete	132.0697
			7	Kanz	Complete	1623.6387
			8	Chhaniyar	Complete	1279.4819
			9	Rampura	Complete	845.7306

Sr. No.	Name of the Districts	Taluka	Name of the Revenue Village			
1	2	3	4			
			Sr. No.	Name of the Village	Survey No.	Total Area of lands (In Hectares)
			10	Ghatisana	Complete	381.2566
3	SURENDRANAGAR	Dasada-Patadi	1	Naviyani	Complete	1507.8150
			2	Manavada	Complete	586.9082
			3	Gosana	Complete	637.6863
			4	Sushiya	Complete	1765.5706
			5	Valevada	Complete	1123.0382
			6	Vanod	Complete	3925.5497
			7	Alampura	Complete	734.0525
			8	Erwada	Complete	560.0470
			9	Echhwada	Complete	1196.4586
			10	Chhatrot	Complete	761.1464
			11	Panva	Complete	2204.0698
			12	Bubwana	Complete	1087.4358

15.8.3. Further the total area of lands as per Notification dated 24.09.2012 which is 50884.8362 hectares, while as per Gujarat Government' Notification dated 14.08.2013 the total areas of land deleted is 40707.4165 hectares. Therefore, on combined reading of both these notifications, it emerges that total area of MBSIR is 10177.4197 hectares in two distinct clusters, wherein in one cluster there are three revenue villages with complete survey number (viz. Hansalpur, Sitapur and Chandanki) and in another cluster there are five revenue villages with complete survey number (viz. Ughroj, Ugrojpura, Ukardi, Bhagapura and Shihor). Accordingly, the Applicant has submitted two maps of above clusters along with its affidavit dated 28.10.2021.

Hence, Section 3 & 29(1) of SIR Act read with aforesaid notifications clearly qualifies MBSIR area as an Industrial Township under Clause (1) of Article 243Q of the Constitution of India and accordingly, MBSIR area meets the requirement. The Commission also notes that this issue is already dealt with by this Commission in earlier matters and same has attained finality. Hence, the issue is no longer res-integra.

15.8.4. Now we deal with the judgments cited by the Objectors and Applicant. The Objectors have referred to the judgement of Hon'ble Supreme Court in MGR Industries Association & Anr. Vs State of Uttar Pradesh & Ors. (2017) 3 SCC 494 wherein it has

been held that exemption from non-constitution of Municipality is dependent upon consideration of various factors and a public notification thereof. In the present case, MBSIR has been duly notified and the Gujarat Special Investment Region Act, 2009 has also been notified, wherein the enactment itself notifies that the Special Investment Region as an Industrial Township. Hence, the referred judgment does not appear to be applicable to the present case.

- 15.8.5. The Applicant has referred and relied on Hon'ble Supreme Court judgment in Saij Gram Panchayat Vs. State of Gujarat, (1999) 2 SCC 366 wherein the Hon'ble Supreme Court was concerned with proviso to Article 243-Q (1) relating to constitution of an Industrial Township. In this regard, the Objectors have argued that the present issue arises as the Rules and Policy refer only to Municipal Corporation and Municipal Council under Article 243 Q and that the same cannot be expanded to refer to Industrial Township. Upon perusal of the judgment, it is noted that the Hon'ble Supreme Court has considered various aspects of separate administrative units, self-government and gave a purposive and wide interpretation to the Proviso to Clause 1 of Article 243-Q. Hence, the judgment is clearly applicable in the present case.
- 15.8.6. In the judgment of Saij Gram Panchayat, the Hon'ble Supreme Court has held that the industrial area has a separate provision for municipal services being provided by the Industrial Development Corporation. Once such an area is a deemed notified area under the Gujarat Municipalities Act, 1964, it is equated with an industrial township under Part IX-A of the Constitution, where municipal services may be provided by industries.
- 15.8.7. Further, regarding the Objectors' contentions about cherry-picking, the Commission observes that the Applicant upon grant of license shall be bound by the mandate of Universal Service Obligation as contained in Section 43 of the Act. In fact, the National Electricity Policy (referred hereinabove) specifically provides that the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of Section 43 of the Electricity Act 2003 for providing benefits of competition to all section of consumers. Additionally, the SERCs are required to regulate the tariff including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers. Therefore, where the Act and the Policy envisages second licensee to provide benefits of competition and mandates universal service obligation on the second licensee, the argument of cherry picking cannot be accepted.
- 15.8.8. Even the contention of the Objectors about MBSIR Area being imperative for cross subsidization is contrary to the statutory objective of competition enshrined in the Electricity Act, 2003 and is also contrary to the National Tariff Policy, 2016. The Section

42 of the Electricity Act, 2003 envisages the progressive reduction in cross subsidy. Hence, the contention of the Objectors cannot be accepted.

15.8.9. Since, the present Application is filed by the Applicant for grant of distribution licence, it is necessary for the Applicant to comply with the provisions of the Distribution of Electricity License (Additional requirements of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005, which are reproduced below:

**“THE DISTRIBUTION OF ELECTRICITY LICENCE (ADDITIONAL REQUIREMENTS OF
CAPITAL ADEQUACY, CREDIT WORTHINESS AND CODE OF CONDUCT) RULES,
2005**

G.S.R. – 188 (E)

Date: 23.03.2005

In exercise of the powers conferred by sub-section (1) of, and clause (b) of (2) of section 176 of the Electricity Act, 2003 (36 of 2003), the Central Government hereby makes the following rules, namely :-

- 1) *Short Title and commencement.*
 1. *These rules may be called the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005.*
 2. *They shall come into force on the date of their publication in the Official Gazette.*
- 2) *Definition – In these rules, unless the context otherwise requires,*
 - a. *‘Act’ means the Electricity Act, 2003 (36 of 2003);*
 - b. *Words and expression used and not defined in these rules but defined in the Electricity Act, 2003 (36 of 2003), shall have the meanings respectively assigned to them in that Act*
- 3) *Requirements of capital adequacy and creditworthiness. -*
 1. *The Appropriate Commission shall, upon receipt of an application for grant of licence for distribution of electricity under sub-section (1) of section 15 of the Electricity Act, 2003, decide the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of section 43.*
 2. *The applicant for grant of licence shall be required to satisfy the Appropriate Commission that on a norm of 30% equity on cost of investment as determined under sub-rule (1), he including the promoters,*

in case the applicant is a company, would be in a position to make available resources for such equity of the project on the basis of the net worth and generation of internal resources of his business including of promoters in the preceding three years after excluding his other committed investments

Explanation-For the grant of a licence for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council or a Municipal Corporation as defined in the article 243(Q) of the Constitution of India or a revenue district shall be the minimum area of supply

4) *Requirement of code of conduct. The applicant for grant of licence shall satisfy the Appropriate Commission that he has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of application for the grant of licence:*

- (a). section 203, section 274, section 388-B or section 397 of the Companies Act, 1956;*
- (b). section 276, section 276-B, section 276-BB, section 276-C, section 277 or section 278 of the Income-tax Act, 1961;*
- (c). section 15-C, section 15-G, section 15-H or section 15-HA of the Securities and Exchange Board of India Act, 1992;*
- (d). clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act, 1944;*
- (e). section 132 or section 135 of the Customs Act, 1962,*

and that the applicant is not a person in whose case licence was suspended under section 24 or revoked under section 19 of the Act, within the last three years from the date of application:

Provided that where the applicant is a company, it shall satisfy the Appropriate Commission in addition to provisions of this rule that no petition for winding up of the company or any other company of the same promoter has been admitted under section 443(e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.

.....”

15.8.10. Now, we deal with the issue as to whether the Applicant has fulfilled the above requirements of Capital Adequacy and Creditworthiness as per the provisions of the Rules, 2005.

- 15.8.10.1. The Applicant has submitted Certificate no. 04-44068, dated 08.02.2006 issued by the Registrar of Companies, Gujarat, Dadra and Nagar Haveli, certifying that Torrent Power Pvt. Ltd. originally incorporated on 29.04.2004 under the Companies Act, 1956 and under the name of Torrent Power Trading Pvt. Ltd. having duly passed the necessary resolution on 01.02.2006 in terms of Section 31/44 of the Companies Act, 1956, the name of the said company is changed to Torrent Power Ltd.
- 15.8.10.2. The Applicant has submitted Memorandum and Articles of Association of the Applicant Company along with the Application. The Applicant has submitted the original Power of Attorney dated 12.05.2021 authorising Shri Chetan Bundela to do in their name or behalf all such acts, deeds and things necessary in connection with or incidental to obtain license for distribution of power in MBSIR.
- 15.8.10.3. The Applicant has submitted a copy of PAN Card bearing no. AACCT0294J dated 29.04.2004 issued by Income Tax Department, Government of India.
- 15.8.10.4. The Applicant has submitted Certificate No. CCG-A/AMT-1/2021-22/12 dated 08.04.2021 signed by AGM and Relationship Manager (AMT-1) of the State Bank of India, Commercial Clients Group Branch, 58, Shrimali Society, Navrangpura, Ahmedabad, stating that the Applicant has availed various credit facilities from State Bank of India, Corporate Clients Group Branch, Ahmedabad, and confirmed that the name of the Applicant, Torrent Power Ltd., does not appear in the wilful defaulter list of Reserve Bank of India as on the date of issue of the said Certificate.
- 15.8.10.5. The Applicant has submitted Certificate No. CCG-A/AMT-1/2021-22/12 dated 08.04.2021 signed by AGM and Relationship Manager (AMT-1) of the State Bank of India, Commercial Clients Group Branch, 58, Shrimali Society, Navrangpura, Ahmedabad, stating that the Applicant has availed various credit facilities from State Bank of India, Corporate Clients Group Branch, Ahmedabad, and confirmed that the account of the borrower in the books of SBI Corporate Clients Group Branch, Ahmedabad, is "Standard", on the date of issue of Certificate.
- 15.8.10.6. From the above, it is apparent that the Applicant is not a "wilful defaulter" and its account is "Standard" as on the date of issue of Certificate by State Bank of India.
- 15.8.10.7. The Applicant has submitted the Annual Reports of the Applicant Company for FYs 2017-18, 2018-19 and 2019-20 to substantiate the net worth and annual turnover of the Applicant Company. It is observed that the net worth of the Applicant Company is Rs. 9187.27 Crore on 31.03.2020. Further, the Annual Turnover of the Company is Rs. 13442.04 Crore in FY 2019-20. The same is stated in table below:

Date/Month/Year	Net Worth (Rs. Cr.)	Financial Year	Turnover (Rs. Cr.)
31 st March, 2016	6,458.48	FY 2015-16	11,661.59
31 st March, 2017	6,884.48	FY 2016-17	10,014.58
31 st March, 2018	7,692.69	FY 2017-18	11,448.86
31 st March, 2019	8,936.80	FY 2018-19	12,977.52
31 st March, 2020	9,187.27	FY 2019-20	13,442.04

The above table indicates that Net-worth of the Applicants company was Rs. 6,458.48 crore as on 31st March, 2016 and has increased to Rs. 9187.27 crore on 31st March 2020 i.e. increase of 42.25% over the period of 5 years. Further the Annual Turnover which was Rs. 11,661.59 crore during FY 2015-16 has increased to Rs. 13,442.04 crore in FY 2019-20 i.e. increase of 15.27% over the period of 5 years.

15.8.10.8. The Applicant has also submitted the Certificate issued by CRISIL for ratings of total bank loan facilities availed by the Company as on date.

15.8.10.9. We also note that the Applicant has furnished a Certificate wherein the net worth of the M/s Torrent Power Ltd. (CIN: L31200GJ2004PLC044068) ("the Company") is Rs. 9187.27 Crore as on 31.03.2020. It is also certified that the Company has free cash and cash equivalents and liquid investments of Rs. 581.62 Crore as on 31.03.2020. It is further certified that on consideration of the above net worth, free cash, cash equivalents and liquid investments and free cash accruals (after considering committed investments) during next 5 years, the Company has sufficient resources available to fund the equity requirement of approximately Rs. 150 Crore during next 5-year period for the purpose of funding the Mandal-Becharaji license area project (MBSIR).

15.8.10.10. The Applicant has also submitted the Rating certificate issued by CRISIL vide their letter no. RM/AHMENEC/249889/BLR/0421/06/113 dated 6th April 2021 for Rating on Total Bank Loan facility of Rs. 16,600/- crore availed/proposed by the Applicant company as on date which is reproduced below.

Total Bank Loan Facilities Rated	Rs. 16600 Crore
Long Term Rating	CRISIL AA/Stable
Short Term Rating	CRICIL A1+

15.8.10.11. The Applicant has also submitted and confirmed on affidavit the compliance to the Rule 4 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 as under:

The Applicant has also submitted and confirmed on affidavit dated 28.10.2021 as under:

“

THE APPLICANT ABOVE NAMED RESPECTFULLY SUBMITS AS UNDER:

1. *Torrent Power Limited (hereinafter referred to as TPL or the Applicant), has filed an application for grant of Distribution License in the Area of Mandal Becharaji SIR under Section 14 of the Electricity Act, 2003 read with Section 20 of the Gujarat Electricity Industry (R&R) Act, 2003.*
2. *Now in furtherance to the above, TPL would like to submit that in compliance to the Rule 4 of the Distribution of Electricity License (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005; the Applicant, being a company, has not been found guilty or has not been disqualified under any of the following provisions within the last three years from the date of application for grant of licence:*
 - (a). *section 203, section 274, section 388-B or section 397 of the Companies Act, 1956;*
 - (b). *section 276, section 276-B, section 276-BB, section 276-C, section 277 or section 278 of the Income-tax Act, 1961;*
 - (c). *section 15-C, section 15-G, section 15-H or section 15-HA of the Securities and Exchange Board of India Act, 1992;*
 - (d). *clause (b), (bb), (bbb), (bbbb), (c) or (d) of sub-section (1) of section 9 of the Excise Act, 1944;*
 - (e). *section 132 or section 135 of the Customs Act, 1962**and that Applicant is not a person in whose case license was suspended under Section 24 or revoked under Section 19 of the Act, within the last three years from the date of application.*
3. *Further, TPL, being a company, no petition for winding up of the company or any other company of the same promoter has been admitted under Section 443(e) of the Companies Act, 1956 on the ground of its being unable to pay its debts.*
4. *In addition to above, TPL also submits herewith the Map of MBSIR duly certified by the Authorised person as received from Mandal Becharaji Special Investment Regional Development Authority, at Annexure for reference and records.*

Ahmedabad
Date: 28.10.2021

Sd/-
Authorised Signatory

.....”

Thus, the Applicant has confirmed that it has not been found guilty and has not been disqualified under any of the relevant provisions of the Companies Act 1956, the Income Tax Act 1961, the Security Exchange Board of India Act, 1992, the Excise Act, 1944 and the Customs Act, 1962. It is further submitted that the license issued to the Applicant has not been suspended under Section 24 or revoked under Section 19 of the Act within last 3 years from the date of application. It is also certified that no petition for winding of the company or any other company of the same promoter has been submitted under section 443(e) of the Companies Act, 1956 on the ground of its inability to pay the debt.

15.8.10.12. From the above, we are satisfied that the Applicant has fulfilled the requisite criteria and qualifications, both financial and creditworthiness. The Applicant has complied with the provisions of the Distribution of Electricity License (Additional requirement of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 and Distribution License can be issued to the Applicant.

15.8.11. Now, so far as another issue no. 2, as above, is concerned, we note that the Objectors have submitted that UGVCL has established high class overhead and underground infrastructure and facilities having objective of affordable, reliable, quality and uninterrupted power supply to their consumers. The villages under the MBSIR are already under the jurisdiction of UGVCL area and are getting continuous 24x7 power supply by UGVCL. There are many customers, including motive power industrial consumers like automobile industry, auto component vendors, logistic part, etc. are getting uninterrupted power supply. UGVCL has already established sub-stations in the area and has robust overhead and underground network. The Objectors also claimed that UGVCL is already supplying electricity satisfactorily to the consumers in the MBSIR.

15.8.12. We note that the Objectors have submitted that UGVCL has established infrastructure in the MBSIR area and is capable of servicing the existing and future power requirement of MBSIR. UGVCL has developed underground infrastructure with Ring Main Unit along with the provision of HT Feeders for changeover arrangement from the adjacent feeders during emergency as well as maintenance purpose so as to provide them uninterrupted, quality power supply.

15.8.13. Further, it is submitted that UGVCL has established plug and play underground power distribution network having approximately 46 KM of 300 Sq. MM underground cable, 168 Ring Main Units (RMU) and 11 compact transformer cubicles for meeting the power requirement in the area. Considering the requirement for high aesthetic value distribution infrastructure in the area, UGVCL has designed and developed the locked and sealed weather-proof High-Tension Metering Cubicle (HTMC) for metering purpose

and the same is being used by almost all HT consumers for getting supply of power in the area.

15.8.14. The Objectors have also claimed that UGVCL has established 3 Nos. 66 kV Sub-stations in the area and is in process of establishing two more 66 kV Sub-stations and that, UGVCL has already incurred huge investments and continuously making investments for development of distribution network in the MBSIR area. At present, UGVCL has no pendency to release new HT/LT consumers for want of distribution network in the area.

15.8.15. We note that the Objectors have submitted that the grant of licence for distribution of electricity in any area and also as a parallel license under Section 15 of the Electricity Act, 2003 is discretionary. It is not necessary that the Commission has necessarily to grant such license once the requirements of the minimum area under the Rules get satisfied. The Objectors submitted that there is no need for the Applicant to be given a second licence and contended that the interest of the consumers in the area is well served by the integrated distribution network established and operated by UGVCL in the much larger area of Uttar Gujarat. Further, in terms of the provisions of the Electricity Act, 2003 the individual consumers in the area have also the option of sourcing electricity by availing open access to the UGVCL network and directly purchasing the electricity requirement from generator or trader or power exchange, in the event they consider it appropriate. It is not a case where the existing distribution licensee does not have the necessary expertise or network to provide connection and make available the quantum of electricity required within the timelines specified in Section 43 of the Electricity Act, 2003.

15.8.16. The Commission notes that it has the powers under Section 14 of Electricity Act, 2003 to grant distribution license on fulfilment of the criteria as outlined in Rules, 2005. Further, the objective of competition is outlined under the Electricity Act, 2003 and merely existence of a distribution licensee in a particular area cannot become the basis for refusing a second license. The Commission has to discharge its function and verify that the Applicant fulfils the applicable criteria as per the Electricity Act, 2003 and the Regulations. Sixth proviso to Section 14 provides as under.

“

Provided also that the Appropriate commission may grant a license to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the condition that the Applicant for grant of license within the same area shall, without prejudice to other conditions or requirements under this Act comply with the additional requirements relating to capital adequacy, creditworthiness, or code of conduct as may be prescribed by the Central Government, and no such Applicant, who complies with all the

requirements for grant of license, shall be refused grant of license on the ground that there already exists a licensee in the same area for the same purpose.”

From the above, it is clear that the Act provides that the Commission may grant license to two or more persons for distribution of electricity.

- 15.8.17. The Electricity Act, 2003 clearly envisages promotion of efficiency and competition and therefore when the Applicant who has fulfilled the necessary criteria and satisfied the conditions there is no reason to reject this Application. It may be pertinent to note here that MBSIR as submitted is going to be developed like Smart City and therefore parallel distribution license is towards the objectives of the Act.
16. The objections raised by the Objectors are not convincing and cannot be accepted. Based on the submission of the Applicant and the decision of the Commission as outlined in above paras with respect to the issues raised, the Commission proposes to issue parallel license to the Applicant in MBSIR as outlined below as per the powers vested with the Commission in Section 14 of the Electricity Act, 2003 read with the GERC (Licensing of Distribution of Electricity) Regulations, 2005 and Electricity Rules, 2005.
17. The Commission intends to encourage the use of renewable energy and installation of smart meters. The Applicant has to adhere to the applicable Rules and Regulations. Further, the Applicant shall focus on encouragement of RE and installation of smart meters in the license area of MBSIR.
18. As per Section 15(2)(ii) of the Electricity Act, 2003, where an Applicant is to be granted distribution license, it is necessary to confirm that the area of license including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defense purpose, the Appropriate Commission has ascertained that there is no objection to the grant of the license on the part of Central Government.
- 18.1. The Application submitted by the Applicant does not include any document clarifying that the area for license proposed by the Applicant does not include any part of cantonment aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defense purposes.
- 18.2. Hence, it is necessary to confirm the same by the Applicant. Accordingly, we direct the Applicant to give an undertaking on affidavit clarifying whether MBSIR area includes whole or any part of cantonment, aerodrome, fortress, arsenal, dockyard or of any building or place in the occupation of the Government for defense purpose or not.

19. On consideration of the material available on record, the Applicant fulfils criteria laid down for the grant of distribution license in Mandal Becharaji SIR area. We therefore, propose to issue a distribution license to the Applicant for the Mandal Becharaji SIR area as notified by the Government of Gujarat under Gujarat Special Investment Region Act, 2009 and Notification No. GHU/2012/21/SIR/112012/1276/I dated 24.09.2012 read with Notification No. GHU/2013/16/SIR/112012/1276/I dated 14.08.2013.
20. As far as map of license area (Annexed to the Application as Annexure II) is concerned, we decide that in the map qualifying as license area as per the provision of Section 29 of the Gujarat Special Investment Region Act, 2009, any area in the said map which is excluded from the Industrial Township as per the provision of Section 29 of the Gujarat Special Investment Region Act, 2009 shall also be construed as outside the proposed licensee area of the Applicant like exclusion Gamtal area.
21. We also direct the office of Commission to issue notice in two local daily newspapers, stating the name and address of the Applicant, as per Clause (a) of sub-Section (5) of Section 15 of the Electricity Act, 2003, as the Commission proposes to issue license to the Applicant. A copy of this Order and copy of the Application be forwarded to GETCO (STU) and PGCIL (CTU), Energy and Petrochemical Department, Government of Gujarat and MBSIR Development Authority.
22. We order accordingly.

Sd/-

(S. R. PANDEY)
MEMBER

Sd/-

(MEHUL M. GANDHI)
I/C. CHAIRMAN & MEMBER

Place: Gandhinagar

Dated: 14/12/2021