

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No. 1, 13th Floor, Cuffe Parade, Mumbai - 400005

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Case No. 142 of 2008

In the matter of
Petition of M/s. Ixora Constructions Private Limited (ICPL) for Grant of Distribution License, under Section 14 of the Electricity Act, 2003 and Regulation 5 of MERC (General Conditions of Distribution License) Regulations, 2006, for upcoming SEZ in Panvel

Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member

M/s. Ixora Constructions Private Limited (ICPL)

..... Applicant

ORDER

Dated: May 24, 2010

M/s. Ixora Constructions Private Limited ('**ICPL**') filed an application under Section 14 of the Electricity Act, 2003 ("EA 2003") and Regulation 5 of the MERC (General Conditions of Distribution Licence) Regulations, 2006 for grant of licence to distribute electricity in the area of Panvel Special Economic Zone ('**Panvel SEZ**') comprising of an area of 139.83 hectares which has been duly notified as SEZ area by the Government of India, Ministry of Commerce and Industry (Department of Commerce) vide Notification No. S.O.514 (E) dated 19th February, 2009. The said area presently falls under the area of supply of Maharashtra State Electricity Distribution Company Limited ('**MSEDCL**'). ICPL has submitted that it requires a distribution license to comply with the basic conditions of providing uninterrupted power and quality of service to its units. It has also been submitted that the Developer is proposing to set up a Sector specific SEZ for service sector (multi services) and the units that will be established within this SEZ would

inter-alia include IT/ITES Companies. Pursuant to the provisions of Rule 5A of the Special Economic Zones Rules, 2006, it is the responsibility of the developer to make available uninterrupted power at stable frequency, within the SEZ area. It has been submitted that the whole of India including the State of Maharashtra is facing severe power shortage and as a co-developer (ICPL), the Applicant herein is mandatorily required to arrange for 24 hrs. power supply within the SEZ area. It has been submitted that if distribution licence is granted to the Applicant, the same will promote competition within the SEZ area. The existing distribution licensee (MSEDCL) will be required to match the price and quality of service provided by the Applicant in order to supply electricity to the consumers within the SEZ area, which will be beneficial to the consumers apart from uninterrupted power at stable frequency. It has also been submitted that there is no existing distribution system of any distribution licensee in the area of the SEZ and neither are there any existing consumers of such incumbent distribution licensee other than the developer of the SEZ. The existing distribution licensee need not create parallel distribution network thereby burdening the consumers within the SEZ area. The capital costs towards creation of parallel network should be incurred only when there is no better optimal solution available. The Applicant has referred to an order of the Commission dated 15.10.2009 passed in Case No. 50 of 2009 where approval has been granted to Tata Power Company Ltd. for supplying power to consumers in the common area of license of Reliance Infrastructure Ltd. – Distribution (RInfra-D), using each other's existing distribution network. A similar approach, it is suggested, can be adopted for supplying electricity by the existing distribution licensee utilizing the network of the developer.

2. The applicant has submitted duly filled in application in the prescribed format as specified in the MERC (General Conditions of Distribution Licence) Regulations, 2006, along with supporting documents like Annual Statement of Accounts, Business Plan, Undertaking for fulfilment of additional requirements on matters related to Code of Conduct, Credit worthiness, and fulfilment of requirements of capital adequacy to comply with Distribution of Electricity licence (additional requirements of Capital Adequacy, Creditworthiness and Code of conduct) Rules, 2005, Authorization letter to file application, map of proposed license area, Copy of PAN/ GIR No. allocated by the Income Tax Department, Certificate of Incorporation of the Company, Memorandum of Association and Articles of Association of the company, proposed organizational set-up, etc.

3. The facts as mentioned in the application made by ICPL are briefly as under:

- (a) ICPL was registered under the Companies Act, 1956 in July, 2006. It is registered as a Co-developer of the SEZ in Panvel by the name of "Hiranandani Palace Gardens". The applicant is a subsidiary promoted by Hiranandani Palace Gardens Private Limited ("HPGPL"). HIRCO Plc. ("HIRCO"), a Hiranandani Group company, is newly incorporated and registered in the Isle of Man. The applicant has submitted that HIRCO has been formed to invest in certain FDI compliant Indian real estate development projects (such as Panvel SEZ being developed by SVRPL). Through placement on the Alternate Investment Markets, London ("AIM"), HIRCO has raised funds for investments in its projects.

- (b) M/s. Sunny Vista Realtors Private Limited (**'SVRPL'**), which has been notified as a 'Developer' by the Ministry of Commerce & Industry (Department of Commerce) vide Notification No. S.O. 515 (E) dt. 19th February, 2009 is developing the said Panvel SEZ in the State of Maharashtra for service sector personnel at Village - Talegaon and Panshil, Taluka – Khalapur and Village - Bhokarpada, Taluka - Panvel in District Raigarh in the State of Maharashtra. The Panvel SEZ will consist of Residential Complexes, Commercial Complexes, Hotels, Hospitals, Schools and Retail Malls.
- (c) ICPL has entered into a Memorandum of Understanding (MoU) with SVRPL for the purpose of providing diverse infrastructure facilities within the Panvel SEZ area, which includes provision for power supply within the SEZ and to unit holders located therein. ICPL has submitted that it proposes to make arrangements for sourcing and distribution of power within the notified area of Panvel SEZ and for this, it will establish a suitable distribution network in accordance with the EA 2003 and regulations made thereunder.
- (d) ICPL has submitted a network plan to cater to the electrical load to be developed in three phases, with the load in Phase – I being projected as 50 MVA and the Phase – II & Phase – III of 77 MVA each, thus envisaging total load of 204 MVA by FY 2015-16.
- (e) ICPL has further submitted that the share capital and reserves of ICPL is Rs. 1 lakh, that of SVRPL is Rs. 243.47 crore and that of HPGPL is Rs. 94.73 crore, and as on 30th March, 2009, the combined share capital and premium of the three companies is Rs. 338.21 crore.
- (f) ICPL has submitted that in terms of Rule 5A of the SEZ Rules, 2006, in case of an SEZ relating to information technology, there is a requirement of twenty-four hours uninterrupted power supply at stable frequency in the SEZ, which has to be ensured.
- (g) ICPL has further submitted that it has already acquired land in the SEZ for the purpose of setting up switchyard and network according to its requirement, and that the supply of power to the SEZ units is proposed from the nearby EHV Grid at Panvel.

4. The Commission had enquired vide its letter ref. no. MERC/LEG/Case 142 of 2008/2808 dated 15th December, 2009 from the Applicant, as under:

“Q1...

As the proposed SEZ area of ICPL does not comply with the minimum area as specified in Distribution of Electricity Licence (additional requirement of Capital Adequacy, Credit Worthiness and Code of Conduct) Rules, 2005, then, the question is on what grounds should the Commission assess the application of ICPL for obtaining electricity distribution licence for the SEZ area. ICPL has to justify its application for distribution licence in view of this.”

5. The Applicant vide letter ref. no. ICPL/MERC-DLA/01-002/2009-2010 dt. January 15, 2010, replied as under:

“A(1)

The petitioner submits that both the Distribution Licensee Rules and NEP specifying the requirement of minimum area are sub-ordinate legislation and policy instrument respectively and there is no specific requirement under EA 2003 for specifying any minimum area for the grant of a distribution license. It is submitted that the NEP is in the nature of guidelines and cannot override the express provisions of the Act. In this regard, it is necessary to place on record the judgement of Hon’ble Appellate Tribunal in case of Power Trading Corporation vs. CERC & others in appeal no. 228 & 230 of 2006, where the Hon’ble Tribunal has specifically held as follows:

‘The policy etc. are guidelines indicated as an object to be achieved in the power sector and being a policy or guideline, it cannot run counter to the legislative mandate nor such a course is permissible to a delegate to overturn the legislative enactment much less a whole.’

It is submitted that the explanation as provided at sub clause (2) of Distribution of Electricity licence (additional requirement of capital adequacy, credit worthiness and code of conduct) Rules-2005, in no way restricts the grant of the license to the applicant. It is submitted that the said explanation merely provides that where more than one applicant is granted a distribution license in a particular area, the license so granted to the applicant shall specify the area for which the license is granted. It is an enabling provision under the Act facilitating the grant of more than one distribution license in a given area. It is submitted that the said explanation as quoted verbatim by the Hon’ble Commission has no impact on the applicant’s application, as admittedly request for grant of license is for the area mentioned in the application i.e. SEZ being developed by the applicant.

..the erstwhile Maharashtra State SEZ Policy contemplates the State Government to specify SEZ as Industrial Township under the proviso to clause (1) of Article 243 Q of the Constitution of India thereby conferring the SEZ’s, the status of a “Municipal Council”.

The Electricity Act, 2003 ought not to be construed in such a way thereby making redundant the specific provisions of the SEZ Act, 2005 which is a Special Act and has been enacted specifically for the purpose of establishment, development and management of Special Economic Zones for the promotion of exports and for the matters which are connected therewith or incidental thereto.

The Petitioner, therefore, states that the provisions of SEZ Act, 2005, SEZ Rules, 2006 and the Electricity Act, 2003 has to be read harmoniously and that the provisions of the Electricity Act, 2003 or the subordinate legislations under the Electricity Act, 2003 ought not to be construed in a manner that prevents the Petitioner from supplying electricity to consumers within the SEZ area as a part of the Infrastructure Facilities which the Petitioner is statutorily obliged to undertake within such SEZ area.

Without prejudice to what has been submitted above, it is stated that the provisions of the rules and policy formulated under the Electricity Act, 2003 cannot be read to defeat the specific provisions of the SEZ Act, 2005. The SEZ Act, 2005 is a special act and therefore the provisions of the Electricity Act, 2003 which is a General Act has to be read in consonance with the provisions of SEZ Act, 2005.

The above submissions clearly establish the fact that a distribution license can be granted within a SEZ and therefore there is no separate requirement for a distribution facility to satisfy the minimum area requirement under the National Electricity Policy and Distribution of Electricity Licence (additional requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 framed under the Electricity Act, 2003. This is for the reason as envisaged in Rule 5A of the SEZ Rules of 2006, ours being the sector specific (multi services SEZ) which includes Information Technology / IT enabled services, the Developer is mandatorily required to ensure twenty-four hours uninterrupted power supply at stable frequency in the Zone.

It is also submitted that for the establishment of a SEZ the Developer is mandatorily required to ensure 24 hours uninterrupted power supply within the SEZ area and therefore the said requirement can only be complied if the Developer and/or the Co-Developer is granted distribution license within the SEZ area. The above clause clearly establishes the fact that a distribution license can be granted within the SEZ area. The National Electricity Policy specifying the minimum area has to be read along with the provisions of the SEZ Act and Rules.

Therefore, there is no bar upon the Hon'ble Commission to allow the application for grant of license within the SEZ area on the basis of minimum area prescribed under the National Electricity Policy."

6. The Commission vide its letter ref. no. MERC/LEG/Case 142 of 2008/2808 dated 15th December, 2009, also enquired from the Applicant as to whether the Panvel SEZ area qualifies as an 'Industrial township' as under:

"Query 10: At page 4, point 3 of its application the applicant (ICPL) has mentioned that, SVRPL is planning to engage in development of Hiranandani Palace Gardens at Panvel ('the HPG Panvel SEZ' or

'Project'), consisting of Residential Complexes, Commercial Complexes Hotels, Hospitals, Schools and Retail malls at Panvel'. However, as per Ministry of Commerce & Industry, Department of Commerce (SEZ section) letter no. F.2/284/2006 SEZ dated 15th October, 2007, M/s. Sunny Vista Realtors Private Limited has been granted approval of a Sector Specific SEZ. Also as per Ministry of Environment and Forest (I.A. Division) letter res. no. 21-942/2007-1A.III dated October 8, 2008, regarding environment clearance specify project to the IT SEZ and residential township. In view of this ICPL must clarify.

- a) The kind of SEZ being developed and provide documentary evidence of the same.*
- b) Can the proposed SEZ in any way be termed as 'Industrial township' or not. If yes, then provide detailed explanation including documentary support."*

7. The Applicant vide letter ref. no. ICPL/MERC-DLA/01-002/2009-2010 dated January 15, 2010 replied as under:

"A 10 (a):

The SEZ being developed by the Developer is a sector specific SEZ for services sector (multi-services), which has been categorically specified in the notification in the Gazette of India. The copy of the same is enclosed herewith as "annexure G" for ready reference of the Hon'ble Commission. The activities and the infrastructure (authorised operations) within the SEZ in the processing and non-processing area are governed by the provisions of the SEZ Rules, 2006. Our application, accordingly, specifies the different activities and infrastructure within the processing / non-processing area of the SEZ.

A10 (b):

As mentioned herein above, the Maharashtra SEZ Policy, 2001 which was acted upon as a policy to promote SEZs prior to commencement of the SEZ Act, 2005 has a provision to declare each SEZ as an 'Industrial township' thereby conferring upon the SEZ with an autonomy status on par with the Municipal Councils as provided under Article 243-Q of the Constitution of India. All the policies framed by the respective state governments prior to the commencement of the SEZ Act, 2005 have been saved by the savings provision contained in Section 53 of the SEZ Act and therefore it can be safely concluded that SEZ means an industrial township".

8. The Commission further enquired from the Applicant vide its letter ref. no. MERC/LEG/ Case 142 of 2008/00074 dt. 15th February, 2010, as under:

"ICPL is directed to submit reply to the following set of queries in the form of an affidavit:

1) ICPL in reply to query no. 1 (at page 3 of the reply) has stated the following:

“.....Pursuant to the said object and the requirement, the erstwhile Maharashtra State SEZ Policy contemplates the State Government to specify SEZ as Industrial Township under the proviso to clause (1) of Article 243-Q of the Constitution of India thereby conferring the SEZ's, the status of a “Municipal Council.....”

Further, ICPL in reply to query no. 10 (a) & 10(b) (at page 13 of the reply) has stated the following:

“10(a).....The SEZ being developed by the Developer is a sector specific SEZ for services sector (multi-services).....”

10(b) As mentioned hereinabove, the Maharashtra SEZ Policy which was acted upon as a policy to promote SEZ's prior to the commencement of the SEZ Act, 2005 has a provision to declare each SEZ as an “Industrial Township” thereby conferring upon the SEZ an autonomy status par with Municipal councils as provided under Article 243-Q of the Constitution of India.....”

ICPL to submit the following to the Commission

a) The applicant in reply to query no. 1 has referred to ‘Maharashtra State SEZ Policy’ and in reply to query 10(b) has submitted to the Commission “Maharashtra State SEZ Act 2002” at Annexure-G, however, in the reply to both the queries it has referred to Maharashtra SEZ Policy. ICPL to confirm if it's referring to the ‘**State Government's Policy regarding setting up of Special Economic Zones in Maharashtra**’, Govt of Maharashtra, **Resolution no. SEZ 2001 / (152) / IND-2 dated October 12, 2001.**

b) Clause 12 of The Maharashtra SEZ Policy, 2001 (resolution no. SEZ 2001 / (152) / IND-2 dt. October 12, 2001) proposes steps to declare SEZs as Industrial Townships, as given below:

“**Clause – 12** The State Government will take appropriate steps to declare the SEZs as Industrial Townships to enable the SEZs to function as self-governing, autonomous municipal bodies.”

Has the proposed Panvel SEZ Area of ICPL been notified as “Industrial Township” by Government of Maharashtra?

- i. If yes, ICPL to submit a copy of the Gazette Notification in this regard to the Commission.
- ii. If no, when does ICPL expect the notification to be issued by the Government of Maharashtra?
- iii. In absence of the notification, why should the current application of ICPL for grant of Distribution licence in its proposed Panvel SEZ area not be rejected by the Commission, as it does not meet the “minimum area” criteria as specified in the Electricity Act 2003?

c) *The Applicant has submitted a copy of the “Maharashtra State SEZ Bill, 2002” at Annexure-G of the replies to the queries, which is yet to receive a Gazette notification from Government of Maharashtra as a State Act. Section 10 of the erstwhile Maharashtra State SEZ Bill, 2002 identifies SEZs as “Industrial Township”.*

..“Section 10 (1): Specification of Special Economic Zone as Industrial Township

The State Government shall declare the Zone to be an industrial township under the proviso to clause (1) of Article 243-Q of the Constitution of India. The Zone shall be governed subject to the provisions of this chapter.”.....

Has the proposed Panvel SEZ area of ICPL been notified as “Industrial Township”?

- i. *If yes, kindly arrange to submit a copy of the gazette notification in this regard*
- ii. *If no, then in the absence of the notification, why should the current application of ICPL for grant of Distribution licence in its proposed Panvel SEZ area not be rejected by the Commission, as it does not meet the “minimum area” criteria, for issuing a Distribution licence, as specified in the Electricity Act 2003?*

9. The Applicant, vide letter ref. no. ICPL/MERC-DLA/01-003/2009-2010 dated March 4, 2010 replied on an affidavit, as under:

“A 1 (a):

That query no. 1(a) is replied in affirmative as “yes”. The copy of the said Government Resolution dated October 21, 2001 as shown on the website is annexed hereto as Annexure A-1.

A1 (b):

That query no. 1(b) mentioned in the letter under reference, the Deponent submits that the proposed Panvel SEZ, so far has not been notified as an ‘Industrial Township’ by the Government of Maharashtra.

(a) That in reply to query no. 1 (b)(ii), it is submitted that the Applicant is not aware of the time lines required for notification to be issued by the Govt. of Maharashtra.

(b) That in reply to query no. 1 (b)(iii), it is submitted that the current application of ICPL for grant of distribution licence can be considered in the light of the following:

That the deponent submits that in view of the provisions contained in the Maharashtra SEZ Policy, 2001 (Regulation no. SEZ 2001/(152)/IND-2 dated October 12, 2001 read with the provisions of the SEZ Act, 2005 and the Rules of 2006 framed there under, though the Panvel SEZ being developed by SVRPL as developer and ICPL as a co- developer has not been declared as an Industrial Township by the Government of Maharashtra, the Honourable

Commission can grant distribution license to the Applicant because of the following reasons:

The said Maharashtra SEZ Policy of 2001, to the best of the knowledge of the Deponent, is presently applicable and has till date not been rescinded. It is submitted that the SEZ Policy issued by the Govt. Of Maharashtra provides that the State Government will take appropriate steps to declare the SEZs as Industrial Township to enable the SEZs to function as self-governing, autonomous municipal bodies. It is submitted that on plain reading of the provisions of the SEZ Policy, it is clear that by virtue of the declaration and notification of SEZ being developed by SVRPL with ICPL as co-developer, the requirement of issuing, a separate notification for declaring the Applicant's proposed SEZ as an Industrial township is not necessary for the purpose of grant of the distribution license. It is submitted that the State Government as per the said policy is necessarily required to take steps to declare SEZ as an Industrial Township but however, no time line can be provided.

5. *That the proponent submits that while considering the Application for grant of distribution license for the proposed SEZ, the Honourable Commission may be pleased to consider the peculiar circumstances of the case and the import and purpose of the SEZ Act, 2005 and the relevant policies of the Central and the State Governments. It is respectfully submitted that even if the State Government does not declare the said Panvel SEZ as an Industrial Township, the Honourable Commission can grant distribution license to the applicant on the grounds detailed in reply dated Jan 15, 2010.*

It is reiterated that the SEZ area is governed by a special statute namely the SEZ Act, 2005. The provisions of the Electricity Act, 2003 have to be construed in the light of the provisions of the SEZ Act, 2005 which is a Special Act governing the area of an SEZ. It is submitted that under Section 14 of the Electricity Act, 2003, the Honourable Commission has the authority and discretion to grant a license to any person "in any area as may be specified in the license". It is submitted that the Act does not provide for any minimum or maximum area requirement for the grant of a distribution licence. The fact that the Act specifically provides for the grant of the license "in any area", shows the intent of the legislature to give the authority to the Commission to grant the license for any area which the Commission deems appropriate. In this regard, it is submitted that the National Electricity Policy is in the nature of guidelines and cannot override the express provisions of the SEZ Act, 2005. Further, the Honourable Appellate Tribunal in case of Power Trading Corporation vs. CERC & others in appeal no. 228 & 230 of 2006, where the Hon'ble Tribunal has specifically held as follows:

'The policy etc. are guidelines indicated as an object to be achieved in the power sector and being a policy or guideline, it cannot run counter to the legislative mandate nor such a course is permissible to a delegate to overturn the legislative enactment much less a whole'

Therefore, the provisions of minimum area provided under the guidelines or policy document are mere guidance to the Honourable Commission and can be waived off in the peculiar facts and circumstances of the present case. It is submitted that the Applicant has applied for the distribution license to enable it to fulfill the aims and objective of the National Policy issued under SEZ Act, 2005 where the benefits of the licence would accrue to the larger number of units and individuals.

.....
It is also submitted that the Ministry of Commerce & Industry, Dept. of Commerce (SEZ section), Government of India, has issued "The Guidelines for Power Generation, Transmission and Distribution in Special Economic Zone" on 27th February, 2009 which clearly shows that distribution license can be granted within the SEZ area. The Honourable Commission can rely upon the same while considering the Applicants petition for grant of distribution license to the Petitioner.

6. *The Deponent also submits that as per the information received by the Deponent, the Kerala State Electricity Regulatory Commission ("KSERC") shows that the KSERC has granted license to Cochin Special Economic Zone, Rubber Park India (P) Ltd., Technopark etc.*

The Regulations framed by KSERC provides that distribution license can be granted in Technoparks, Industrial Parks, SEZ etc. despite the fact that the same does not qualify for the minimum area. The above regulations make it clear that grant of distribution license in an SEZ area is not violative of the Electricity Act, 2003 and the rules and regulations framed therein. A copy of the said Regulations obtained from the website of KSERC are annexed hereto and marked as Annexure A - 2 (colly).

7. *The Deponent also submits as per the information received by the Deponent, the Gujarat Electricity Regulatory Commission ("GERC") vide its Order dated May 8, 2009 in the matter of application for grant of distribution license in the area of Dahej SEZ Ltd. (LA no.5/2008) has expressly indicated their intent to issue a distribution license and accordingly directed for issue of public notice under clause (a) of subsection (5) of Section 15 of the Electricity Act. A copy of the order dated 8.5.2009 passed by GERC is annexed hereto and marked as Annexure A-3.*

It is further necessary to point out that the Uttar Pradesh Electricity Regulatory Commission (UPERC) by its Order dated 11.12.2009 has granted license area of Noida Power Corporation Ltd. (NPCL) despite the fact that the license area of NPCL was not fulfilling the minimum area requirement as prescribed in policy and guideline document. A copy of the Order dated 11.12.2009 passed by UPERC is annexed hereto and marked as Annexure A-4.

8. *That in reply to query no. 1(c), the Deponent submits that the proposed Panvel SEZ, so far has not been notified as “Industrial Township” by the Government of Maharashtra. The Maharashtra State SEZ Act, 2002 is to the best of the deponent’s knowledge still in a bill stage and has not been enacted till date. Therefore, no notification can be issued by Government of Maharashtra converting SEZ into Industrial Township under the State bill. The Petitioner has referred to the SEZ Policy, 2001 and Maharashtra SEZ Act, 2002 in order to show the intention of the State Government.”*

10. A hearing was held on 17th March, 2010, in the presence of three consumer representatives authorised on a standing basis under Section 94(3) of EA 2003 to represent interest of the consumers in the proceedings before the Commission. Shri Sitiesh Mukherjee, Advocate, appeared for the Applicant. The Commission during the hearing of the case had enquired as to whether ICPL, the Applicant has been notified as ‘Co-developer’. The Applicant, in this regard, had submitted its reply vide letter ref. no. ICPL / MERC – DLA/04-001/2010-2011 dated April 9, 2010, which reads as under:

“With reference to the captioned subject we would like to inform you that the company had applied as Co-developer for providing infrastructure facilities in the Multi-services SEZ being developed by Sunny Vista Realtors Pvt. Ltd., to the Board of Approval, chaired by the Secretary, Ministry of Commerce and Industry, pursuant to the SEZ Act, 2005.

Attached herewith is a copy of the approval no. F.2./284/2006-EPZ dt. August 20, 2009 from the Govt. of India, Ministry of Commerce and Industry granting our company the status of “Co-Developer” under the SEZ Act, 2005 for the said SEZ being developed by Sunny Vista Realtors Pvt. Ltd. at Panvel, Maharashtra. The said approval is the final approval and to be treated as a notification from the Ministry of Commerce and Industry and there will not be a separate Gazette in this respect.”

In the present case, M/s. Sunny Vista Realtor Private Limited (SVRPL) has been notified as the ‘Developer’ of the Panvel SEZ and ‘ICPL’, the Applicant is the ‘Co-developer’ of the SEZ.

11. The Applicant drew the attention of the Commission to the Notification dated 3rd March, 2010 issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India. It was submitted that by virtue of the declaration and notification of the SEZ, the requirement of issuing a separate notification for declaring the Applicant’s proposed SEZ as an ‘industrial township’ is not necessary for the purpose of the grant of the Distribution License. It was further submitted that the SEZ area is governed by a special statute named the SEZ Act, 2005, and that the provisions of the EA 2003 have to be construed in the light of the provisions of the SEZ Act, 2005. It was submitted that Section 14 of the EA 2003 authorises the Commission to grant a License to any person “in any area as may be specified in the license”.

12. Having heard the Applicant and after considering the materials placed on record, the Commission is of the view that under Section 49(1) of the Special Economic Zones Act, 2005, the Central Government may, by notification, direct that any of the provisions of any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification-- (a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or (b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modifications and adaptation, as may be specified in the notification. Accordingly, a notification has been issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India on 3rd March, 2010 with regard to exemption of SEZ Developers from obtaining Distribution License.

1.1. The Government of India on 3rd March, 2010 has notified the following amendment to Section 14 of Electricity Act, 2003 (No. 36 of 2003) with regard to SEZ, which reads as under:

“S.O. 528 (E).- In exercise of the powers conferred by clause (b) of sub-section (1) of Section 49 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government hereby notifies that the provisions of clause (b) of Section 14 of the Electricity Act, 2003 (36 of 2003), shall apply to all Special Economic Zones notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, subject to the following modification, namely:-

In clause (b) of Section 14 of the Electricity Act, 2003 (36 of 2003), the following proviso shall be inserted, namely: -

“Provided that the Developer of a Special Economic Zone notified under sub-section (1) of Section 4 of the Special Economic Zones Act, 2005, shall be deemed to be a licensee for the purpose of this clause, with effect from the date of notification of such Special Economic Zone.”

13. Subsequent to the last hearing, the applicant has, vide its letter ref. no. ICPL / MERC – DLA/04-001/2010-2011 dated April 9, 2010, stated that under approval no. F.2./284/2006-EPZ dt. August 20, 2009 the Govt. of India, Ministry of Commerce and Industry has granted the status of “Co-Developer” to the Applicant herein under the SEZ Act, 2005 for the said SEZ being developed by Sunny Vista Realtors Pvt. Ltd. at Panvel, Maharashtra. It has also been stated by the Applicant that the said approval is the final approval and to be treated as a notification from the Ministry of Commerce and Industry and there will not be a separate Gazette notification in this respect. Therefore, the Applicant has got the status of deemed Distribution Licensee as per the Notification No.S.O.528(E) dated 3.3.2010 issued by Ministry of Industry and Commerce, Government of India which provides that an SEZ developer shall be deemed to be licensee for the purpose of clause (b) of Section 14 of the Electricity Act,2003. Under Section 2(g) of the Special Economic Zones Act, 2005 a “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 **and includes an Authority and a Co-Developer**”. {Emphasis laid}

14. The main prayer made by the Applicant reads as follows:-

“(a) this Hon’ble Commission be pleased to admit the present Petition and issue distribution license to the Petitioner company for the area of supply in Panvel SEZ”

However, the purpose of the application of the applicant has been served by the notification issued by the Ministry of Commerce & Industry (Department of Commerce), Government of India on 3rd March, 2010 exempting Co-developers from obtaining distribution license. In view of the above, the present application seeking grant of distribution license requires to be dismissed as infructuous.

15. Though the aforesaid Notification exempts Developer including Co-developers of Special Economic Zones from obtaining licence under EA 2003, it is made clear herein that the Applicant has to abide by all applicable provisions of the EA 2003.

In view of the above, the present Application stands dismissed.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman

(K. N. Khawarey)
Secretary, MERC