
**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of Petition for review of the order dated 26.07.2022 passed by the Commission in petition no. 72 of 2021, under section 94 of the Electricity Act, 2003 and under order 47 rule 1 and 2 of the code of civil procedure, 1908 read along with regulation 40 of the MPERC (Conduct of Business) regulations, 2016.

ORDER

(Date of Order: 24th November' 2022)

M.P. Power Management Co. Ltd.

Shakti Bhawan, Block No. 2, Rampur,
Jabalpur (M.P.) – 482008

- **Petitioner**

V/s

M/s MB Power (Madhya Pradesh) Ltd.

Laharpur, Jaithari,
Anuppur, Madhya Pradesh- 484330

- **Respondent**

Shri Ashish Barnard, Advocate and Shri Nitin Kumar Khatri appeared on behalf of petitioner.

M.P. Power Management Co. Ltd. (MPPMCL) has filed this petition for review of the Commission's order dated 26.07.2022 passed in petition no. 72 of 2021 regarding adjudication of disputes due to non-payment of capacity charges / fixed charges for the period of April' 2020 and May' 2020 by invoking "Force Majeure" provision under PPA. The subject petition is filed under section 94 of the Electricity Act, 2003 and under order 47 rule 1 and 2 of the Code of Civil Procedure, 1908 read along with regulation 40 of the MPERC (conduct of business) Regulations.

2. The Petitioner M.P. Power Management Company Ltd. is a holding company of three distribution licensees in Madhya Pradesh. The Respondent, M/s MB Power (Madhya Pradesh) Limited is a generating company having 2x600 MW (1200 MW) coal-based Thermal Power Project at District Anuppur in Madhya Pradesh. The respondent's generating Units No. 1 and 2 achieved Commercial Operation (CoD) on 20.05.2015 and 07.04.2016, respectively.
3. The petitioner executed Power Purchase Agreement (PPA) dated 05.01.2011 with the Respondent for purchase of 30% power of installed capacity of respondent's power plant for a period of 20 years at the tariff determined by the Commission. The respondent

executed another PPA with the Government of Madhya Pradesh on 4th May' 2011 for supply of 5% of net electricity on variable charges as determined by the Commission.

4. Earlier, the Respondent M/s MB Power (MP) Power Ltd. had filed Petition No. 72 of 2021 regarding adjudication of dispute due to non-payment of Capacity Charges / Fixed Charges by MPPMCL to M/s MB Power (MP) Ltd. for the period April' 2020 and May' 2020 by invoking 'Force Majeure' provision under Power Purchase Agreement (PPA) in respect of nation-wide lockdown imposed due to Covid-19 pandemic.
5. Vide order dated 26.07.2022, the Commission had allowed the prayer made in aforesaid petition No. 72 of 2021 and disposed of the same with the direction to MPPMCL to pay the Capacity Charges / Fixed Charges for the period of April' 2020 and May' 2020 alongwith late payment surcharge in accordance to the provisions under the MPERC Tariff Regulations, 2020, the PPA executed between the parties read with Commission's order dated 5th April' 2020 regarding Late Payment Surcharge (LPS).
6. Aggrieved with the aforesaid order dated 26.07.2022, petitioner MPPMCL has filed the subject review Petition for review of the Commission's order dated 26.07.2022 passed in Petition no. 72 of 2021. In this petition, the petitioner contended that the Commission has committed a grave and manifest error in law and facts as it has held that the lockdown imposed due to the Covid-19 Pandemic in April' 2020 and May 2020 (First Wave) is not a Force Majeure event with respect to the Power Purchase Agreement dated 05/01/2011 executed between the Petitioner and the Respondent.
7. The Petitioner has broadly submitted the following in this review petition:
 - i. *The Government of India, vide its notification dated 24/03/2020 issued directions/guideline directing complete lock down in the country, thereby affecting the industrial operations, which are the major consumers of electricity, procured by the petitioner through generators like the Respondent no. 1. It is pertinent to mention that although the Generation, Transmission and Distribution was kept away from the purview of the lockdown, being essential services, but there was admittedly a drastic reduction in demand as shops, industries etc. were closed all of a sudden and same was a force majeure event hampering the operations of the Petitioner and the very intention of the planned power purchases in the state thereby putting the petitioner in a force majeure situation of having existing PPAs but no substantial consumption of power.*

- ii. *The petitioner herein evaluated the situation and looking to the drastic situation invoked the 'Force majeure Clause 11' of the PPA vide its letter dated 30/03/2020 and 31/03/2020 and enumerated the following hardships on the part of the Petitioner in procuring the power as per Capacity of the Respondent:*
- a. *Demand of state sharply decreasing due to closure of industries, shops and other major establishments due to the lockdown, forcing MPPMCL not to schedule or partly schedule power from some of the generators;*
 - b. *Massive disruption in the economic activity, which is likely to affect a significant proportion of consumers' capacity to pay electricity bills on time and therefore pending payments shall be delayed; and*
 - c. *Discoms being affected most by cash crunch being faced by public and communities.*
- iii. *It will be pertinent to mention herein that the Covid19 pandemic is a once in a century pandemic seen never before in the lifetime of the officials of the Petitioner company and therefore looking to the urgent, immediate and overnight shutdown of industries and commercial establishment the Petitioner invoked the force majeure clause of the PPA.*
- iv. *It is also pertinent to mention herein that the Respondent no.1 did not shut down its plant as it is supplying electricity to other states also such as Uttar Pradesh and Haryana and therefore the Respondent no.1 for its own commercial reasons kept its power plant operational for supplying power to the other states who had not invoked force majeure on the Respondent no.1.*
- v. *The Respondent no. 1 approached this Hon'ble Commission seeking payment of Capacity Charges of Rs. 34,12,83,756/- (Rupees Thirty-Four Crores, Twelve Lacs, Eighty-Three Thousand and Seven hundred Fifty-Six Only), deducted by the Petitioner against the Monthly Tariff Invoices raised by the Respondent no. 1 for the power supplied during the months of April and May 2020 due to restrictions imposed by the nationwide lockdown due to Covid-19 pandemic. This Hon'ble Commission by the order under review dated 26/07/2022 passed in petition no. 72/2021 has held that the lockdown imposed and the closure of shops and industries and establishment does not fall in the category of natural force majeure as mentioned in the PPA.*

- vi. *The aforesaid finding is completely perverse, manifestly erroneous and not in accordance with the evidence available on record including the terms of the PPA. Force Majeure has been clearly defined in the PPA as any event which wholly or partly prevents or delays the performance of the obligations of a party and covid-19 imposed lockdown was and admittedly is a force majeure event and therefore a natural force majeure event under the PPA and the Commission committed a grave error on the face of the record. Further it is also erroneous on the face of the record for this Commission to hold that the **Lockdown was not a 'Force majeure' Situation for the petitioner**, as the Government of India had exempted Generation, Transmission and Distribution from the lockdown, the said observation is against the spirit of plethora of Judgments of the Hon'ble Apex Court (having the force of law) which held that the Lockdown due to pandemic was a 'Force Majeure' Situation. Therefore, the order under review dated 26/07/2022 directing the petitioner to pay Fixed Capacity Charges for the period of April and May 2020 along with late payment surcharge to the Respondent no. 1 is incorrect and commits a grave error on the face of the record.*
- vii. *It is further submitted that the letter dated 27/03/2020 issued by the Ministry of Power pertains to and was limited to the opening and maintaining of letter of credit as a payment security mechanism by the distribution licensee, but more importantly Ministry also acknowledged the fact that the situation was a force majeure situation and instructed that the power may be scheduled even if the payment security mechanism is established for 50%. In this order of 27/03/2020 it was directed by the Union of India that looking to the unprecedented and force majeure situation the payment security mechanism for scheduling of power shall be at 50%. It is further submitted that in this order of 27/03/2020 Union of India clearly held in para-3 that the COVID19 pandemic is unprecedented and force majeure situation. It is submitted that it is the entire case of the review petitioner herein that the COVID-19 pandemic is a once in a life time pandemic and is a natural force majeure under the terms of power purchase agreement.*
- viii. *It is submitted that as per Article 11.3.1 (i) of the PPA the COVID-19 pandemic (Act of God) is a natural force majeure event therefore, as per clause 11.7.1 (c)(Para-2), no tariff is payable to the Petitioner for the duration of Force majeure by the Respondent.*
- ix. *Further vide letter dated 06/04/2020 and in particular at Para -3(C) of the said letter wherein the Union of India has clarified that the obligation to pay capacity charges as*

per the PPA shall continue is misplaced. It is submitted that the said letter of UOI does not in any manner state that capacity charges have to be paid even if the purchaser has invoked the force majeure clause. Further, it is reiterated that as per clause 11.7.1 (c)(Para-2) of the PPA, no tariff is payable to the Respondent for the duration of Force majeure by the Petitioner.

- x. It is submitted that a careful reading of para-3(C) of the letter dated 06/04/2020 of the Union of India highlights that the obligation to pay capacity charges is 'as per the PPA' and therefore, the Commission committed a grave error in this regard and ought to have to examined the payment of capacity charges in terms & provisions of the PPA, which contains rights and obligations of the parties, and in the instant case, the Petitioner had invoked the force majeure clause under Article 11.3 of the PPA and as per Article 11.7.1(C) (Para-2), no tariff is payable to the Respondent.*
- xi. That, reliance of the Respondent on the letter dated 28/03/2020 issued by the Union of India issued U/s 107 of the Electricity Act is also of no help to the Respondent as firstly the letter dated 28/03/2020 clearly acknowledges that the COVID-19 event is a force majeure event and secondly the directions given in the said letter are only in relation with reduction in the rate of late payment surcharge and do not give any direction that capacity charges has to be paid even in the event of invocation of force majeure by the purchaser (DISCOM) under the PPA.*
- xii. Also, the reliance of the Respondent on the letter dated 15/05/2020 is of no avail as it is a request to the generating company and the transmission company of the central sector by the Union of India, to offer a rebate to the distribution companies. In this regard it is most respectfully submitted that the respondent has in view of the said letter dated 15/05/2020 been successful in getting a rebate from NTPC and Power grid to the tune of Rs.147.08 Cr. & Rs. 96.42 Crores respectively. Thus, it is clear that COVID-19 pandemic is a Force Majeure and this Commission has erred in holding that the same is not a force majeure under the PPA.*
- xiii. Further another grave error committed is that the exemption from lockdown was for the employees of the Generators, Transmitters' and Distributors to move around freely and not for the Industrial Consumers of the State and hence the any clarification issued by the Ministry of Power Government of India does not in any way restricts the rights and obligations given out in the PPA.*
- xiv. That, to summarize it is most humbly submitted that the instant dispute is a contractual*

dispute governed by the PPA dated 05/01/2011 and in the instant case the lockdown had a far reaching effect and the demand for electricity had unpredictably dropped drastically, due to which the Petitioner could not have performed its obligation under the PPA, the liberty (exemption), granted by Gol to the officials of DISCOMs, TRANSCO, and Gencos to freely move during the lockdown to meet power requirement, cannot be construed otherwise and forgo the fact that the Force Majeure event did exist.

- xv. *That, the Petitioner against a similar order dated 18/11/2021 passed by this Commission in Petition No. 10/2021 had filed a Petition under Article 227 of the Constitution of India before the Hon'ble High Court of Madhya Pradesh which was registered as M.P. No. 564 of 2022. The Hon'ble High Court was initially pleased to grant ex-parte interim stay of the order dated 18.11.2021 vide its order dated 04/03/2022 and then after due consideration of the matter was pleased to relegate the Petitioner to review jurisdiction of this Hon'ble Commission vide its order dated 01/08/2022, and most importantly has while disposing the matter continued the interim stay granted on 04/03/2022 till the review petition along with the application for stay is taken up for hearing.*
- xvi. *It is further submitted that the Commission has erred and failed to appreciate that the invocation of force majeure was on account reduction in the demand due to the lockdown and closure of industries and commercial establishments and not on account of insufficiency of funds as has been held in the order under review. It is further submitted that the Petitioner herein and its Companies have on account of COVID-19 granted the benefit of non-payment of bills to various consumers and in this regard have not recovered substantial charges running in crores from the consumers of the State of MP and therefore it cannot be averred or submitted by the Respondent that the Petitioner is recovering monies from the consumers but not giving the same to the Respondent. It is therefore submitted that the impugned order is grossly erroneous and ought to be reviewed on the facts and grounds mentioned herein.*
- xvii. *It is submitted that the inter-alia findings recorded are similar to the order passed in Petition no. 10 of 2021 dated 18.11.2021. Hence due to this grave, glaring and manifest error leading to perversity in the order dated 26/07/2022 the Petitioner is preferring the instant review of the order dated 26/07/2022.*

8. The petitioner in the review petition has raised the following grounds-
- a. *For that, order under review dated 26/07/2022 passed in Petition no. 72 of 2021 is on the face of it grossly erroneous and mistaken and manifestly perverse.*
 - b. *For that, this Commission has erred in concluding that Lockdown Imposed by the Government of India due to Covid 19 pandemic, was not a force Majeure situation and the Petitioner is bound to pay fixed capacity charges to the Respondent.*
 - c. *For that, the Parties to the Contract of Power Purchase are their own lexicographers and hence the Petitioner in all its legal framework has the right to invoke "force majeure" clause in situation beyond its control to purchase the power as promised in the said contract.*
 - d. *For that the circulars of the Union of India do not state anywhere that capacity charges have to be paid notwithstanding the provisions of the PPA and invocation of force majeure.*
 - e. *For that, it is submitted that the Commission has erred and failed to appreciate that the exemption from lockdown was for the employees of the Generators, Transmitters' and Distributors and not for the Industrial Consumers of the State.*
 - f. *For that, it is further submitted that the Commission has erred and failed to appreciate that the invocation of force majeure was on account reduction in the demand due to the lockdown and closure of industries and commercial establishments and not on account of insufficiency of funds as has been held in the order under review.*

9. With respect to the aforesaid submissions the petitioner has prayed the following:

"In view of the facts and grounds mentioned in the Petition and on the basis of the record of the case in Petition no. 72 of 2021 and further in view of the instant review petition and documents annexed thereto, the humble petitioner most respectfully prays that this Hon'ble Commission may kindly be pleased to:

- i. *review the order dated 26/07/2022 passed in Petition no. 72/2021 and recall the order dated 26/07/2022 and consequently dismiss the Petition no. 72 of 2021.*

10. The petitioner has also submitted two Interlocutory Application's along with the petition and has broadly submitted the following-

- i. Application seeking **Interim Relief** under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, read with Section 94(2) of the Electricity Act, 2003 and read with Regulation 39 of MPERC (Conduct of Business) Regulations 2016. The Applicant submitted that, a similar order dated 18/11/2021 passed by the Commission in Petition No. 10/2021 the Petitioner had filed the Petition under article 227 of the Constitution of India before the Hon'ble High Court of Madhya Pradesh which was registered as MP. No. 564 of 2022. The Hon'ble High Court was initially pleased to grant ex-parte interim stay of the order dated 18.11.2021 vide its order dated 04/03/2022 and then after due consideration of the matter was pleased to relegate the Petitioner to review jurisdiction of this Commission vide its order dated 01/08/2022, and most importantly has while disposing the matter had also continued the interim stay granted on 04/03/2022 till the review petition along with the application for stay is taken up for hearing. Further, there are several other generators who have relied on the instant order under review to claim similar relief and therefore, there is huge public interest involved and therefore, the balance of convenience is in favour of the petitioner and irreparable damage and injury shall be caused to the petitioner if the order dated 26/07/2022 is not stayed the Petitioner would have to suffer irreparable loss.

Further, this Commission while hearing the Petition No. 53 of 2022 filed by the Petitioner/Applicant this Commission has been pleased to stay the order dated 18.11.2021 passed in Petition No. 10 of 2021 while taking the note of order dated 01.08.2022 passed by the Hon'ble High Court of MP. The Petitioner craves leave to refer and rely on the facts and grounds as stated in the Petition for the purposes of the instant application.

- ii. Application seeking exemption from filing Certified Copy of the Order 26.07.2022 and submitted that looking to the limitation, the appellant herein preferring instant review petition without certified copy, however, it will be produced at later stage as and when required by the Commission.

11. At the motion hearing held on 27.10.2022, representative of Petitioner requested for adjournment of matter due to absence of their counsel. Considering the request, case was rescheduled for motion hearing on 09.11.2022.

12. At the hearing held on 09.11.2022, the Petitioner was heard on the issue of admissibility of the subject petition and on application for interim relief. The case was reserved for order on admissibility. Meanwhile, vide daily order dated 10.11.2022, it was mentioned that order dated 26.07.2022 in petition No. 72 of 2021 passed by the Commission shall remain stayed till order as aforesaid is pronounced by the Commission.

Commission's Observations and Findings

13. The petitioner M.P. Power Management Co. Ltd, has filed this petition for review of the Commission's order dated 26.07.2022 passed in petition no. 72 of 2021 regarding adjudication of disputes due to non-payment of capacity charges / fixed charges for the period of April' 2020 and May' 2020 by invoking "Force Majeure" provision under PPA due to Covid-19 pandemic.
14. Vide aforesaid impugned Order dated 26.07.2022, the Commission had observed that the reasons/conditions for invocation of Force Majeure clause by MPPMCL were not in accordance to the provisions of the PPA dated 05.01.2011 and MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. Therefore, MPPMCL was directed to pay the Capacity Charges / Fixed Charges for the period of April' 2020 and May' 2020 along with late payment surcharge in accordance to the provisions under the MPERC Tariff Regulations, 2020 & the PPA executed between the parties read with Commission's Order dated 5th April' 2020 regarding reduction in late payment surcharge.
15. The petitioner has filed this review petition along with two Interlocutory Applications (i.e. application seeking Interim Relief and application seeking exemption from filing Certified Copy of the Order 26.07.2022) for review of the aforesaid Commission's order dated 26.07.2022. The observations of the Commission on each ground raised by the petitioner in subject review petition are as follows:

Ground:

- i. *"Order under review dated 26/07/2022 passed in Petition no. 72 of 2021 is on the face of it grossly erroneous and mistaken and manifestly perverse"*

Commission's Observations:

The Commission has passed impugned order dated 26.07.2022 after considering all relevant orders issued by Government of India in this regard, relevant provisions under PPA dated 05.11.2011 and the provisions under MPERC (Terms and Conditions for determination of tariff) Regulations, 2020. The Petitioner has also submitted that the

Commission's decision in its order dated 26.07.2022 that the lockdown was not a force majeure situation, is against the spirit of plethora of Judgment of Hon'ble Apex Court (having the force of law) which held that the Lockdown due to pandemic was a "Force Majeure" situation. The Commission observed that the Petitioner has neither submitted any judgment/ order in support of the contention nor any reference of Hon'ble Apex Court's order was given in this regard. Therefore, the contention of the petitioner seeking review on this ground has no merit.

Ground:

- ii. *"This Commission has erred in concluding that Lockdown Imposed by the Government of India due to Covid 19 pandemic, was not a force Majeure situation and the Petitioner is bound to pay fixed capacity charges to the Respondent."*

Commission's Observations:

The Commission in Para No. 37 of Order 26.07.2022 had observed the following:

"On perusal of the aforesaid conditions, the events for Natural force majeure as articulated under PPA are act of God, including but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years. When in definition certain terms are used and thereafter there is a general term, the general term has to be construed to the words used prior in the very same definition. However, in the instant case, the reasons enumerated by the Respondent No. 1 like sharp decrease in demand due to closure of industries, shops and other major establishments due to the lockdown and disruption in the economic activity caused reduction in collections of revenue by the Respondent No. 1 from the consumers does not fall under the events/conditions for natural force majeure under clause 11.3.1 of the PPA. Further, Article 11.4 which deals with Force Majeure exclusion states that the conditions like insufficiency of funds or the agreement becoming onerous to perform would not include under Force Majeure event."

In view of the above, the lockdown imposed due to the Covid – 19 pandemic does not cover under force majeure in terms of the provisions under PPA dated 05.01.2011. Further, services of power generation, transmission and distribution, being essential in nature, were exempted from the purview of the said lockdown. Ministry of Power,

Govt. of India vide its letter dated 06.04.2020 has also stated that the obligation to pay for Capacity Charges as per the PPA shall continue, as does the obligation to pay for transmission charges. Therefore, the contention of the petitioner seeking review on this ground has no merit.

Ground:

- iii. *“The Parties to the Contract of Power Purchase are their own lexicographers and hence the Petitioner in all its legal framework has the right to invoke ‘force majeure’ clause in situation beyond its control to purchase the power as promised in the said contract.”*

Commission’s Observations:

Force majeure is defined under Article 11.3.1 of the PPA and Natural Force Majeure events are defined under Article 11.3.1(i) of the PPA. There are certain events which are listed under natural force majeure and condition on which natural force majeure was invoked by the petitioner, is not covered under the PPA signed between both the parties.

Further, in Para 37 of the impugned order, the Commission had observed that reasons enumerated by the Respondent like sharp decrease in demand of electricity because of closure of industries, shops and other major establishments due to lockdown and disruption in the economic activity caused reduction in collection of revenue by the Respondent from the consumers does not fall under the events/conditions for natural force majeure under the PPA. Further, Article 11.4 which deals with Force Majeure exclusion states that the conditions like insufficiency of funds or the agreement becoming onerous to perform would not include under Force Majeure event. Therefore, the contention of the petitioner seeking review on this ground has no merit.

Ground:

- iv. *“The circulars of the Union of India do not state anywhere that capacity charges have to be paid notwithstanding the provisions of the PPA and invocation of force majeure.”*

Commission’s Observations:

With regard to contention of the review petitioner that the circulars of Union of India do not state that capacity charges have to be paid notwithstanding the provisions of the PPA, it is pertinent to mention that the Ministry of Power vide letter dated 27.03.2020 issued certain directions to generating companies and distribution

licensees regarding payment security mechanism. Subsequently, vide letter dated 06.04.2020, the Ministry of Power issued a clarification to its earlier order dated 27.03.2020 and stated that there has been some misconception regarding interpretation of its previous order and clarified that the obligation to pay for Capacity Charges by the procurer as per the PPA shall continue, as does the obligation to pay for transmission charges. Therefore, the contention of the petitioner seeking review on this ground has no merit.

Ground:

- v. *“It is submitted that the Commission has erred and failed to appreciate that the exemption from lockdown was for the employees of the Generators, Transmitters’ and Distributors and not for the Industrial Consumers of the State.”*

Commission’s Observations:

In para 38 of the impugned order dated 26.07.2022, the Commission had observed that National Disaster Management Authority (NDMA) vide Order dated 24.03.2020 issued directions to take effective measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. The Guidelines issued by NDMA provided for a complete lockdown in the country, while ensuring maintenance of essential services and supplies. In terms of the above, the activities relating to power generation, transmission and distribution, being essential in nature, were exempted from the nationwide lockdown imposed for restricting spreading of the Covid-19. Therefore, the interpretation of NDMA Order dated 24th March 2020 by the petitioner that the exemption was only for employees of generators, transmission and distribution is incorrect and the contention of the petitioner seeking review on this ground has no merit.

Ground:

- vi. *“It is further submitted that the Commission has erred and failed to appreciate that the invocation of force majeure was on account reduction in the demand due to the lockdown and closure of industries and commercial establishments and not on account of insufficiency of funds as has been held in the order under review.”*

Commission’s Observations:

The petitioner while issuing the Force Majeure Notice dated 30.03.2020 to the respondent had mentioned that the lockdown coupled with unexpected reduction in the power demand in the State of Madhya Pradesh had led to drastic reduction in collection of revenue from retail consumers, which qualifies as a force majeure event.

In this regard, in para 37 of the impugned order the Commission had observed that the reasons enumerated by MPPMCL like sharp decrease in demand due to closure of industries, shops and other major establishments due to the lockdown and disruption in the economic activity caused reduction in collections of revenue by MPPMCL from the consumers does not fall under the events/conditions for natural force majeure under clause 11.3.1 of the PPA. Further, Article 11.4 which deals with Force Majeure exclusion states that the conditions like insufficiency of funds or the agreement becoming onerous to perform would not include under Force Majeure event.

16. Having discussed and deliberated at length on the grounds stated by Petitioner for review in the subject petition, the Commission has examined the subject review petition in accordance with Rule 1 Order 47 of the Code of Civil Procedure, which provides that a person aggrieved by an order may apply for a review under the following circumstances:

- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
- (b) An error apparent on the face of the record;
- (c) For any other sufficient reason

17. In view of foregoing observations, the Commission has noted that grounds raised by the petitioner had been appropriately dealt in detail by the Commission in the order under review. Further, no new and important matter or evidence is produced in this review petition, nor any error apparent on the face of the record. Further, no any other sufficient reason is filed by the petitioner. Therefore, contention of the petitioner seeking review has found no merit.

18. Let us refer to a few judgments passed by the Hon'ble Supreme Court and various High Courts for the scope and effect of review under the CPC:

- (i) The judgment of the Hon'ble Supreme Court in Parsion Devi and Others vs. Sumitri Devi and Others [1997 (8) SCC 715], wherein it was held as under: *"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it*

is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise".

- (ii) In the case of Lily Thomas vs. Union of India, (2000) 6 SC 224, it is observed and held that: *"the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs Most Rev. Mar Poulouse Athanasius, AIR 1954 SC 526".*
- (iii) The Hon'ble Madhya Pradesh High Court in Sharda Begam v. Kallu, [2020 SCC OnLine MP 2419], decided on 23/10/20 held that: *"it is well settled that in the guise of review, a rehearing is not permissible. In order to seek review it has to be demonstrated that order suffers from error apparent on the face of record. The Court while deciding the application for review cannot sit in appeal over the judgment or decree passed by it. The review petitioner cannot be given liberty to readdress the Court on merits because it is not an appeal in disguise where the judgment/order is to be considered on merits."*

19. In light of the issues examined in preceding paragraphs of this order, it is observed that the issues raised by the petitioner in the present review petition do not fall under any of the circumstances articulated in Rule 1 Order 47 of CPC for review. Therefore, the subject review petition is not found admissible, hence disposed of and dismissed, accordingly.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S. P. S. Parihar)
Chairman