BEFORE THE ADJUDICATING OFFICER UNDER THE ENERGY CONSERVATION ACT, 2001
DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11 (2343)/DERC/2025-26/8504

Petition No. 38/2025

In the matter of:	**Petition Under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer.**

The Bureau of Energy Efficiency (BEE) .. ………. Petitioner

Versus

1. New Delhi Municipal Corporation …..Respondent No. 1

2. The Energy Efficiency & Renewable Energy Management Centre ……Respondent No. 2

CORAM:

Hon'ble Sh. Ram Naresh Singh, Adjudicating Officer-Cum-Member, DERC

Appearance:

1. **Mr. Kartikey Nayyar, Learned Advocate, BEE**
2. **Ms. Poorva Aggarwal, Learned Advocate, BEE**
3. **Mr. Anil K. Airi, Learned Senior Advocate, NDMC**
4. **Mr. Ravi Krishan Chandna, Learned Advocate, NDMC**
5. **Mr. Saad Sherwani, Learned Advocate, NDMC**
6. **Mr. Akshat Mishra, Learned Advocate, NDMC**

Order

(Date of Order: 03.09.2026)

1. The instant Petition filed by the Petitioner, Bureau of Energy Efficiency (BEE), Under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty under Section 26 of the Energy Conservation Act, 2001 by the Adjudicating Officer against New Delhi Municipal Corporation (NDMC).

2. The Petitioner has made inter-alia the following prayers in its Petition:
   (a) Hold an enquiry for the purpose of adjudging the penalty under Section 26 of the Energy Conservation Act, 2001 for non-compliance of the Regulation by the Respondent No. 1;

(b) Direct the Respondent No. 1 to make payment of penalty as adjudicated by the Adjudicating Officer;

(c) Direct the Respondent No. 1 to comply with the Regulation notified by the Petitioner and submit the requisite form for Energy Audit as provided in the Regulation;

<u>Petitioner's Submissions</u>

3. The Petitioner has submitted the following:

   i. The Petitioner namely Bureau of Energy Efficiency (BEE) is a statutory body set up by Government of India on 01.03.2002 under the provisions of the Energy Conservation Act, 2001. The principle objective of the Petitioner is to assist in developing policies and strategies with a thrust on self-regulation and market principles, within the overall framework of the Energy Conservation Act, 2001 with the primary objective of reducing energy intensity of the Indian economy. BEE further coordinates with Designated Consumers (DISCOM) to recognize, identify and utilize the existing resources and infrastructure with aim to perform the function assigned to it under the Energy Conservation Act, 2001. The Energy Conservation Act, 2001 provides for regulatory and promotional functions.

   ii. The Petitioner with the approval of the Union of India and in exercise of the power conferred by Clause (g) of sub-section 2 of Section 58 read with Clause (q) of subsection 2 of Section 13 of the Energy Conservation Act, 2001 notified the Regulation namely "The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021" (hereinafter referred to a "Regulations") vide Notification dated 07.10.2021 and an amendment regulation thereof vide Notification dated 31.10.2022.

   iii. The Petitioner framed the Regulations on Manner and Intervals for Conduct of Energy Audit in Electricity Distribution Companies (DISCOMs). The Regulations framed by the Petitioner for energy audit in DISCOMs provided a board framework for conducting the Annual Energy Audit and Quarterly Energy Accounting with necessary pre-requisite and reporting requirements to be met.

   iv. The Union of India under the power conferred vide Section 14(i) of the Energy Conservation Act, 2001 can direct DISCOMs to get energy audit conducted by an accredited energy audit. The aforesaid provision of the Energy Conservation Act, 2001 is reproduced herein below for the ready reference of the Adjudicating Officer:

14. Power of Central Government to enforce efficient use of energy and its conservation – The Central Government may, by notification, in consultation with the Bureau-

(i) direct, if considered necessary for efficient use of energy and its conservation, any designated consumer to get energy audit conducted by an accredited energy auditor;

v. As per the provisions of the Regulations, Respondent No. 1, was mandatorily directed to conduct periodic energy accounting by In-House Energy Manager and Annual energy audit by an Accredited Energy Auditor (by engaging a Third-Party agency). The Regulations also required Respondent No. 1 to create a centralized energy accounting and audit cell with adequately qualified personnel. It is pertinent to mention here that the aim of the provisions of the Regulation in to create and established an intervention free auditing system which would help to identify loss pockets and enable remedial measures by Respondent No. 1 with the overall objective of accelerating the reduction of AT&C losses in the nation.

vi. The relevant timeline for the compliance of the Regulations by Respondent No. 1 is mentioned herein below for the ready reference of the Hon'ble Adjudicating Officer:

Report	Whom to be submitted	Type of report/audit	Period	Due date for submission
Periodic Energy Accounting by Energy Manager(EM)	Bureau of Energy Efficiency and State Designated Agency	First Period energy accounting (Quarter II//Q2)	01.07.2021 to 30.09.2021	06.12.2021
		Subsequent periodic energy accounting (Quarter III/Q3)	01.10.2021 to 31.12.2021	01.03.2022
		Subsequent periodic energy accounting (Quarter IV/Q4)	01.01.2022 to 31.03.2022	30.05.2022
Annual Energy Audit by an	Bureau of Energy	First annual energy audit	FY 2021-22	06.04.2022

Accredited Energy Auditor (AEA)	Efficiency and State Designated Agency	Subsequent Annual Energy Audit	FY 2021-22	31.07.2022

vii. The Petitioner for the purpose of creating awareness and facilitating the compliance of the Regulations by the DISCOMs organized region-wise webinars/workshops for DISCOMs and sent multiple invitation mails to the DISCOMs requesting them to join these webinars/workshops vide email dated 26.10.2021.

viii. The Union of India under the power conferred vide Section 14(i) of the Energy Conservation Act, 2001 issued letter dated 27.10.2021 addressed to Chief Secretary, ACS/Principle secretary/ Secretary (Energy/Power) of all State Government and UTs informing the aforesaid Regulation and further informed that all the distribution companies governed under the various provisions the Energy Conservation Act, 2001 are required to have its First Energy Audit conducted by an accredited energy auditor within six months i.e., by 06.04.2022 and periodic energy accounting for the previous quarter (ending September 2021) to be done by the Energy Manager. It was further requested that all DISCOMs should follow the timeline of the Regulations.

ix. The Petitioner issued a letter dated 18.11.2021 addressed to Respondent No. 1 informing them that as per Clause 5(g) of the Regulations, the DISCOMs shall create a centralized energy accounting and audit cell comprising of a Nodal Officer, an Energy Manager and other personnel. The Nodal Officer, will be the point of contact for all communication/ activities related to the compliance of the Regulation. Further, in the same letter, the Petitioner requested Respondent No. 1 to provide details of Energy Audit Cell (EAC) in a prescribed format as has been mentioned in the letter.

x. The Petitioner further informed Respondent No. 1 vide its letter dated 09.12.2021 that non-compliance of the Regulations will attract penal provisions of the Energy Conservation Act, 2001, and accordingly, requested Respondent No. 1 to submit the First Annual Energy Audit Report and Periodic Energy Accounting Report.

xi. The Petitioner vide its letter dated 28.01.2022 informed Respondent No. 1 that despite several communications and follow up the Petitioner did not receive the First Periodic Energy Accounting Report of the Respondent No. 1 and the last date for submission of the aforesaid report was on 06.12.2021. Further, vide the aforesaid letter the Petitioner once again formally notified Respondent No. 1 to submit the First Periodic Energy Accounting Report. The Petitioner had also warned that failure to do so will result in the initiation of penal action as per the provisions of the Energy Conservation Act, 2001.

xii. The Petitioner vide its email dated 23.02.2022 circulated the letter dated 22.02.2022 to Respondent No. 1 and informed that as per the Regulations, the second Periodic Energy Accounting Report for Q3 of FY-2021-22 (period 01.10.2021to 31.12.2021) had to be submitted on or before 01.03.2022. The Petitioner reiterated to Respondent No. 1 that if the pending Periodic Energy Accounting Reports were not submitted it time, such a non-compliance of Regulation would attract penal provisions as per the Energy Conservation Act, 2001.

xiii. The Petitioner vide its letter dated 04.03.2022 issued a Show Cause Notice to the Respondent No. 1 for non-compliance of the provisions of the Regulation and non-submission of First Energy Accounting report and directed Respondent No. 1 to submit their response to the Show Cause Notice explaining the reasons of non-submission of First Energy Accounting Report along with the copy of the First Energy Accounting Report within a period of seven days from the receipt of the aforesaid Show Cause Notice. It was further informed vide the aforesaid Show Cause Notice that if Respondent No. 1 failed to submit their Energy Accounting Report along with response to the aforesaid show cause notice, penal action would be taken against it in accordance with the provisions of the Energy Conservation Act, 2001.

xiv. The Petitioner in addition to the Show Cause Notice had also vide its letter dated 23.05.2022 addressed to the Respondent No. 1 informed that First and Second Energy Accounting Report for Q2 and Q3 of FY 2020-21 has not been submitted to the Petitioner with a copy to State Designated Agency (SDA) which were to be submitted by 06.12.2021 and 01.03.2022 respectively as per the Regulations. The Petitioner further directed Respondent No. 1 to submit their response and reasons for non-submission of the reports along with a copy of the First and Second Energy Accounting Reports on or before 31.05.2022 failing which penal action would be initiated in accordance with the provisions of the Energy Conservation Act, 2001.

xv. The Petitioner further issued a Show Cause Notice dated 19.01.2023 in continuation to the previous notice issued to the Respondent No. 1 and directed for Submission of the response to the Show Cause Notice stating the reasons for non-compliance of the Regulation and non-submission of the report to the Petitioner along with a copy of Periodic Energy Accounting Report and Annual Energy Audit Report within a period of 7 days.

xvi. The compliance status of the 'Periodic Energy Accounting Reports and Annual Energy Audit Reports' of Respondent No. 1 is as follows:

Financial Year (FY)	Compliance	Due date of submission	Date of Receipt of report
2021-2022	Quarter 2 FY 2021-22 (July 2021-September 2021)	06.12.2021	Not Received
2021-2022	Quarter 3 FY 2021-22 (October 2021-December 2021	01.03.2022	Not Received
2021-2022	Quarter 4 FY 2021-22 (January 2022-March 2022	30.05.2022	Not Received
2022-2023	Quarter 1 FY 2022-2023 (April 2022-June 2022)	30.08.2022	Not Received
2022-2023	Quarter 2 FY 2022-2023 (July 2022-September 2022)	29.11.2022	Not Received
2022-2023	Quarter 3 FY 2022-2023 (October 2022- December 2022)	01.03.2023	Not Received
2022-2023	Quarter 4 FY 2022-2023 (January 2023- March 2023)	30.05.2023	Not Received
2023-2024	Quarter 1 FY 2023-2024 (April 2023-June 2023)	30.08.2023	Not Received
2023-2024	Quarter 2 FY 2023-2024 (July 2023-September 2023)	14.11.2023	Received on 30.04.2024, but not as per BEE's format
2023-2024	Quarter 3 FY 2023-2024 (October 2023-December 2023)	14.02.2024	Received on 30.04.2024, but

			not as per BEE's format
2023-2024	Quarter 4 FY 2023-2024 (January 2024- March 2024)	15.05.2024	Not Received
2024-2025	Quarter 1 FY 2024-2025 (April 2024-June 2024)	14.08.2024	Not Received
2024-2025	Quarter 2 FY 2024-2025 (July 2024-September 2024)	14.11.2024	Not Received
2024-2025	Quarter 3 FY 2024-2025 (October 2024- December 2024)	14.02.2026	Not Received
2020-2021	Annual Report 2020-2021	06.04.2022	Yes, Received on 07.02.2024
2021-2022	Annual Report 2021-2022	31.07.2022	Yes, Received on 07.02.2024
2022-2023	Annual Report 2022-2023	31.07.2023	Yes, Received on 11.03.2024
2023-2024	Annual Report 2023-2024	31.07.2024	Not Submitted

xvii. The Respondent No. 1 after much delay submitted the Energy Accounting Report pertaining to Q2 and Q3 of FY 2023-24. However, the Petitioner duly apprised Respondent No. 1 vide email dated 08.05.2024 that the submitted Report were not as per BEE's accounting format and accordingly, directed Respondent No. 1 to submit the revised Reports as per the format.

xviii. Respondent No. 1 continued to operate flagrantly and filed to comply with the directions issued by the Petitioner. Consequently, the Petitioner was compelled to issue several reminder mails to Respondent No. 1 informing them of their obligations to submit the mandatory compliance reports for the financial years 2023-24 and 2024-25 vide emails dated 15.05.2024 and 21.11.2024. However, Respondent No. 1 has continued to disregard mail communication and has remained surreptitiously silent on its non-compliance.

xix. The Petitioner, aggrieved by the negligent behavior and non-compliance with the regulations, issued a final notice on 16.07.2024, directing the defaulting DISCOMs, including NDMC, to adhere to the guidelines and submitted their Energy Report. However, Respondent No. 1, with its lackadaisical approach, continues to flout the mandatory obligations prompting the Petitioner to invoke the penalty provisions as prescribed under Section 26 of the Energy Conservation Act, 2001. The aforesaid Section is reproduced hereinbelow for the ready reference of the Hon'ble Adjudicating Officer:

*26. **Penalty. —***

(1) If any person fails to comply with the provisions of clause (h) or clause (i) or clause (k) or clause (l) of section 14 or clause (c) or clause (h) of section 15, he shall be liable to a penalty which shall not exceed ten lakh rupees: Provided that in the case of continuing failures, the person shall be liable to an additional penalty which may extend to ten thousand rupees for every day during which such failures continue.

(2) Notwithstanding anything contained in this Act or any other Act for the time being in force, if any person fails to comply with the provisions of clauses (c) and (d) of section 14, he shall in addition to the penalty of ten lakh rupees, be also liable to pay additional penalty which shall not exceed five thousand rupees per appliance or equipment in relation to which the non-compliance has occurred, but shall not be lower than two thousand rupees: Provided that where such non-compliance relates to any industrial unit or vessel, he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent consumed in excess of the prescribed norms: Provided further that if the manufacturer of a vehicle fails to comply with the fuel consumption norms, he shall also be liable to pay an additional penalty per unit of vehicles sold in the corresponding year, as follows, namely:—

(i) twenty-five thousand rupees per vehicle for non-compliance of norms up to 0.2 litres per 100 kms;

(ii) fifty thousand rupees per vehicle for non-compliance of norms above 0.2 litres per 100 kms. (3) If any person fails to comply with the directions issued under clauses (n) and (x) of section 14, he shall be liable to a penalty which shall not exceed ten lakh rupees for each such failure: Provided that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms.

(4) If a person fails to comply with the provisions of sub-section (1) of section 13A or fails to provide any information under section 52, he shall be liable to a penalty which may extend to fifty thousand rupees on first such non-compliance or failure: Provided that for every

subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure.

(5) Any amount payable under this section, if not paid, may be recovered as if it were an arrear of land revenue."

xx. Pursuant to the above, it can be transpired that delayed compliance on part of Respondent No. 1 attracts a penalty under Section 26 of the Act which can be computed as follows:

Financial	**Compliance**	**Days of Delay as on 15.04.2025/ date of receipt of report**	**Penalty (Max) (in Rs.)**	**Additional penalty @ (Rs. 10000/day)**	**Total (in Rs.)**
2021-2022	Quarter 2	1226 Days	10,00,000/-	1,22,60,000/-	1,32,70,000/-
2021-2022	Quarter 3	1141 Days	10,00,000/-	1,14,10,000/-	1,24,10,000/-
2021-2022	Quarter 4	1051 Days	10,00,000/-	1,05,10,000/-	1,15,10,000/-
2022-2023	Quarter 1	959 Days	10,00,000/-	95,90,000/-	1,05,90,000/-
2022-2023	Quarter 2	868 Days	10,00,000/-	86,80,000/-	96,80,000/-
2022-2023	Quarter 3	776 Days	10,00,000/-	77,60,000/-	87,60,000/-
2022-2023	Quarter 4	686 Days	10,00,000/-	68,60,000/-	78,60,000/-
2023-2024	Quarter 1	594 Days	10,00,000/-	59,40,000/-	69,40,000/-
2023-2024	Quarter 2	518 Days	10,00,000/-	51,80,000/-	61,80,000/-
2023-2024	Quarter 3	426 Days	10,00,000/-	42,60,000/-	52,60,000/-
2023-2024	Quarter 4	335 Days	10,00,000/-	33,50,000/-	43,50,000/-
2024-2025	Quarter 1	244 Days	10,00,000/-	24,40,000/-	34,40,000/-
2024-2025	Quarter 2	152 Days	10,00,000/-	15,20,000/-	25,20,000/-
2024-2025	Quarter 2	60 Days	10,00,000/-	6,00,000/-	16,00,000/-
2020-2021	Annual Report 2020-2021	671 Days	10,00,000/-	67,10,000/-	77,10,000/-
2021-2022	Annual Report 2021-2022	555 Days	10,00,000/-	55,50,000/-	65,50,000/-
2022-2023	Annual Report 2022-2023	223 Days	10,00,000/-	22,30,000/-	32,30,000/-
2023-2024	Annual Report 2023-2024	258 Days	10,00,000/-	25,80,000/-	35,80,000/-
Total = Indian Rupees Twelve Crore Fifty-Four Lakh Forty Thousand Only					**12,54,40,000/-**

xxi. The Petitioner is filing the present Petition before the Commission under Section 27 of the Energy Conservation Act, 2001 for adjudication of the penalty to be imposed upon the Respondent No. 1 under Section 26 for non-compliance of the direction issued by the Union of India vide its letter dated 27.10.2021. Further, the Petitioner is filing the present Petition in accordance with the S.O.6027(E) dated 23.12.2022 wherein the Petitioner has been empowered to file Petition before the Competent Authority for Non-Compliance of the Regulation.

The relevant portion of Section 27 of the Energy Conservation Act, 2001 is reproduced herein below for the ready reference of the Hon'ble Adjudicating Officer;

"27. Power to adjudicate. -

(1) For the purpose of adjudging under section 26, the State Commission shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed by the Central Government, after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the clauses of the sections specified in section 26, he may impose such penalty as he thinks fit in accordance with the provisions of any of those clauses of that section: Provided that where a State Commission has not been established in a State, the Government of that State shall appoint any of its officer not below the rank equivalent to a Secretary dealing with legal affairs in that State to be an adjudicating officer for the purposes of this section and such officer shall cease to be an adjudicating officer immediately on the appointment of an adjudicating officer by the State Commission on its establishment in that State: Provided further that where an adjudicating officer appointed by a State Government ceased to be an adjudicating officer, he shall transfer to the adjudicating officer appointed by the State Commission all matters being adjudicated by him and thereafter the adjudicating officer appointed by the State Commission shall adjudicate the penalties on such matters."

xxii. The Regulations, 2021 applies equally to all the DISCOMs of India and compliance of timelines under the Regulations, 2021 is mandatory and compulsory for all DISCOMs in India and strictly no exemption in any circumstances can be granted under the Regulations, 2021 by the Petitioner. Further, the letter circulated by the Petitioner to all the DISCOMs clearly stated the timelines for submission of the reports. However, Respondent No. 1 failed to abide by the timelines without providing any justification for the said delay.

xxiii. In Adjudicating Case No. 1 of 2023 before the Adjudicating Officer Jharkhand State Electricity Regulatory Commission at Ranchi, it was observed that timely filing of statutory reports is required under the Energy Conservation Act, 2001 as these help in optimizing energy use, reducing costs, and minimizing environment impact which would directly enhance the performance of the DISCOMS thereby reducing the tariff burden on the consumers arising out of inefficiencies and high energy losses.

xxiv. The Adjudicating Officer Jharkhand State Electricity Regulatory commission at Ranchi observed that the DISCOMs was liable to a penalty of Rs. 1,09,40,000/- (Indian Rupees One Crore Nine Lakh Forty Thousand Only) and in view of the above observation, the Hon'ble Adjudicating Officer Jharkhand State Electricity Regulatory Commission at Ranchi vide its order dated 28.03.2024 imposed a penalty of Rs. 10,00,000/- (Indian Rupees Ten Lakh Only) upon Jharkhand Bijli Vitran Nigam Limited due to their non-compliance of Regulations, 2021.

xxv. The Petitioner submits that the subject matter of the Petition in within the jurisdiction of this Commission and has not previously filed any Petition in respect of which the present Petition is preferred before any other Court, any other authority, nor any Writ Petition is pending.

xxvi. The Petitioner further submits that no other remedy is available under the Energy Conservation Act, 2001 or any other statutory proceeding of law or rule to the information and knowledge of the Petition. It is further submitted that no proceedings are pending before the Hon'ble

Adjudicating Officer at the instances of Respondent No. 1/ or any other Third Party in this matter.

xxvii. The Petitioner has also filed written Submission on 28.11.2025.

Respondent No.1 (NDMC) Submissions

4. The Respondent has submitted the following:
   i. The Respondent, New Delhi Municipal Council (NDMC), is a statutory municipal body constituted under the New Delhi Municipal Council Act, 1994. The NDMC traces its origins to the "Raisina Municipal Committee" established in 1916 to cater to municipal needs during the construction of New Delhi, which later evolved into the "New Delhi Municipal Committee" and was reconstituted through various enactments until the enactment of the NDMC Act, 1994. The Respondent is entrusted with the municipal governance of the New Delhi area, comprising approximately 42.74 square kilometers, which includes within its limits the seat of the Central Government such as the Rashtrapati Bhawan, the Prime Minister's Office and Residence, Central Government offices, residence of Ministers, Member of Parliament, diplomats, foreign missions and Central Government employees.

   ii. The Respondent is a deemed distribution licensee under the proviso to Section 14 of the Electricity Act, 2003 for the purpose of electricity supply in the NDMC area. This status arises by operation of law from its statutory character and not from the grant of a licence by any State or Joint Electricity Regulatory Commission.

   iii. The Petition is not maintainable against the Respondent No. 1 NDMC. The Respondent No. 1 is not a "designated consumer" as defined under Section 2(e) of the Energy Conservation Act, 2001 ("EC Act"). Consequently, none of the provisions of the EC Act sought to be enforced against the Respondent No. 1 by way of the present Petition are applicable to NDMC.

   iv. The Petitioner has alleged non-compliance by Respondent No. 1 NDMC in respect of:
      i. Section 14(i) of the EC Act (requirement of designated consumer to get energy audit conducted by an accredited energy auditor)

ii. Section 3 and 4 of Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021 ("2021 Regulations")

iii. Section 26 (penalty for non-compliance of obligations cast upon designated consumers)

It is submitted that each of these provisions applies only to a "designated consumer" under the EC Act. Since NDMC is not a designated consumer, the very foundation of the Petitioner's allegations collapses.

v. The Petitioner has mis-conceived itself in relying upon Order No. 3445(E) dated 28.09.2020, to claim that NDMC is an "Electricity Distribution Company" and an entity "having been issued a distribution licence by State/Joint Electricity Regulatory Commission under the Electricity Act, 2003." Such a construction is wholly erroneous.

vi. Respondent No. 1 –NDMC is a statutory municipal body constituted under the New Delhi Municipal Council Act, 1994 ("NDMC Act"). Its primary function is municipal governance of the Respondent No. 1-NDMC area, and incidentally, it also carries responsibility of electricity distribution within it area. NDMC discharges this function not by virtue of a license issued under Section 14 of the Electricity Act, 2003, but as a deemed licensee under the provisions of the NDMC Act read with the Electricity Act, 2003.

vii. Section 200 of the NDMC Act, 1994 (titled "Power to engage in the business of supplying electricity") expressly provides that the Council shall have the power to supply electricity in the NDMC area. Further, Section 14, Proviso (b) of the Electricity Act, 2003 clarifies that NDMC shall be a deemed distribution licensee. This legislative recognition flows from the statutory character of NDMC and not from any license issued by a State/Joint Electricity Regulatory Commission.

viii. NDMC is not incorporated as a corporate entity and functions under a municipal law framework with governance through an elected Council, and where necessary, the Ministry of Home Affairs (MHA), Government of India. This distinction, fundamental in nature, has been overlooked by the Petitioner, and as a consequence, the Petition proceeds on a flawed premise.

ix. NDMC is not "an entity having been issued a distribution licence by State/Joint Electricity Regulatory Commission" as alleged by the Petitioner. Rather, it functions as a statutory municipal body and a deemed licensee by operation of law.

x. In these circumstances, the entire premise of the Petition i.e. that NDMC is a designated consumer amenable to proceedings under Section 27 of the EC Act is false, misconceived, and without jurisdiction.

xi. It is therefore submitted that the present Petition is liable to be dismissed in limine with exemplary costs.

xii. The Respondent No. 1 has, at all material times, acted in good faith and in a transparent manner. It has submitted Annual Energy Audit Report for FY 2020-21, 2021-22 and the revised FY 2022-23 report, all of which were duly acknowledged by the Petitioner. The Petitioner has deliberately not placed these acknowledgements on record, and has instead sought to portray the Respondent No. 1 as a chronic defaulter. Once annual audit obligations have been substantially discharged, the allegation of continuing non-compliance falls to the ground. At worst, deviations in format are procedural and curable, and cannot justify the invocation of penal action.

xiii. The Respondent No. 1 has also placed on record its genuine and insurmountable administrative difficulties in immediately constituting the Energy Audit Cell (EAC) envisaged under the 2021 Regulations. The EAC requires a BEE-certified Energy Manager, an IT Manager, and a Finance Manager, each with technical qualifications and minimum experience. The Respondent, being a municipal body, has no sanctioned posts for such technical officers. Creation of such posts requires framing recruitment rules, approval of the Council, and in several cases, clearance from the Ministry of Home Affairs and UPSC. These processes are lengthy and outside the Respondent's immediate control. Accordingly, the Respondent No. 1 made a considered decision to outsource Audit Cell functions to external agencies to ensure pragmatic compliance.

xiv. The Respondent No. 1 addressed two detailed representations to the Petitioner, specifically dated 10.07.2025 and 14.08.2025, wherein it placed on record its statutory municipal structure, explained the absence of sanctioned posts of BEE-certified Audit Cell officers, highlighted constraints of its annual municipal treasury cycle (as opposed to corporate quarterly accounting cycles), and proposed operationalizing the Audit Cell through outsourcing. These representations were duly received but have not been considered by the Petitioner.

xv. Unlike corporate DISCOMs, the Respondent's financial and accounting systems are integrated with its municipal treasury, which operates on an annual accounting cycle. Preparation of quarterly energy accounting reports in the prescribed BEE format required structural changes and data-segregation pipelines that could not be immediately established. The Respondent No. 1 brought this difficulty to the notice of BEE and the SDA through representations and also pointed out a similar issue under the Revamped Distribution Sector Scheme (RDSS), where the Respondent No. 1 sought exemption from quarterly reviews due to its statutory municipal accounting framework. The Respondent No. 1 has thus been transparent and consistent in communicating its structural constraints.

xvi. The Petitioner's reliance on the order of the Jharkhand State Electricity Regulatory Commission in BEE v JBVNL is wholly misplaced. Unlike the Respondent No. 1 NDMC, the said case dealt with a corporate DISCOM which was a designated consumer under the EC Act. Even then, despite alleged non-compliances, the adjudicating authority imposed only a token penalty of INR 10,00,000/- against a theoretical liability of several crores, precisely on grounds of proportionality and bona fides. This demonstrates that Section 26-28 of the EC Act mandate a tempered and reasonable approach, not the revenue-maximizing computation adopted by the Petitioner.

xvii. The Petitioner has sought to impose a penalty of INR 12,54,40,000/- upon the Respondent No. 1 by mechanically applying the maximum limits under Section 26 of the EC Act and compounding daily penalties across multiple quarters. Such a method is not contemplated by the statute. Section 28 makes it mandatory for the Adjudicating Officer to consider the nature and gravity of default, the loss caused to any person, the repetitive nature of default, and any disproportionate gain or unfair advantage made by the Consumer. None of these factors have been addressed in the Petition.

xviii. The penalty demanded is grossly disproportionate and contrary to public interest. The Respondent No. 1 is a statutory municipal utility, not a profit- making enterprise. Imposition of over INR 12 crores as penalty would only divert scarce municipal resources away from developmental and welfare activities for residents of the Respondent's area. On the Contrary, the Respondent No. 1 has undertaken actual projects in energy efficiency and demonstrated bona fides, and therefore deserves regulatory indulgence and guidance rather than punitive sanctions.

xix. The Respondent No. 1 respectfully submits that the Petition filed by the Petitioner deserves to be dismissed in limine since the very foundation of the case rests upon an erroneous assumption that the Respondent No. 1 is a designated consumer under the Energy Conservation Act, 2001, whereas the Respondent No. 1 has acted bona fide, placed its constraints on record, and substantially complied with the spirit of the Regulations, and therefore no penalty should be imposed.

xx. The Respondent No. 1 has also filed written Submission on 18.12.2025.

Adjudicating Officer's Analysis

5. The Adjudicating Officer has heard Mr. Kartikey Nayyar and Ms. Poorva Aggarwal, Ld. Counsel for the Petitioner, and Mr. Anil K. Airi, Ld. Sr. Advocate with Mr. Ravi Krishan Chandna, Mr. Saad Sherwani and Mr. Akshat Mishra, Ld. Counsel for the Respondent No. 1. The pleadings, written submissions and documents on record have been examined in the light of the Energy Conservation Act, 2001, The Bureau of Energy Efficiency (Manner and Interval for Conduct of Energy Audit in Electricity Distribution Companies) Regulations, 2021" (hereinafter referred to a "Regulations 2021") as amended, the notifications issued thereunder, the Electricity Act, 2003 (hereinafter referred to a "Act, 2003")and the NDMC Act, 1994.

6. It is recorded that the Respondent No. 2, the State Designated Agency for Delhi under clause (d) of Section 15 of the Act, has neither appeared nor filed any

reply, although the reports in question are required to be furnished to it concurrently with the Bureau.

7. The Petitioner prays in the Petition, that an enquiry be held for adjudging penalty under Section 26, that the Respondent No. 1 be directed to pay the penalty adjudged, and that it be directed to comply with the Regulations and submit the requisite form for energy audit. The Respondent No. 1 has filed a reply and no counter-claim; it seeks dismissal of the Petition as not maintainable, with exemplary costs, on the ground that it is not a designated consumer and, in the alternative at paragraphs 4(xviii) and 4(xix), regulatory indulgence and guidance rather than punitive sanctions, and that no penalty be imposed. The Respondent No. 2 has sought no relief.

8. Three issues arise for determination, and this Order is confined to them:
   i. Whether the Petition is maintainable against the Respondent No. 1, that is to say, whether it is a "designated consumer" under the Act;
   ii. Whether non-compliance is established and what penalty, if any, ought to be adjudged under Section 26 (prayers (a) and (b)); and
   iii. What directions ought to issue for compliance (prayer (c)).

Issue I — Whether the Petition is maintainable

9. The Respondent No. 1 objects that it is not a designated consumer, relying on S.O. 3445(E) dated 28.09.2020, which specifies as designated consumers those entities "having issued distribution license by State/Joint Electricity Regulatory Commission under the Electricity Act, 2003". It is urged that no licence was issued to it by this Commission, its status arising by operation of statute under the NDMC Act, 1994. Two mis-descriptions in the pleadings may be corrected at the outset: "designated consumer" is defined in clause (g) of Section 2 and not clause (e); and licensee status is conferred by Section 197 of the NDMC Act, 1994, not Section 200, which deals with charges for supply.

10. The proposition urged is that an entity distributing electricity under its own parent statute, rather than under a licence granted by a Commission, stands outside the Energy Conservation Act, 2001. Such a proposition is not digestible. The Damodar Valley Corporation is equally a creature of its own enactment, the Damodar Valley Corporation Act, 1948, yet an express proviso to Section 14 of the Electricity Act, 2003 deems it to be a licensee under that Act while relieving it of the requirement to obtain a licence thereunder; and a further proviso likewise deems an Appropriate Government which itself distributes electricity to be a licensee without requiring it to obtain a licence. Upon the construction canvassed, every

such entity would stand outside the Act. The Energy Conservation Act, 2001 in any event forecloses the argument. Section 60 provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, so that the NDMC Act, 1994 operates alongside it and not to its exclusion; and Section 61, which identifies those to whom the Act does not apply, extends only to the Ministry or Department of the Central Government dealing with Defence or Atomic Energy and such other similar Ministries, Departments, undertakings, Boards or institutions as may be notified. The Respondent No. 1 falls within no such class, and no notification in its favour has been placed on record. Where the legislature has expressly stated the exclusions it intended, further exclusions cannot be implied.

11. Further, the Energy Conservation Act, 2001 does not define "distribution licensee" or "licence"; clause (u) of Section 2 borrows those meanings from enactments now repealed, so that by force of Section 8 of the General Clauses Act, 1897 the reference is to be read as one to the Act, 2003, under which the Respondent No. 1 is indisputably a distribution licensee. It is pertinent to mention here that this Commission has year upon year determined the Aggregate Revenue Requirement and retail tariff of the Respondent No. 1 under Section 62 of the Act 2003, being a jurisdiction which exists only over a distribution licensee. The deeming provision by which the Respondent No. 1 holds that status cannot be given effect in one direction only, namely for the purpose of recovering tariff from consumers, and denied in the other, namely for the purpose of accounting for the energy lost in the course of such supply.

12. There is a further and more fundamental consideration. The Energy Conservation Act, 2001 was enacted to provide for the efficient use of energy and its conservation, and its designated consumer machinery is directed at energy intensive industries and establishments. The Respondent No. 1 handles approximately 1,356 million units in FY 2024-25 and 1,322 million units in FY 2023-24, with no generation of its own, so that every unit lost within its network is a unit the Delhi power system must procure afresh. Having regard to the constraints of the Delhi power system, energy conserved is in real terms energy generated. An entity handling so large a quantum of energy cannot be envisaged as standing outside a statute whose entire purpose is the efficient use of that very energy, and must be held accountable for the energy which passes through its network

13. Nor does the NDMC Act, 1994 pull in a contrary direction; it points the same way. Sub-section (1) of Section 195 of that Act casts upon the Council the duty to develop and maintain an efficient, co-ordinated and economical system of electricity supply for the New Delhi area, and for that purpose to take steps from

time to time; and clause (a) of sub-section (2) of Section 195 of that Act requires it, in the discharge of its functions in relation to electricity supply, to promote the use of all economical methods of transmitting and distributing electricity. The Energy Conservation Act, 2001 is such a law. A duty to maintain an efficient and economical system of supply cannot be discharged, nor can its discharge be tested, without an accounting of the energy received and the energy sold and an audit of the difference between them. That is precisely the discipline which is the Regulations, 2021 prescribe and which the Petitioner administers; compliance with it is therefore not something extraneous to the Council, but an obligatory function under its own constituent Act.

14. Issue I is accordingly answered against the Respondent No. 1. The Respondent No. 1 is a designated consumer, bound by the Energy Conservation Act, 2001 and the regulations and notifications made thereunder in the same measure as every other distribution licensee in Delhi. The objection to maintainability therefore fails, and the costs sought by the Respondent No. 1, being consequential upon the dismissal it sought, do not survive its rejection.

Issue II — Whether penalty ought to be adjudged

15. Turning to prayers (a) and (b), the enquiry contemplated by Section 27 of the Energy Conservation Act, 2001 has been held. On the compliance statement reproduced at paragraph 3(xvi) hereinabove, the Annual Energy Audit Reports for FY 2020-21, FY 2021-22 and FY 2022-23 were furnished only on 07.02.2024, 07.02.2024 and 11.03.2024, the report for FY 2023-24 remains unfiled, and of the fourteen periodic energy accounting reports listed, twelve were not furnished at all while the remaining two, for Q2 and Q3 of FY 2023-24, were furnished on 30.04.2024 otherwise than in the specified format. The fact of non-compliance is therefore established upon the record, and the submission of the Respondent No. 1 that it has substantially complied with the spirit of the Regulations cannot be accepted. The period over which that non-compliance is to be reckoned, and its consequences, are considered hereunder.

16. Upon consideration of the submissions advanced on behalf of the Respondent No. 1, the defences urged on the merits do not bear scrutiny:

    i. Inability to constitute the Energy Audit Cell. The difficulty pleaded is one of creating posts, not of designating officers. Certification as an Energy Manager is obtained by examination conducted by the Bureau; it is a qualification, not a cadre. No explanation is offered why serving officers were not nominated for certification, or why the outsourcing decided upon was never effected. Section 11 of the NDMC Act, 1994 in any event requires the Council to make adequate provision for the management of this undertaking by any means or measures which it may lawfully use or take.

ii. Not a profit-making enterprise. That the Respondent No. 1 is a municipal body is relevant to quantum; it is not an immunity. Exemption under Section 53 of the Energy Conservation Act,2001 lies with the Central or State Government and not with the Adjudicating Officer, and the representations dated 10.07.2025 and 14.08.2025 were in substance applications for a relief which lies elsewhere.

17. Non-compliance being established, the question is what penalty, if any, ought to follow. Section 26 prescribes a maximum and not a mandatory quantum, and the discretion which it confers is to be exercised judicially. In this regard, weighing the factors under Section 28 together with the circumstances of the present case, this Adjudicating Officer observes as under:

i. No disproportionate gain or unfair advantage has been pleaded, much less quantified. The first statutory factor is neutral.

ii. The date from which the obligation became enforceable is not free from doubt. The Petition is founded, at paragraph 3(xxi), upon a letter dated 27.10.2021 addressed to the Chief Secretaries of the States and Union Territories, whereas Section 14 requires the Central Government to act by notification, and the notification bearing No. S.O. 6027(E) came to be issued on 23.12.2022.

iii. The State Designated Agency, charged under clause (d) of Section 15 of the Energy Conservation Act, 2001, with coordinating, regulating and enforcing the provisions of the Act in Delhi, has been arrayed as a party but has not participated in these proceedings. The consequences of inaction on the part of the designated agency cannot be visited wholly upon the entity which it was required to supervise.

iv. The Energy Conservation Act, 2001 is remedial and not a revenue statute. Its purpose here is that the energy flowing through the network be accounted for and the losses reduced, which purpose is served by compliance rather than by a transfer of funds from one public authority to another, the burden whereof would ultimately fall upon consumers.

18. Upon a balancing of these considerations, and while holding the Respondent No. 1 fully bound by the Energy Conservation Act, 2001, the Adjudicating Officer is of the view that the discretion under Section 26 of that Act ought to be

exercised by declining to impose penalty upon this occasion. The Respondent No. 1 is a public authority discharging a statutory obligation in an area of National significance, has placed its constraints candidly on record, and has commenced furnishing the data required; and this is the first occasion of enforcement against it under a newly introduced framework. The Petitioner has prayed for penalty, but the Respondent No. 1 being a responsible distribution utility which has begun to respond to the requirements of the Petitioner, no penalty is being imposed at this instance, and a fair opportunity is instead afforded to it to comply.

19. The indulgence is extended once and once only. The Energy Conservation Act, 2001 applies to the Respondent No. 1 in exactly the same measure as to every other distribution licensee in Delhi. If the data and the reports required by the Petitioner are not hereafter furnished within the timelines fixed by this Order and by the Regulations, penalty shall be imposed in terms of the provisions of the said Act, and no prayer shall avail on the next occasion.

20. Issue II is answered accordingly. The enquiry sought by prayer (a) having been held, that prayer is answered; prayer (b) is declined, and the claim of ₹12,54,40,000/- is rejected.

<u>Issue III — Directions for compliance</u>

21. Prayer (c), by which the Petitioner seeks a direction to the Respondent No. 1 to comply with the Regulations and submit the requisite forms, is well founded and is granted in the terms set out hereunder. Such directions, and not a monetary sanction, are the appropriate response upon the present record.

22. In view of the above discussion and observations, the Adjudicating Officer hereby orders as under:

    a) The preliminary objection of the Respondent No. 1 to the maintainability of the Petition is rejected. The Respondent No. 1 is held to be a designated consumer under the Energy Conservation Act, 2001, bound by that Act and the regulations and notifications made thereunder in the same measure as every other distribution licensee in Delhi. The prayer for dismissal of the Petition, and for costs, is declined.

    b) The enquiry sought by prayer (a) of the Petition having been held, non-compliance by the Respondent No. 1 with the Regulations, 2021 read with S.O. 6027(E) dated 23.12.2022 is held to be established.

    c) For the reasons recorded at paragraphs 17 to 19 above, no penalty is imposed upon this occasion. Prayer (b) is declined and the claim of ₹12,54,40,000/- is rejected. This forbearance is extended once only and shall not be treated as a precedent, either in the case of the Respondent No. 1 or in the case of any other licensee.

d) The Respondent No. 1 shall, within ninety (90) days, constitute and operationalise the centralised energy accounting and audit cell required under the Regulations, 2021, designating a Nodal Officer and a certified Energy Manager, and intimate the particulars to the Petitioner, the Respondent No. 2. It is at liberty to engage an Independent Accredited Energy Auditor from the panel maintained by the Petitioner and to engage external support for the accounting function, accountability for compliance remaining with it.

e) The Respondent No. 1 shall file all outstanding periodic energy accounting reports, in the format specified by the Petitioner, within ninety (90) days, and the outstanding Annual Energy Audit Reports for FY 2023-24 and FY 2024-25 within one hundred and twenty (120) days. All subsequent reports shall be filed strictly within the periods prescribed by the Regulations as amended.

f) Liberty is reserved to the Petitioner to institute fresh proceedings upon any default on or after the dates at sub-paragraphs (d) and (e). The Respondent No. 1 is put on notice that upon any such default penalty shall be imposed in terms of the Energy Conservation Act 2001, and that the considerations which have weighed in declining penalty upon this occasion shall not be available to it hereafter.

g) Any penalty imposed hereafter shall be borne by the Respondent No. 1 from its own resources, and shall not be claimed as a permissible expense in its Aggregate Revenue Requirement, true-up or any tariff filing before this Commission, nor recovered from the consumers of the NDMC area.

23. Petition is disposed of in terms of the above.

24. Ordered accordingly.

S/d
(Ram Naresh Singh)
Adjudicating Officer-Cum-Member