

**Sub: In the matter of petition under Section 82 and 86 of the Electricity Act, 2003 read with Section 9 of the M.P.Vidyut Sudhar Adhiniyam, 2000**

**(P.No. 57/2020)**

**Order**

(Hearing through Video Conferencing)

Date of order: 01.09.2021

**M/s Brilliant Estates Limited , Indore : Petitioner**

**V/s**

**MP Paschim KVVCL, Indore (West Discom) : Respondent**

- i. Shri Ravindra Singh Chhabra, Advocate appeared on behalf of the petitioner.
- ii. Shri Prasanna Prasad, Advocate appeared on behalf of the Respondent.

1. The subject petition is filed by the petitioner in light of the order issued by Hon'ble High Court of MP, Indore bench on 19.06.2020 passed in WP 938/2019 whereby the Hon'ble Court has held that the State Commission has exclusive jurisdiction to decide the applicability of tariff in accordance with clause 1.24 of Retail supply tariff order for FY2017-18 and thus petitioner can approach to State Commission. The petitioner has made following prayers in its petition.

- i. To declare the case of petitioner falls with Tarif category "HV3.3 (Shopping Mall );
- ii. To quash impugned letter dated 19.11.2018 ;
- iii. To direct respondents to revise petitioner's electricity bills from,November,2018 onwards and bill according to tariff category "HV3.3" (Shopping Malls)

2. The petitioner has stated in the petition that it is a limited company engaged in business of development of commercial buildings and leasing of commercial premises. The petitioner has been granted sanction of 300kVA power at 33kV for commercial complex under HV3.2 (non-industrial tariff) vide letter dated 26.11.2009 of Respondent which subsequently stood cancelled vide Respondent's letter dated 12.08.2010 due to non-completion of extension work and availing of HT connection within stipulated time of agreement.

3. Subsequently, petitioner had applied part load of 110 kVA against the sanctioned load of 300kVA and executed agreement. Further, due to increase in number of consumers , it requested to enhance the load to extent of 500 kVA which was approved by the respondent vide letter dated 26.11.11. under HV 3.3 (Shopping mall ) referring to petitioner's letter dated 30.09.2011 whereby a request had been made for change of category from HV3.2 to HV3.3 of Tariff order.
4. Subsequently, the petitioner has gradually enhanced its load up to 2200 kVA by executing supplementary agreements with respondent under HV3.3. (Shopping mall category). In subsequent development, the Respondent has issued letter dated 19.11.2018 to petitioner whereby petitioner has been asked to submit an application for change of tariff from HV3.3 (Shopping malls) to HV3.2 (Non -industrial ) and execution of supplementary agreement thereof in view of the fact that petitioner is running Information Technology services /Business offices /Convention centers/ Banquet and marriage hall in said premises which fall under HV3.2 (Non-industrial ) tariff category. The petitioner vide letter dated 17.12.2018 has requested the Respondent to withdraw the letter and continuing charging tariff as per HV3.3 in place of HV3.2.
5. Subsequently, respondent issued a bill on 28.12.2018 of Rs 52,06,330 wherein a sum of Rs 3,51,779 has been added towards the difference of month of November and December 2018 on account of change of tariff category. Against this act of the Respondent, the petitioner had filed a WP 938 /2019 before Hon'ble High Court, Indore bench whereby the Court held that the State Commission has exclusive jurisdiction to decide the applicability of tariff in accordance with clause 1.24 of Retail supply tariff order for FY2017-18 and thus petitioner can approach to State Commission. The Petitioner in its petition has made following submission :-

- I. *That, this petition is preferred in the light of the order dated 19.06.2020 passed in W. P. No. 938/2019 by the Hon'ble High Court of Madhya Pradesh Bench at Indore.*
- II. *That, the petitioner is a limited company having its registered office as shown in the cause title and is engaged in the business of development of commercial buildings and leasing of commercial premises.*
- III. *That, the petitioner company constructed buildings named "Brilliant Solitaire" at Plot No.6A and "Brilliant Titanium" at plot no. 9 and both the buildings adjoin each other in*

*Scheme No.78, Part-II, Indore. On or around 07.10.2009, the petitioner applied for 300 KVA HT Connection for the said buildings.*

- IV. *That, vide Letter No.6859 dated 26.11.2009, the respondent approved the sanction of 300 KVA power on 33 KV for the commercial complexes.*
- V. *That, pursuant to the request of the petitioner, an agreement dated 20.02.2010 was executed between the petitioner company and respondent no. 1 Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited, Indore (hereinafter referred to as “MPPKVVCL or Utility Company”) for 300 KVA at 33KV line for power connection in respect of the said buildings which stood cancelled vide letter dated 12.08.2010.*
- VI. *That, thereafter, pursuant to the power sanction letter dated 26.11.2009, the petitioner vide letter dated 27.07.2010 requested the respondent to release the part power load of 110 KVA against the sanctioned load of 300 KVA in respect of the buildings at Plot No.6A and 9 in Scheme No.78, Part-II, Indore. An Agreement dated 21.09.2010 was executed between the petitioner Company and MPPKVVCL for 110 KVA at 33KV Line for power connection in respect of the buildings at Plot No.6A and 9 in Scheme No.78, Part-II, Indore.*
- VII. *That, due to increase in the number of consumers of electricity, the petitioner requested to enhance an additional electricity load to the extent of 500 KVA at 33 KV Line, which the respondent vide letter dated 26.11.2011 approved over and above the then existing load of 110 KVA at 33 KV Line redefining the area and change in tariff from 33 KV Non-Industrial tariff to 33 KV Shopping Mall tariff of the existing Units at Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore.*
- VIII. *That, such approval of additional power load of 500 KVA at 33 KV Line with the revised tariff from 33 KV Non-Industrial tariff to 33 KV Shopping Mall tariff of the existing Units at Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore was executed in writing vide a Supplementary Agreement dated 16.01.2012 for the total power load of 610 KVA at 33 KV Line.*

- IX. That, due to requirement of further power load, the petitioner vide letter dated 27.12.2012 requested the respondent to enhance the additional power load by 390 KVA over and above the then existing power load of 610 KVA at 33 KV Line, which was sanctioned vide letter dated 23.01.2013.*
- X. That, thereafter, as per the requirement of the Chief Engineer, the petitioner submitted a list of End Users. Pursuant to compliance of all required formalities, a second Supplementary Agreement dated 05.04.2013 was executed in writing for the additional electricity load of 390 KVA over and above the then existing power load of 610 KVA at 33 KV Line, being the total electricity load of 1000 KVA at 33 KV Line.*
- XI. That, subsequently, the petitioner vide letter dated 18.06.2013 requested the respondent to accord approval for unification of Plot No.8 in Scheme No.78, Part-II, Indore with the redefined area against the Consumer Code 574386 at Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore.*
- XII. That, as required by the respondent, the petitioner submitted the 3<sup>rd</sup> Supplementary Agreement duly signed together with a list of End Users, which was duly executed between M.P.P.K.V.V.C.L. and the petitioner Company on 15.07.2013.*
- XIII. That, a fourth Supplementary Agreement dated 28.11.2013 was executed between the petitioner and respondent company for further additional power load of 500 KVA at 33 KV Line over and above the then existing power load of 1000 KVA at 33 KV Line in respect of Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore and conveyed vide letter dated 30.11.2013.*
- XIV. That, a fifth Supplementary Agreement dated 03.11.2014 was executed between the petitioner and respondent company for further additional power load of 300 KVA at 33 KV Line over and above the then existing power load of 1500 KVA at 33 KV Line in respect of Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore and the same was conveyed vide letter dated 05.11.2014.*

- XV. *That, a sixth Supplementary Agreement dated 19.08.2016 executed between the parties for further additional power load of 400 KVA at 33 KV Line over and above the then existing power load of 1800 KVA at 33 KV Line in respect of Plot Nos.5, 6A and 9 in Scheme No.78, Part-II, Indore.*
- XVI. *That, subsequently, the petitioner vide letter dated 05.05.2017 requested the respondent to accord approval for unification of Plot No.10 in Scheme No.78, Part-II, Indore with the redefined area against the Consumer Code 574386 at Plot Nos.5, 6A, 8 and 9 in Scheme No.78, Part-II, Indore. As required by the respondent, the petitioner submitted the seventh Supplementary Agreement duly signed together with a list of End Users, which was duly executed between M.P.P.V.V.C.L and the petitioner on 03.07.2017.*
- XVII. *That, as per the Tariff Schedule framed by the MPERC, in all the Supplementary Agreements dated 16.01.2012, dated 05.04.2013, dated 15.07.2013, dated 28.11.2013, dated 03.11.2014 dated 19.08.2016 and dated 03.07.2017, the applicable tariff was fixed as HV 3.3 (Shopping Mall) for the petitioner's buildings.*
- XVIII. *That, the Consumers belonging to HT power load requiring a "Single Point Supply" for the purpose of downstream consumption by separately identifiable entities will have to either operate through developer's / management firm's route or such entities will have to take individual connections under relevant category, which is being fulfilled.*
- XIX. *That, the Commission has framed the Schedule of Tariffs for electricity consumption of different categories. In order to resolve the dispute w.r.t. tariff categorization it would be apt to refer to the relevant provisions of the Schedule of Tariff. The relevant provision from the Tariff Schedule for the year 2018-19 is reproduced hereunder:-*

*"The tariff HV-3.2 (Non-Industrial) shall apply to establishments like Railway Stations, Offices, Hotels, Institutions, etc. (excluding group of consumers) having mixed load for power, light and fan etc. which shall mean and include all energy consumed for lighting in the offices, stores, canteen, compound lighting etc. This shall*

*also cover all other category of consumers, which are defined in L.T. non-domestic category subject to the condition that the HT consumer shall not redistribute/sub-let the energy in any way to other person.”*

*“The tariff HV-3.3 (Shopping Mall) shall apply to establishments of shopping malls having group of non-industrial consumers as defined below and subject to the specific terms and conditions specified in this schedule.”*

*A bare perusal of the aforesaid provisions show that Tariff category “HV-3.2 (Non-Industrial)” shall apply to establishments like Railway Stations, Offices, Hotels, Institutions, etc. excluding group of consumers. In the case of the petitioner, the electricity is being supplied through a Single Point to a Group of Non-Industrial Consumers in different Units under separate ownership. Therefore, the electric supply to the Petitioner would fall within the tariff category “HV-3.3 (Shopping Mall)” as per the tariff Schedule for the year 2018-19.*

*Moreover, the Electricity Tariff laid down by this Hon’ble Commission in respect of the tariff HV-3.2 (Non-Industrial) and tariff HV-3.3 (Shopping Mall), makes it abundantly clear that the tariff of “Group Consumers” should not be equated with a single consumer of electricity. Therefore, the Group Consumers’ cannot be termed and equated as a single consumer of electricity.*

*XX. That, the respondent issued a letter No.7186 dated 19th November, 2018 to the petitioner whereby the petitioner has been asked to submit an application for change of tariff from HV 3.3 (Shopping Mall) to HV3.2 (Non-Industrial) and execution of supplementary agreement.*

*XXI. That, a detailed and comprehensive reply to the aforesaid letter was submitted on 17.12.2018 mentioning therein that submission of application and execution of the supplementary agreement is neither expedient nor legally tenable and therefore, a*

*request was made to withdraw the letter dated 19.11.2018 and continue charging tariff as per HV 3.3 (Shopping Mall) with the subsisting agreement.*

*XXII. That, without considering the merits mentioned in the said reply, a bill for Rs. 52,06,330/- has been issued on 28.12.2018 showing tariff "HV3.3, 33 KV Shopping Malls" in which a sum of Rs.3,51,779/- has been illegally, un-contractually and arbitrarily added towards the difference for the month of November and December, 2018.*

*XXIII. That, being aggrieved by the illegal acts of the Respondents, the Petitioner Company preferred a Writ Petition No. 938/2019 before the Hon'ble High Court of Madhya Pradesh, Bench at Indore. Reply was filed by the Respondents before the Hon'ble High Court. Rejoinder was also filed by the Petitioner.*

*XXIV. That, during the pendency of the Writ Petition, the Committee of Respondent vide order dated 15.02.2019 decided representation of the Petitioner dated 17.12.2018 and came to the conclusion that tariff category HV 3.2 is for Single User only and the same does not hold in case of Petitioner. Relevant extract of order dated 15.02.2019 is reproduced hereunder :-*

*"16. That, Brilliant Estates Ltd and all the occupants / end users of Brilliant Estates Ltd. are using electricity for the purpose of meeting halls, places for public entertainments, hotel, restaurants, marriage garden etc. which is totally covered in the tariff HV-3.2 HV-3.3 and LV-2.2 of tariff specified by MPERC 2018-19, but having group of consumers in different multies which are situated on different plots. The supply to these different consumers is being supplied by Brilliant Estates as a single unit, so attract tariff HV 3-3 (in HV-3.2, the user is single user only does not hold in case of Brilliant Estates Ltd.)*

*17. That, on the ground of use of these activities audit came to conclusion that the services which are being provided by different occupants of multi, though in the nature of commercial but did not attract any activity of shopping mall, thus, the interpretation of audit was this that wherever in multies goods are sold and carried by consumers is termed as mall. But the committee has view*

*that whatever commercial activities are being done in multies are also a part of sales (not goods but services). On the above legal and physical conditions, the audit objection has been raised and instructed the regularizing tariff from HV-3.3 to HV-3.2. As per tariff HV-3.2, the HT consumer should be single consumer in non DL / commercial activities which is not being fulfilled in case of Brilliant Estates Ltd.”*

*The aforesaid decision was brought to the knowledge of the Hon’ble High Court by filing Rejoinder in the matter.*

*That, the Hon’ble High Court vide order dated 19.06.2020 disposed of the Writ Petition granting Petitioner liberty to approach this Commission. Relevant extract of order dated 19.06.2020 is reproduced hereunder :-*

*“9. Thus, in view of the rival submissions made by the parties, judgments cited and as per the Clause provided and also in the peculiar facts and circumstances of the case, this Court of the firm opinion that the petitioner is having an alternative remedy to decide its dispute before the MPERC, therefore, instead of entertaining this writ petition on merits, I deem it appropriate/proper to dispose of the petition with liberty to the petitioner to approach the MPERC. If the petitioner approaches the MPERC within a period of one month from the receipt of certified copy of the order, then, the MPERC shall decide the matter in accordance with law within a period of two months thereafter.*

*10. Accordingly, the petition stands disposed of finally”.*

*XXV. That, invoking the aforesaid liberty granted by the Hon’ble High Court, the Petitioner is filing the instant Petition before this Hon’ble Commission on the following grounds :-*

*A. Grounds Urged:-*

*i. BECAUSE the Hon’ble High Court did not dismiss the Petition, but has granted the liberty to approach this Commission, after having examined the “lis on merits”.*

ii. *BECAUSE the Electricity Supplied to the Petitioner was pursuant to the agreements made between the Parties. Any modification of Tariff can take place only with mutual consent of the parties by entering into a fresh written contract or by modification of contract.*

iii. *BECAUSE modification or fresh contract between the Parties can only be done by consent of both of the Parties. Vide letter dated 19.11.2018 merely a request was made to execute a Supplementary Agreement for conversion of Tariff Category of HV 3.3 (Shopping Mall) to Tariff Category HV 3.2 (Non-Industrial). This demand to change the Tariff Category was not acceptable to the Petitioner as the same was arbitrary, unjustified and capricious. Vide letter dated 17.12.2018 Respondents were requested to reconsider their arbitrary demand. Without any change in the agreement and in absence of supplementary agreement, the Parties are bound to perform the original contract (as mutually supplemented by agreement dated 19.08.2016) in view of Section 62 of the Indian Contract Act, 1872. For ready reference Section 62 is reproduced hereunder :-*

*“62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.”*

iv. *BECAUSE without there being any change in the Contract, the Respondents arbitrarily added Rs. 3,51,779/- as the alleged difference amount as per Audit Objection in the Electricity Bill for the month of November and December, 2018 and the balance amount is carried forward in all subsequent bills/ invoices. This addition by the Respondents is contrary and illegal to the Agreement executed between the Parties in view of Section 62 of the Indian Contract Act. This illegality and arbitrary act of the Respondent is evident from the order dated 15.02.2019 passed by Committee of Respondents wherein they have concluded after hearing the Parties that tariff category HV 3.2 is for Single User only and the same is not applicable to the case of the Petitioner.*

- v. *BECAUSE the Respondents have erred in law in giving a very narrow and restrictive meaning to the word “Shopping Mall”. The word shopping mall has to be read and construed in a broader perspective in the light Tariff Category HV 3.3, which defines Shopping Mall as under :-*
- “The tariff HV-3.3 (Shopping Mall) shall apply to establishments of shopping malls having group of non-industrial consumers as defined below and subject to the specific terms and conditions specified in this schedule.”*
- vi. *BECAUSE the respondents have grossly erred in not appreciating that the case of the Petitioner can by no stretch of imagination fall within the definition of HV 3.2 (Non-Industrial).*
- vii. *BECAUSE all the actions are deemed to have been done or taken under the corresponding provision of the earlier Tariff Schedule as HV 3.3 (Shopping Mall) for electricity billing are saved, in exercise of statutory power, all the Supplementary Agreements which were entered into by the Utility Company M.P.P.K.V.V.C.L., Indore with the petitioner Company, are having legal force, have been saved under the aforesaid provisions and therefore conversion of tariff schedule from HV 3.3 (Shopping Mall) to HV 3.2 (Non-Industrial) and further execution of the supplementary agreement does not arise.*
- viii. *BECAUSE looking to the facts and circumstances of the case it is further submitted in this respect that it would be absolutely unfair to treat and equate the ‘Group Consumers’ in the same class of consumers of electricity like a ‘single consumer’.*
- ix. *BECAUSE as per the Tariff Schedule framed by the MPERC, the petitioner’s case being that of Group of Consumers of electricity, are covered under the tariff HV-3.3 (Shopping Mall), tariff HV-3.2. (Non-Industrial) is not attracted in petitioner’s case in view of the fact that the entire electricity supply is metered through a ‘Single Point of Supply’ to ‘Group of Consumers’ at various premises having their separate ownership and the*

*provision of billing is provided in the tariff itself. Thus, the tariff HV-3.3 (Shopping Mall) will be applicable to the petitioner's case and not the alleged tariff HV-3.2 (Non-Industrial).*

- x. BECAUSE the direction issued by the respondents vide letter bearing no. 7186 dated November 19, 2018 to submit an application for change of tariff from HV 3.3 (Shopping Mall) to HV3.2 (Non-Industrial) and execution of supplementary agreement in respect thereof is neither expedient nor legally tenable and therefore, the letter dated 19.11.2018 deserves to be quashed and the respondents be directed to continue charging tariff as per HV 3.3 (Shopping Mall) with the subsisting agreement.*
- xi. BECAUSE the petitioner has been billed as per HV 3.3 Tariff i.e. Shopping Mall category till date in view of the agreements between the petitioner and the respondents, however the answering respondents in spite of mentioning in the electricity bill of the petitioner to be of Shopping Mall category, added the difference amount in the name of "Supplementary amount with surcharge" every month.*
- xii. BECAUSE the respondents had never contended for the last 9 years during the prevalence of the Agreements that there was a mistake to fix the tariff as "33 KV 3.3 Shopping Mall" prescribed by the MPERC in the Agreements entered into with the petitioner and even the respondents have not even pleaded in their reply before the Hon'ble High Court that there was a mistake in the Agreements.*
- xiii. BECAUSE the Tariff Schedule framed and fixed by this Commission is binding on the Utility Company i.e. Respondent no. 1 and illegal categorization cannot be done by Respondent.*
- xiv. That, the petitioner craves leave to urge other grounds at the time of hearing before this Commission.*

*B. Reliefs prayed for:-*

*The petitioner seeks following relief from this Commission:-*

- i. To declare that the case of the Petitioner falls with Tariff Category “HV 3.3 (Shopping Mall)”.*
- ii. To quash impugned letter dated 19.11.2018.*
- iii. To direct the respondents to revise their Electricity Bills from November 2018 onwards and bill according to Tariff Category “HV 3.3 (Shopping Mall)”.*

6. The Commission held the motion hearing on 29.09.2020. None appeared on behalf of petitioner. The Commission scheduled the next motion hearing on 02.11.2020 and heard the petitioner. The Commission vide daily order dated 02.11.2020 has admitted the petition and directed to issue notice to Respondent for submission of their reply.

7. The Commission held the next hearing on 24.11.2020. During the hearing, Respondent sought 15 days time to file response as petitioner had not served the copy of petition. The Commission granted 15 days time. Subsequently, Respondent filed the reply primarily stating that petitioners and its occupants /end users are using electricity for the purpose of Hotel, business offices , marriage halls /banquet hall /convention hall. All these activities are not related to shopping malls but it is related to Non -industrial (HV3.2) and therefore said petition is liable to be dismissed . The synopsis of Respondent’s reply is presented below :-

*“The answering respondents would like to say and submit that the nucleus of the petitioner’s contention is a challenge to the categorization form HV-3.3 (Shopping Mall) to HV-3.2 (Non-industrial category) and in furtherance thereof execution of supplementary agreement. The petitioner has also challenged the validity of electricity*

*bill for the month of November, 2018 and addition of different amount in the subsequent bills. In this context, to clarify its stand, the answering respondent submits as under:-*

*I. That, the MPPKVCL., Indore follows the tariff order passed by MP Electricity Regulatory Commission time to time .*

*II. That, the provision of tariff HV 3.3 (shopping mall) as per MPERC tariff 2018-19 is as follows :-*

*“The tariff shopping mall (HV 3.3) shall apply to establishments of shopping malls having group of non industrial consumers subject to the specific terms and conditions specified in (i) of this scheduled.*

*Shopping mall shall be a multi-storeyed shopping centre in an urban area having a system of enclosed walkways with collection of independent retail stores, services and parking areas constructed and maintained by a management firm/developer as a unit.”*

*Specific Terms and Conditions specified in clause (i) of Tariff Schedule-HV-3 is as follows :-*

*“(i)Additional specific terms and conditions for shopping mall-*

- (a) Individual end user shall not be levied a rate which is exceeding non-domestic commercial tariff (LV 2.2) in case of LT connection and HT non industrial tariff (HV 3.2) in case of HT connection as determined by the commission.*
- (b) All end users shall enter into a tripartite agreement with the management firm/developer of the shopping mall and the licensee for availing supply of electricity in the shopping mall in order to get the benefit of the tariff under this category.”*

*III. That, in the case of Brilliant Estates Ltd, all the occupants were allotted space for running either IT services/ business offices or convention/ banquet/ marriage hall which were purely commercial activities. Also, the conditions specified in HV 3.3 (shopping mall) that shopping mall shall be a multi-storeyed shopping centre having a system of enclosed walkways with collection of independent retail stores is not fulfilled in the case of Brilliant Estates Ltd., but different consumers are situated in different multies on different plots of Brilliant Estates Ltd.*

*IV. That, according to the MPERC tariff for year 2018-19 the definition of tariff HV3.2 (non-industrial) is define is as under :-*

*“ The tariff HV 3.2 (Non Industrial) shall apply to establishments like Railway Stations, Offices, Hotels, Hospitals, Institutions etc. (excluding group of consumers) having mixed load for power, light and fan etc. which shall mean and include all energy consumed for lighting in the offices, stores, canteen, compound lighting etc. This shall also cover all other categories of consumers, defined in LT Non-domestic category*

*subject to the condition that the HT consumer shall not redistribute/sub-let the energy in any way to other person.”*

*Definition of LT non-domestic consumer as per MPERC tariff 2018-19 :-*

*“ LV 2.2*

*Applicability : This tariff is applicable for light, fan and power to Railways (for purposes other than traction and supply to Railway Colonies/water supply), Shops / showrooms, Parlors, All Offices, Hospitals and medical care facilities including Primary Health Centers, clinic nursing homes belonging to either Govt. or public or private organizations, public buildings, guest houses, Circuit Houses, Government Rest Houses, X-ray plant, recognized Small scale Service Institutions, clubs restaurants, eating establishments, meeting halls, places of public entertainment, circus shows, hotels, cinemas, professional’s chambers (like Advocates Chartered Accountants, Consultants, Doctors etc), bottling plants, marriage gardens, marriage houses, advertisement services, advertisement boards/hoardings, training or coaching institutes petrol pumps and services stations, tailoring shops, laundries, gymnasiums, health clubs, telecom towers for mobile communication and any other establishment which is not covered in other LV categories.”*

*V. That, in this back drop, the stand of the answering respondent is perfectly justified. It is further submitted that single point of supply only applicable to HV-3.3 (Shopping Mall) and HV-6 (Bulk Residential Users) and not on other category consumers. In petitioner’s case, single point of supply given to him for the purpose of Shopping Mall as per agreement, but consumer diverted the use of energy to other purpose than mentioned in the agreement which is complete violation of clause 7.21 and 7.22 of M. P. Electricity Supply Code, 2013.*

*VI. That, it is submitted that the petitioner would fall to the tariff category HV 3.2 (non-industrial) for the following reasons :-*

*(1) Because the petitioner and its occupants/end users are using electricity for the purpose of hotel, business offices, marriage hall/ banquet hall/convention hall.*

*All these activities are not related to Shopping mall but it is related to non industrial (HV 3.2).*

*(2) Because this tariff category covers all categories of consumers, defined in LT Non-Domestic category.*

*(3) Because petitioner quoted that “they are Group of Consumers, that’s why HV 3.3 will be applicable to petitioner, is also wrong because tariff category HV 3.3 is applicable to establishments of Shopping Mall having Group of Non-Industrial consumers which itself justifies that those Group of Consumers shall have establishment related to Shopping activities which is not fulfilled in petitioner case.*

*(4) Because as per the definitions mentioned in Clause 2(s) of M.P.E.R.C.(Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations (Revision-I), 2009 {RG-31(I) of 2009} –*

*“ Shopping Mall” shall mean a multi-storeyed shopping centre limited to pedestrians facing a system of enclosed walkways with collection of independent retail store, service and parking areas constructed and maintained by a Management Firm / Developer as a unit, this condition is not fulfilled in the case of Brilliant Estate.*

*VII. That, the AG Audit has come forward with an audit objection by analyzing the facts and the legal position of tariff order and for ready reference and convenience of the Hon’ble Court, the relevant portion is reproduced herein below :-*

*“No./CAP-10/SE(CC)/Indore/2011-15/AE No.16 Dated 01.09.2015*

*Subject : Incorrect categorization of HT consumer from Commercial (HV- 3.2) to Shopping Mall (HV- 3.3).*

*As per Part-A Section-III of Delegation of Power (DOP) of M.P. Paschim KshetraVidhyutVitran Company Limited (Company), full power to sanction new load or additional load up to 5000 KVA of Contract Demand (CD) for voltage up*

*to 33 KV supply vests with Regional E.D./C.E. in respect of all the prospective/existing High Tension (HT) consumers.*

*In order to meet its power requirement for Commercial Complex situated at Plot No. 6a & 9, Scheme No. 78, Indore M/s Brilliant Estates Limited, Indore applied for (October, 2009) new High Tension (HT) connection with Contracted Demand (CD) 300 KVA on 33 KV Voltage Supply which was approved (December, 2009) by the West Discom, HT agreement concluded (February, 2010) and the CD was revised (September, 2010) to 110 KVA, revised HT agreement concluded (September, 2010) and service connection (No. 129) was released (November, 2010). Initially, the service connection was categorised under HT 3.2 (Non-Industrial) as required for commercial complex and the monthly billing demand through Regional Account Office (RAO), Indore was being issued accordingly.*

*On the request (October, 2011) of the consumer that the power was being utilised for shopping complex, the billing was revised to HV- 3.3 (Shopping Complex) and bills raised accordingly.*

*On acquisition (February, 2011) of adjoining land/building for expansion i.e. Plot No. 5 and further acquisition (July, 2013) of another extension of adjoining land i.e. Plot No. 8, the consumer had applied for unification of these plots with additional load which was enhanced (January, 2012) from 110 KVA to 610 KVA and further enhancement (April, 2013) from 610 KVA to 1000 KVA. The main reason for demanding additional load was to cater power supply for occupants of buildings constructed in Plot No. 5 & 8. Subsequently, based on additional requirement the load was further enhanced (November, 2013) from 1000 KVA to 1500 KVA and up to 1800 KVA during November, 2014.*

*In this regard audit observed that :*

- The switching from HV category 3.2 (Non-Industrial) to HV category 3.3 (Shopping Mall) during October 2011 and continuation till date on total CD is found to be incorrect Technology Services/ Business Offices or*

*Convention/ Banquet/ Marriage Halls which were purely commercial in nature and did not attract any activity relating to shopping malls. As the monthly Fixed Charges in HV 3.2 is more than HV 3.3 (more than Rs. 25/- per KVA), and as there is only a marginal difference of Re. 0.05 paise i.e.*

*more in HV-3.3 towards energy charges the West Discom is likely to benefit on fixed charges (presently 1800 KVA). The billing demand may be raised according to correct categorization.*

- *It may also be enquired and ascertained from the concerned field office as to utilisation of West Discom's power supply during construction of buildings/ complexes in plot no. 8 (as separate service connection was not available) when the land was stated to be acquired and enhancement of additional load of consumer was sanctioned. If in case, the enquiry reveals that the power supply during construction of these buildings was met out of single point of voltage supply than the monthly billing demand at 1.3 times of prevailing tariff should be raised (treating enhanced load as a temporary supply during period of construction).*

*While confirming the above facts and figures. The HT account of consumer may be re-casted and action taken there on may please be intimated to audit."*

VIII.

*That, the answering respondent also craves leave to refer and rely on electricity supply code 2013 and clause 7.21 and 7.22 are reproduced herein below for ready reference of the Hon'ble Court :-*

*7.21 The electrical energy supplied to the consumer shall not be utilized by the consumer in any manner prejudicial to the licensee and all usage must be in accordance with the provisions of the agreement and the Electricity Act, 2003 as applicable.*

*7.22 No consumer shall divert the use of energy to any other purpose, other than that mentioned in the agreement or extend the line beyond its premises other than that for which it was sanctioned by the licensee, until and unless prior sanctioned of the licensee is obtained for such diversion or extension."*

8. During the next hearing held on 05.01.2021, Petitioner sought 15 days time to file the rejoinder on reply submitted by the Respondent .Subsequently, petitioner filed the rejoinder on reply of West Discom. It is stated by petitioner in its rejoinder that it fulfils all the requirements under tariff HV3.3 (Shopping mall) as per following details –

- a) Group of non -industrial consumers;
- b) Multi story shopping centre
- c) Enclosed walkways
- d) Collection of independent retails stores , services and parking areas constructed and maintained by management firms /developers as unit.

It is stated by the petitioner that Tariff HV 3.2 (Non-Industrial) applies to establishments like Railways Stations, Offices, Hotels, Hospitals, Institution, etc. (Excluding Group of Consumers). Since the Petitioner is neither of any establishment mentioned in the aforesaid Tariff, it would fall within Tariff HV 3.3 (Shopping Mall). Besides this, “Group of Consumers” have been excluded from the definition of Tariff HV 3.2 (Non-Industrial). Other categories of consumers mentioned in LT Non-Domestic Category have been covered in HV 3.2 (Non-Industrial) which leaves no room for any doubt that the Petitioner falls within Tariff HV 3.3 (Shopping Mall). Furthermore, under HV 3.2 (Non-Industrial) consumers are prohibited from redistribution / sub-letting of energy in any way to other person which prohibition is not contained in Tariff HV 3.3 and the terms of agreement.

It is reiterated that the buildings of the Petitioner are inter-connected with each other. Common walkways and parking areas in the premises in question are duly maintained and operated by the Petitioner and electricity supply is made from a “single point” to “group of consumers”. The addition of requirement of establishment related to “shopping activities” to “Non-Industrial Consumers” by the Respondents is misconceived and misplaced from bare reading of the provision.

9. During the hearing held on 09.02.2021, Respondent sought two weeks time to file his reply to the rejoinder filed by the petitioner which was allowed by the Commission. Subsequently Respondent has filed the reply on 04.03.2021 reaffirming its stance in the matter.
10. During the next hearing held on 09.03.2021, petitioner has sought two weeks time to file his submission on reply filed by the Respondent which was granted by the Commission .
11. During the hearing held on 15.06.2021 , the petitioner has further sought the time for two week which was granted by the Commission vide daily order dated 18.06.2021.
12. At the hearing held on 06.07.2021, the Commission observed that Petitioner has filed the rejoinder on 05.07.2021 against the surrejoinder filed by the Respondent. During

the course of hearing held on 06.07.2021, the Counsel for the petitioner sought further adjournment for final arguments. The Commission vide order dated 18.06.2021 granted one final opportunity to petitioner on his request, and accordingly the case was listed on 06.07.2021 for final arguments.

13. At the hearing held on 6/07/2021, instead of arguments, the Counsel who appeared for the petitioner preferred to file his written submission on arguments. Considering the request of the petitioner during the hearing, the Commission allowed the Petitioner as well as Respondent to file their written submissions, on arguments within 3 days. Subsequently, the petitioner filed the written submission dated 09.07.2021 reiterating its earlier stance. The excerpts of aforesaid submission of Petitioner is presented below -

*“The respondent has failed to appreciate that the case of the petitioner falls within the tariff HV 3.3 (Shopping Mall) and not under tariff HV 3.2 (Non Industrial) as “Group of Consumers” is excluded in HV 3.2 (Non-Industrial). The Non-industrial consumer includes establishments like railway station, offices, hotels, institutions etc. (excluding group of consumers) with a rider that HT Consumer shall not re-distribute / sublet the energy in any way to other person. Since the petitioner is supplying energy to other consumers, his case would unequivocally fall within HV 3.3 (Shopping Mall). The respondents have failed to demonstrate as to how the case of the petitioner would fall within HV 3.2 (Non-Industrial) which excludes Group of Consumers. The objection of the Respondent that hotels, banquet halls and marriage gardens are being operated is frivolous, as they fall within “service” and are amenable to the Goods and Service Tax, therefore, operating of hotels, banquet hall and marriage garden fall within the definition of retail outlet / services and therefore fall within the category of Shopping Mall.”*

#### **The Commission’s observations**

14. The Commission observed that dispute between the Petitioner and the Respondent pertains to applicability of tariff category for petitioner’s electricity connection. The issue before the Commission is to interpret whether tariff category HV3.3 (Shopping Mall) or tariff category HV 3.2(Non-industrial) would be applicable for the electric connection of the Petitioner. Earlier the petitioner approached Hon’ble High Court of MP, Indore bench

and in the WP 938/2019 Hon’ble High Court passed an order dated 19.06.2020 and held that State Commission has exclusive jurisdiction to decide the applicability of tariff. It has also been mentioned in the order that Clause 1.24 of Retail Supply Tariff Order for FY 2017-18, states that in case of any dispute arise regarding interpretation for this tariff order and/or applicability of this tariff, the decision of the Commission shall be final and

binding. Accordingly this petition has been admitted by the Commission for interpretation of applicability of tariff category for the Petitioner's electricity connection.

15. As per the Petitioner's submission, the dispute arose due to arbitrary demand raised by the Respondent from the month of November 2018 & onwards. The Commission in its Retail Supply Tariff Order for FY2018-19 has defined following applicability of Tariff Category HV3.3 (Shopping Malls):-

*The tariff HV-3.3 (shopping malls) shall apply to establishments of shopping malls having group of non-industrial consumers subject to the specific terms and conditions specified in (i) of this schedule.*

*Shopping Mall shall be a multi-storeyed shopping centre in an urban area having a system of enclosed walkways with collection of independent retail stores, services and parking areas constructed and maintained by a management firm/ developer as a unit.*

***Specific Terms and Conditions:-***

***(i) Additional specific terms and conditions for shopping mall***

*(I) Individual end user shall not be levied a rate which is exceeding non-domestic-commercial tariff (LV 2.2) in case of LT connection and HT non-industrial tariff (HV 3.2) in case of HT connection, as determined by the Commission.*

*(II) All end-users shall enter into a tripartite agreement with the Management Firm /developer of the shopping mall and the licensee for availing supply of electricity in the shopping mall in order to get the benefit of the tariff under this category.*

16. In its submissions the Petitioner stated that his connection fulfills requirements under tariff HV 3.3 (Shopping Mall) category. He further stated that his buildings are inter-connected with each other. Common walkways and parking areas in the premises in question are duly maintained and operated by the Petitioner and electricity supply is made from a single point to group of consumers. He further stated that tariff HV 3.2(Non-industrial) shall apply to establishments like Railway Stations, Offices, Hotels, Institutions, etc excluding group of consumers. Since Petitioner is neither of any establishment mentioned in the aforesaid tariff, it would fall within tariff HV 3.3 (Shopping Mall). Besides this, group of consumers have been excluded from the definition of tariff HV 3.2 (Non-Industrial).

17. The Respondent in his submissions stated that in case of Brilliant Estate Limited, all the occupants are allotted space for running either IT services/business offices or convention/banquet/marriage hall which were purely commercial activities. Also, as per

condition specified in HV 3.3, Shopping Mall shall be a multi storied shopping centre having a system of enclosed walkways with collection of independent retail stores, but this condition was not fulfilled in the case of Brilliant Estate Limited. In this case different consumers are situated in different multies on different plots of Brilliant Estates Limited. It has further been stated that initially to meet power requirement for commercial places

situated at plot no. 6 (A) and 9, under scheme no. 78 Indore, M/s Brilliant Estates Limited, Indore obtained connection for load of 300 KVA in February, 2010. Thereafter in the phased manner the load was increased upto 1800 KVA within a span of 4 to 5 years. The Respondent also stated that in case of Brilliant Estates Limited, the occupants were allotted space for running either IT services/business office or convention/banquet/marriage hall which were doing commercial activities. These activities are covered under HV 3.2 (Non-Industrial) category in the tariff order. He also mentioned that single point of supply under Shopping Mall category was given to the petitioner but by enhancing load in different plots in phased manner, the Petitioner diverted use of electricity for other purpose and violated conditions of the agreement executed by the Petitioner with the Respondent. The Clause 7.21 & 7.22 of the Supply Code 2013, prohibits the consumer from using power supply for the purpose other than agreed in the agreement. The Respondent in support of his arguments also mentioned that the Audit found that the use of electricity by the Petitioner falls under HV 3.2 (Non-industrial) category and not under HV 3.3(Shopping Mall) category and therefore, the Petitioner is liable to pay the difference of charges for use the power under HV 3.2(Non-industrial) category.

18. In View of the Order dated 19/06/2020, passed by the Hon'ble High Court, Indore Bench, the Commission looked into the issue related to applicability of the tariff only on the connection of the Petitioner. As per the submissions made by the Petitioner and the Respondent, the Commission observed that connection of the Petitioner is not fulfilling the criteria specified for Shopping Mall as his premises is not a multi storied shopping center with a common enclosed walkways system. The complex of Brilliant Estates Ltd is having different multi storied buildings on different plots. Looking to the use of a single connection for different Business Offices, Hotels, Marriage halls, Banquet, Convention hall on different plots, and on different buildings without a common enclosed pathway, the connection is not fulfilling the criteria defined for Shopping Mall under the tariff order and specified in Recovery of Expenses Regulations. Therefore the tariff category HV 3.3 (Shopping Mall) shall not be applicable in this case and billing should be done under HV 3.2 (Non-industrial) category. With these findings the Petition is dismissed and stands disposed of.

**(Shashi Bhushan Pathak)**  
Member (Law)

**(Mukul Dhariwal)**  
Member

**(S.P.S. Parihar)**  
Chairman