

**GUJARAT ELECTRICITY REGULATORY COMMISSION
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE
Polytechnic Compound, Barrack No.3, Ambawadi,
Ahmedabad-380015**

CASE NO.29/2019

Appellant: M/s. Diamond & Gem Development Corp. Ltd.(DGDC)
Surat Special Economic Zone, Nr. Sachin Rly. Station
Sachin. Surat-394230

Represented by: Shri S.S.Kelkar, C.G.M.
Shri B.G.Tamakuwala,G.M.
Shri S.R.Muniwala, Electrical Engineer

V/s.

Respondent: Executive Engineer,
Dakshin Gujarat Vij Company Ltd.,
Industrial Division Office, Pandesara.
Surat Navsari Road, Surat-394221.

Represented by: Shri N.K.Choksi, EE, DGVCL, Surat Ind. Division.
Shri H.R.Modi, DE, DGVCL, Sachin Ind. Sub-Division.

:::PROCEEDINGS:::

- 1.0. The Appellant had submitted representation aggrieving with the order No.4388 dated 20.03.2019 passed by the Consumer Grievances Redressal Forum, DGVCL, Surat, in case No.105/2018-19. The representation was registered at this office as Case No.29/2019. The hearing of this case was kept on 02.05.2019 and 28.05.2019.
- 2.0. Appellant has represented the case as under.
 - 2.1. Appellant (DGDC) is a developer of Surat Special Economic Zone (SEZ) is spread across 47 hectors. As per directives of GoI Ministry of Commerce & Industries, to promote small scale industries constructed Ready Units (RU) of approximately 1000 sq.ft. area on certain plots of the SEZ.
 - 2.2. During June-July,2015 some of the new RU holders when they approached before DGVCL for new connection, their applications for new connections were not entertained by DGVCL on the premises that

there were some other RUs on the same plot who had defaulted in paying their dues and as such till all the RUs on the same plot did not clear their dues they would not consider their applications for new connections. Thus denial of releasing new connections is barred on wrong interpretation of the premises.

2.3. The interpretation by local authority of DGVCL at Sachin, Surat is that all civil structures on plot constitute one premise. To illustrate Appellant has RUs 157, 158, 159, 160, 161 and 162 on plot No.259 in SEZ area. All RUs have separate legal entity that is there is separate lease deed, separate CIN number. Each RU has separate GSTN Number. They all have separate identity as required to qualify being considered as separate premise yet Respondent, DGVCL consider all six RUs are one entity or premise and hence any application for new connection in any of these six RUs is being rejected if any of the other five RUs are having outstanding dues.

2.4. Appellant has taken up the above matter with various authorities and Respondent. The details of letters are as under:

- (1) DGDC letter No.219-2015 dated 13.07.2015 to C.E. DGVCL.
- (2) Letter No.SSEZ/II/007/13-14 dated 23.07.15 to CE,DGVCL.
- (3) Letter No.338-2015 dated 03.09.15 to EE, DGVCL, Ind. D.O. Pandesara.
- (4) D.O. letter from Development Commissioner, Surat SEZ, dated 30.09.15 to Chairman and MD,GUVNL.
- (5) DGDC letter No.455 dated 10.11.15 to CE, DGVCL.
- (6) DGDC letter No.507 dated 23.12.15 to CE, DGVCL.

2.5. Vide letter dated 28.05.2019, Appellant has reiterated certain above para and stated as under.

Some of these ready built Unit (RU) holders on taking possession of their RUS applied for electric connection to Respondent for setting up their Units. Respondent did not entertain their applications on the plea that there were outstanding dues in respect of some other RUs on the same plot. Respondent directed these new applicants to get the outstanding dues of other RUs i.e. RUs other than their own RU, cleared before their application for new connection could be

considered. These aggrieved applicants approached Appellant i.e. Developer to intervene on their behalf so that they can get their electric connections at the earliest and they could set up their Small Scale Units. Appellant had interacted with Respondent for resolving this non-issue. After protracted correspondence and despite personal meetings with the officials of Respondent, as the issue was not resolved, Appellant approached Chief Engineer of DGVCL for issuance of directions to the authorities of Respondent to release new connections to the applicants wherever there were no outstanding dues on the RUs to which the electric connection was sought, i.e. without linking the dues of other RUs on the same plot.

- 2.6. CGRF, after hearing the case, passed an order vide letter No.4388 dated 20.03.2019. As per the order of CGRF, contrary to the definition of the premises as defined at Section 2.3(54) of Supply Code,2015, the interpretation of the erring authority of Respondent has been upheld by the Forum and have sited loss of revenue as the reason for this interpretation.
- 2.7. It is submitted that new connection should be dealt with in the letter and spirit of the Supply Code,2015. As per definition of premise, Section 2.3(54) of the Supply Code,2015 reads as ‘premises’ refers to “land, building or infrastructure or part or combination thereof in respect of which a separate meter or metering arrangements have been made by the licensee for supply of electricity.” From this it emerges that each separate meter is a separate premise, one building can have more than one premises. This interpretation has been accepted by Respondent also. Commercial Circular No.769 dated 28.01.2005 refers wherein the guideline for identity of each premise has been enumerated. As per this Circular in a constructed building to qualify for separate premises the construction should be separated by wall of permanent nature from ground to ceiling. Further each premises to have separate legal entity such as separate PAN number, separate CIN number, GSTIN, letter of permission given by development

commissioner and lease agreement between developer and party. In this case all these items of classification exist in respect of all the RUs in one building/plot as such all RUs on one plot or in one building are separate premises and therefore denying processing/release of new connection on account of default in payment by other RUs other than on the premise for which the new connection is asked for is gross violation of Section 43 of the Electricity Act,2003.

2.8. Section 43 of Electricity Act,2003 makes it mandatory for the licensee to release connection within one month from the date of application. Further as per the Supply Code,2015, the new connection can only be refused provided the premise for which he is asking new connection has any outstanding dues or the applicant owes any dues for any other installation in his name, save these two conditions, Respondent can not refuse to release new connection. It is submitted that representation of Appellant is only against denial of electric in such case where there are no dues on the premises for which the new connection has been asked for or the applicant does not owe Respondent for any other electric installation of Respondent. Secondly the interpretation of Respondent of premises encompassing all the RUs on one plot or in one building is wrong and that it should be correctly interpreted as brought out above.

2.9. Appellant has prayed as under:

- (1) Respondent be directed to give new electric connections within one month wherever there are no previous outstanding dues on the subject premise and that denial of new connections on account of outstanding dues of other premises just because it will not be possible to recover by Respondent is contrary to the spirit of Section 43 of Electricity Act,2003 as asking the appellant to clear dues of co-located premises is coercion.
- (2) As Respondent has failed to supply electricity within the period specified in Sub-section 43(1) of Electricity Act,2003 and that to due to a coercive action, all the applicants of Surat SEZ denied

electricity post first representation of Appellant dated 13.07.2015 be given compensation of Rs.1000/- per day as provisioned in Section 43(3) of Electricity Act,2003.

3.0. Respondent has represented the case as under.

- 3.1. Appellant is the developer of Surat Special Economic Zone, located at Sachin. GIDC authority has allotted approximately 47 hectars land on 99 years lease agreement to Appellant for establishment of SEZ. Appellant has developed industrial plots in SEZ Sachin area allotting these plots to individual entrepreneurs by executing sub-lease agreement. Appellant has also developed ready units of approximately 1000 sq.ft. area on certain plots.
- 3.2. It has been observed that unit holders at Surat SEZ, after availing benefit of exemptions in Electricity Duty, vacating premises without clearing dues of Respondent and not traceable. Their connections were permanently disconnected by Respondent. On the same plot, if new entrepreneur demands new connection, then Respondent is insisting for clearing dues for processing their applications as per Clause No.4.30 of GERC Supply Code, 2015.
- 3.3. Appellant, vide his letter dated 13.07.2015, 23.07.2015, 03.09.2015, 26.09.2015 and 30.09.2015 has represented that units in the building/cluster have separate entity for running their export units though they are on one plot/block. They have also represented to process new applications without insisting pending dues of other units of the said plots. In this regard there was one meeting convened between Respondent and Appellant at Corporate office of Respondent at Surat.
- 3.4. After the meeting, vide letter No.18370 dated 14.12.2015, Respondent has conveyed as under:
“As per Supply Code, DGVCL is unable to release new connection in same plot number where the arrears exist. As such, Appellant has made sub-lease agreement with above parties and collected the rent of above units also. On the basis of your sub-lease agreement, DGVCL

had released the connections on the name of parties. Unfortunately, some parties have pending arrears against electricity consumption and connections were made PDC by DGVCL and during visit of DGVCL officials, it is found that parties have vacated the premises and now not traceable, so DGVCL is at present not in a position to recover the pending arrears. If the connections are again given to applicants other than having arrears, there is every possibility of repetition of what happened and instead of recovering pending arrears, further arrears will be increased hampering the financial position of DGVCL. It was suggested by DGVCL that if guarantee for recovery of electricity bill/dues is ensured by M/s. Diamond & Gems Development Corporation Limited (Appellant) on behalf of the applicants/consumers, DGVCL's interest can be safeguarded and the problem regarding release of new connections in the same premises can be resolved amicably.”

- 3.5. Earlier, 31 No. of PDC consumers having outstanding dues, amounting to Rs.127891.38 have been settled under Amnesty Scheme,2017 and Lok Adalat. There are 73 No. of PDC consumers pertaining to SEZ Sachin area having outstanding dues amounting to Rs.10,27,807.84 pending to be recovered. These 73 No. of PDC consumers have vacated their premises without clearing dues of Respondent and now not traceable.
- 3.6. M/s. Maa Padma Exports had approached Respondent for availing new electric power connection for their Unit located at Plot No.296, Unit No.11-12 at SEZ Sachin. On verifying office records, it was come to know that there are outstanding dues of other units of Plot No.296 pending and hence Respondent had informed to the representative of M/s. Maa Padma Exports that due to pendency of outstanding dues of other units on the said plot No.296, Respondent cannot process their application for new LT power connection unless outstanding dues are cleared as per Clause No.4.30 of GERC Electricity Supply Code & Related Matters Regulations, Notification No.4 of 2015.

- 3.7. After clearing of pending dues, M/s. Maa Padma Exports has registered an application for new LT connection of 11KW for their unit located at Plot No.296, Unit No.11-12 at SEZ Sachin on 12.06.2018. The said application for new LT connection was processed by Respondent and new LT connection in the name of M/s. Maa Padma Exports was released on 17.07.2018.
- 3.8. It is submitted by Respondent that if new connections as demanded by Applicants are released without recovery of all dues then it will not be possible to recover dues, which will be loss of public money and motto of supply code provision will be washed out. Respondent is processing applications for new connections at SEZ Sachin, GIDC Sachin area expeditiously. Respondent has denied for processing of applications for new connection only where outstanding dues are pending on the same plot, in accordance with above correspondence made by Respondent and as per Clause No.4.30 of GERC Supply code,2015.
- 3.9. Looking to the above, Respondent has denied for new connection as per the deliberation in meeting between Respondent and Appellant, conveyed vide letter No.18370 dated 14.12.2015 and as per Clause 4.30 of GERC Supply Code,2015.

::: ORDER :::

- 4.0.** I have considered the contentions of the Appellant and the contentions of Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.
- 4.1. Issues arising from the above are as under.
- (1) Whether Appellant M/s. Diamond & Gem Development Corporation Limited (DGDC) is entitled to file representation? Who are the affected parties in the present subject matter to have right to file the grievance.
 - (2) Who is the authority to determine the interpretation of premises as it is one of the subject issue in the appeal.

4.2. In regards to issue No.1 present Appellant had filed grievance before CGRF and aggrieved with the order passed by CGRF, he has filed a present representation.

Appellant is the developer of Surat Special Economic Zone (SEZ for Surat). This SEZ is governed by the SEZ Act,2005 and the SEZ Rules 2006. Appellant has constructed ready built units of approximately 1000 sq.ft. on some of the plots.

It is stated by Appellant that some of these ready built Units (RUs) holders having possession of their RUs, have applied for electric connection which are not entertained by Respondent on the ground of outstanding dues in respect of some other RUs on the same plot. It was directed by Respondent to clear the outstanding dues of other RUs i.e. RUs other than their own RUs. Thereby aggrieved RUs holder had approached before Appellant to intervene in the matter of electric connection.

Appellant had interacted with Respondent for resolving this issue conducting meeting with authority of Respondent i.e. Chief Engineer, DGVCL, but the issue was not resolved.

In this subject matter, it is required to read the definition of complainant as defined in 1.5(c) of Notification No.2 of 2011.

1.5(c) "Complainant" means (a) any Consumer or Consumers including their legal heirs or successors, having a Complaint against a Licensee and lodging the same either directly or through their representatives; or (b) any voluntary consumer association or associations, registered under the law for the time being in force and making the Complaints in the larger interest of the Consumers; or (c) any Consumer(s)/voluntary consumer association(s) where the Licensee does not register or fails to register the Complaint of such Consumer(s)/voluntary consumer association(s); or (d) any person whose electricity connection is disconnected; or (e) an applicant for a new connection for the supply of electricity.

Here, Appellant is a developer of Surat Special Economic Zone (SEZ) and is not consumer or legal heirs on successors having complaint against Respondent. Appellant is also not a voluntary consumer association making complaint in the interest of consumers. It is also not on the records that Respondent 'DISCOM' had not registered any

complaint of such consumers and not decided such complaint. Appellant is not an applicant for new connection for supply of electricity.

Therefore, by way of definition it is presumed that present Appellant does not fall under the definition as specified in Clause 1.5(c) of Consumer Grievances Redressal Forum & Ombudsman Regulation, 2011.

Here it is to note that Appellant is a developer of SEZ and has raised the issue of present subject matter to provide electric connections to ready unit holder by way of lease agreement/sub-lease agreement.

The issue raised in representation is for denial of electric connection to Ready Unit holder (lease holder) of plot or sub-lease holder of plot while Appellant as a developer had raised grievance before CGRF as well as Electricity Ombudsman. Here it is seen that affected parties (legal owner of unit/plot) had not filed complaint/grievance before appropriate authority for redressal of complaint/grievance. Therefore, in such circumstances, issue in large interest of Ready Unit holder of Surat SEZ has been pointed out by Appellant and raised question for interpretation of premises.

- 4.3. In regards to issue No.2, Appellant has contended to interpret the definition of premises as per Regulation framed by GERC. GERC, vide Supply Code Regulation, 2015 has framed out definition of premises at 2.3(54).

Clause 2.3(54):Premises:

2.3(54) '**Premises**' refers to land, building or infrastructure or part or combination thereof in respect of which a separate meter or metering arrangements have been made by the licensee for supply of electricity; In case of Agriculture Connection, premises means the place of source of water in respect of which connection has been given or intended to be given by the licensee for supply of electricity.

The issue involved herein is for recovery of dues pertaining to plot wherein new applicant by way of lease deed asked electric supply and Respondent had asked new applicant to clear dues of said plot (previous holder of other Units of said plot or whole plot as the case

may be) and by that way restricted to provide electric connection to Ready Unit holder of Surat SEZ and thereby delayed the process and functioning of activity of SEZ.

Vide Para No. 3.6 Respondent has submitted one such case and contended that as per Clause 4.30 of Supply Code,2015, outstanding dues recovery demanded while processing application of Applicant against plot No. 296 of Surat SEZ.

Vide Para 3.5 Respondent has submitted that number of such type of cases recorded wherein PDC consumers have vacated their premises without clearing dues of Respondent in SEZ Sachin area and now they are not traceable.

Clause 4.30 reads as under:

An application for new connection, reconnection, addition or reduction of load, change of name or shifting of service line for any premises need not be entertained unless any dues relating to that premises or any dues of the applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the Distribution Licensee have been cleared.

Provided that in case the connection is released after recovery of earlier dues from the new applicant and in case the licensee, after availing appropriate legal remedies, get the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered after adjusting the expenses to recover such dues.

It is also on records that Appellant had conducted meeting with authority of Respondent regarding such issues. Respondent had intimated Appellant that action for providing new services in the SEZ area of Surat is as per the provisions of Supply Code Regulation, 2015 and recovery of outstanding dues of plot is as per Clause 4.30 of Supply Code, 2015.

Here it is to note that for number of such cases, Respondent had acted in accordance with Clause 4.30 of Supply Code,2015. The correspondence made for such issues are from the year 2015 between the parties to decide amicable solution. Communication records between parties on such issues.

4.4. From the above, as regard with interpretation of definition of premises, 2.3(54) is concerned, it is to note that Electricity Supply Code & Related Matters Regulation has been framed by GERC vide Notification No.4 of 2015 w.e.f. September,2015.

Consideration of Section 2, definition and interpretation Clause 2.1 and Clause 2.2 and procedure to settle disputes, pertaining to interpretation of any definition, GERC is the appropriate authority to deal with.

4.5. In the circumstances as pointed out earlier, present Appellant does not fall under definition of complainant as defined in Clause 1.5(c) of Notification No.2 of 2011 as Appellant is a developer of SEZ and made complaint for their Ready Unit holder (Surat SEZ).

The subject issue of premises and interpretation involved as contended by Appellant, the above issue equally falls under GERC to interpret the definition of “premises”.

Looking to the above observations, representation of Appellant is not maintainable and dismissed accordingly.

4.6. I order accordingly.

4.7. No order as to costs.

4.8. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.

Date:19.06.2019.