

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Sub: Review petition on behalf of MPPMCL under Section 94 and 149 of the Electricity Act read with Order 47 of the Code of Civil Procedure 1908.**

**Petition No. 27/2018**

**ORDER**

**(Date of Order: 9<sup>th</sup> January 2019)**

**M.P. Power Management Company Ltd. (MPPMCL),  
Shakti Bhawan, Rampur, Jabalpur – 482008**

- **Petitioner**

Vs.

**M/s. Adani Green Energy Limited,  
Adani House, Near Mithakhali,  
Six Road, Navrangpura, Ahmedabad – 380 009**

- **Respondent**

Shri Aashish Anand Bernard, Advocate appeared on behalf of the petitioner.

Shri Aditya Singh, Advocate and Shri Dilip Moolchandani, Advocate appeared on behalf of the Respondent.

2. The petitioner MP Power Management Co. Ltd. filed the subject petition for review of the Commission's Order dated 04.05.2018 in Petition No. 53/2017 filed by M/s. Adani Green Energy Limited in the matter of Section 142 and 146 of the Electricity Act, 2003 against the MPPMCL for non-compliance of the directions issued by the Commission in Order dated 29.07.2017 in Petition No. 14/2017. The Petition No. 14/2017 was filed before the Commission under Section 86(1)(e) of the Electricity Act, 2003 in the matter of seeking directions for payment of the Petitioner's outstanding invoices for the electricity delivered and late payment surcharge for the delayed payment in terms of the PPA dated 13.06.2016 by the Respondent and to set up payment security mechanism {including opening of revolving irrevocable letter of credit (cumulative)} to secure timely payment of Petitioner's invoices. By taking cognizance of various facts and circumstances vide Order dated 29.07.2017 the Commission disposed of the Petition No. 14/2017 by directing MPPMCL to make the payment of outstanding invoices to M/s. Adani Green Energy Limited in terms of the provisions of the PPAs/tariff order and to make suitable arrangements so that in future such delay is avoided. Further, in the event of non-compliance of the aforesaid order of the Commission by MPPMCL, M/s. Adani Green Energy Limited filed Petition No. 53/2017 for seeking appropriate directions of the Commission in the matter. Vide Order dated 04.05.2018 the Commission disposed of the Petition 53/2017 stating as under:

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10. *The Commission observes that despite order in Petition No. 14/2017, the Respondent is still not making payments to the petitioner. The Respondent has stated that the payment to the petitioner against the invoices was not disputed, but it is only under the liquidity crunch, the payments are delayed. On the other hand, the respondent has also stated that other parties are being paid because of the amicable settlement of waiving delayed payment surcharge. Therefore the Commission is of the view that by not paying to the petitioner, it is discriminating only because the petitioner is not agreeing for waiver of Delayed Payment Surcharge (DPS) as demanded by the respondent. Whereas, the PPA does not provide for waiver of DPS.*
  11. *The Commission is of the view that in spite of the Commission's order dated 29.07.2017 to make the payment to the petitioner in terms of PPA, the payments were not made to the petitioner which is clear non-compliance of the Commission's order by the Respondent. The Commission's order cannot be read as a direction for non-payment of bills till the life of PPA, as being contended by the respondent. The Commission's Order also directed the respondent to make suitable arrangements so that in future such delay is avoided. It clearly shows that Commission's order is to avoid such delay in payment in future, whereas the respondent is maintaining that it can continue to delay the payment including DPS in terms of PPA. This is completely wrong interpretation of the Commission's order and PPA, which needs to be read in totality.*
  12. *Therefore, the Commission directs the respondent to pay all the legitimate dues in terms of PPA to the petitioner within 45 days of this order. The Commission also directs the respondent to pay a penalty of Rs. 1 lakh to the Commission within 45 days towards non-compliance of the Commission's order dated 29.07.2017.*
3. Being aggrieved by the aforesaid order, MPPMCL has filed the instant petition and has prayed as under:
- i. Review the impugned order dated 04.05.2018 passed in Petition No. 53/2017 and hold that Review Petitioner is complying with the order dated 29.07.2017.
  - ii. Recall/ review the order levying a penalty of Rs. 1 lakh on the Review Petitioner.

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- iii. Award exemplary direction and penalty on Respondent to discourage indulgence and misrepresentation of facts and circumstances before judicial and quasi-judicial bodies.
- iv. Pass any other order in the interest of justice.

4. The case was listed for motion hearing on 10.07.2018. During the motion hearing, the petitioner sought adjournment as the main counsel Shri A.A. Bernard was not available. The Commission considered the request for adjournment. The case was listed for motion hearing on 28.08.2018.

5. During the motion hearing held on 28.08.2018, the petitioner restated the contents of the petition and stated that it has been making payments to the Respondent as per the availability of the resources and there is no non-compliance of the Commission's orders in the matter. The Commission admitted the petition for further hearing and directed the petitioner to submit the detailed status of the payment of principal and the delayed payment surcharge in the matter, by 18.09.2018. In the meanwhile, the petitioner was directed to serve a copy of the petition to the respondent within a week's time and the Respondent was directed to submit its reply by 18.09.2018, with a copy to the other party. The case was listed for hearing on 25.09.2018.

6. During the next hearing held on 25.09.2018, Shri Manoj Dubey, Advocate, MPPMCL on behalf of the Petitioner requested the Commission for adjournment in the matter as the Advocate and OIC in the case were not present in the hearing. The Commission accepted the request. The case was listed for next hearing on 09.10.2018.

7. The Respondent submitted the reply dated 05.10.2018. During the hearing held on 09.10.2018 the counsel for petitioner submitted that there had not been any willful disobedience on account of the petitioner in the matter of the Commission's order. The respondent contested that whether re-argument in the instant matter being a review petition is permissible. Further, by taking cognizance of the information submitted vide submission dated 29.09.2018, the Commission directed the petitioner to resubmit the statement in respect of all renewal sources by 30.10.2018, indicating date wise seniority wise list of the bills received, payment made thereof including the details of delayed payment surcharge outstanding as on 01.04.2017 and month wise thereafter up to 30.09.2018 . The case was listed for next hearing on 13.11.2018 which was

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adjourned and rescheduled on 15.11.2018.

8. The counsel for the petitioner Shri Aditya Singh vide his e-mail dated 12.11.2018 requested the Commission for adjournment of the hearing scheduled on 15.11.2018. During the hearing held on 15.11.2018, the representative of the Petitioner requested for adjournment of the hearing. The Commission has considered the request. The representative of the Petitioner further requested the Commission to allow them to file executive summary of the data furnished by them vide letter No. 05-11/RO/P-27-2018/1197 Dated 06.11.2018. The Commission considered the request and directed to submit the same in hard and soft copy by 27.11.2018. The case was listed for next hearing on 12.12.2018.

9. During the hearing held on 12.12.2018, the parties argued before the Commission at length in favour of their respective contentions in the matter. The representative of the Petitioner by referring to various facts and circumstances submitted that there had not been any willful disobedience on account of the petitioner in the matter of the Commission's order while the respondent by taking cognizance of the various judgments of the Apex Court continued to contest that whether re-argument in the instant matter being a review petition is permissible? Both the parties requested the Commission for allowing them 10 days time for filing their written submission of their respective arguments. The parties submitted their written arguments on 31.12.2018.

10. The petitioner vide the petition and submission dated 31.12.2018 prayed the Commission to review the impugned order dated 04.05.2018 passed in Petition No.53/2017, hold that petitioner is complying with the order dated 29.07.2017 and to recall/review the order levying a penalty of Rs. 1 lakh on the Review Petitioner. The petitioner has broadly submitted as below:

- (i) *At this stage, it is pertinent to mention that the Respondent herein had filed the instant Petition No.53/2017 on 21.11.2017 wherein it had inter-alia contended that no payment is being made to the Respondent herein whereas payments to other generators are being made. It was inter-alia contended by the Respondent that the Review Petitioner is not complying with the order dated 29.07.2017. Therefore, Respondent petitioned before this Hon'ble Commission under Section 142 and 146 of the Electricity Act and prayed for the reliefs as mentioned in the petition.*

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(ii) *In Petition 14/2017, Hon'ble Commission had directed the Review Petitioner to make payment of outstanding invoices and make suitable arrangements to avoid future delays. The directions of Hon'ble Commission are extracted hereunder:*

*“Under the aforesaid circumstances, the Commission directs the respondent to make the payment of outstanding invoices to the petitioner in terms of the provisions of the PPA/tariff order. The Commission further directs the respondent to make suitable arrangements so that in future such delay is avoided”.*

(iii) *Pursuant to orders of Hon'ble Commission, Review Petitioner endeavored to make as much payment as possible subject the availability of funds from various sources. The same is established from the fact that Review Petitioner had paid Rs. 4,84,33,085 (i.e. about Rs. 4.84 crore) to Respondent during 23.08.2017 to 16.11.2017 i.e. post order of Hon'ble Commission on 29.07.2017 and before the filing of Petition 53/2017 by Respondent. This fact in itself is a proof that Review Petitioner was duly complying with the orders of Hon'ble Commission as per availability of funds and did not require Respondent to approach Hon'ble Commission through Petition 53/2017 on 21.11.2017. Further, it is most noticeable fact that the above payments were done against invoices raised till March 2017, which strongly contradicts the representation of Respondent that payments had not been made against invoices from December 2016. This implies that Respondent misrepresented with gray intent, through Petition No. 53/2017, before Hon'ble Commission on payments by the Review Petitioner and necessitates exemplary punishment on the Respondent which shall act as a precedent to all involving in acts of misrepresentation with mala fide intent. The submissions of Respondent vide Petition No. 53/2017, amounting to misrepresentation of facts and circumstances, are extracted hereunder for reference:*

*“It is stated that despite aforesaid specific directions of this Hon'ble Commission, the Respondent has neither cleared the (i) invoices raised by the Petitioner for Late Payment Surcharge (LPS)*

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*applicable on delayed payments under Article 7.6.3 of the PPA from March, 2016 onwards and (ii) invoices raised by the Petitioner under Article 7.6.1 of the PPA seeking payment for power supplied by the Petitioner from December 2016 till date”. [Para 2 of Petition 53/2017 filed by Adani Green Energy Ltd.]*

*“It is stated that at the time of filing the present Petition, a period of 4 Months (Four Months) months has elapsed without compliance of the directions issued by this Hon’ble Commission in Petition No. 14 of 2017 directing .....(contd.)”. [a part of Para 3 of Petition 53/2017 filed by Adani Green Energy Ltd.]*

*Further, it is submitted that out of total outstanding of Rs.14,79,58,898/- (i.e. about 14.79 crores) as on 29.07.2017, Review Petitioner has progressively endeavoured to make as much payments as possible as per availability of funds from various sources. Therefore, prima-facie there was compliance of the order dated 29.7.2017 as per fund availability, without compromising with payments of other equally valuable generators and suppliers.*

- (iv) Therefore, it can be seen that immediately after the passing of the order dated 29.7.2017 and even prior to the passing of the said order the Review Petitioner herein has been making the payments to the Respondent herein and therefore there is no non-compliance of the order dated 29.07.2017.*
- (v) As on the date of the impugned order dated 04.05.2018, out of total amount of Rs.14.79 crores pending as on 29.07.2017, only Rs.1.83 crores was pending as dues as on 04.05.2018. This means almost 88% outstanding payments were progressively made as per fund availability, without compromising with payments of other generators. Therefore, the Review Petitioner herein has never been non-compliant or willfully disobeyed the order dated 29.07.2017 to an extent inviting levy of penalty of Rs.1 Lakh vide order dated 04.05.2018. The current outstanding balance payable to the Respondent as of 05.06.2018 is Rs. 2.49 crore, including subsequent bills invoiced months of February to April, 2018.*

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- (vi) *Over the years from the Financial Year 2012-2013 to Financial year 2017-2018 the total power purchase cost has increased from 14,538 crores to Rs.30,185 cores. Against such increase in power purchase cost, remittances from DISCOMS have not increased proportionately. Hon'ble Commission would appreciate that even in these difficult circumstances the Review Petitioner herein has been dutifully paying all its liabilities in a systematic and time bound manner to all the parties from which it purchases power.*
- (vii) *The Review Petitioner first makes payment to the large generators such as NTPC, NHDC etc from whom it is procuring major share of power. Thereafter, it manages the payments to other generators. However, at no stage can it be alleged or averred by any party that its bills are not being paid at all.*
- (viii) *It will be seen that the share of payment made to the wind generators as percentage of cash remittance from the DISCOMS has grown from 0.7% in Financial Year 2014-15 to 8.4% in Financial Year 2017-2018. On the other hand, share of wind power purchase cost as percentage of total power purchase cost has grown from 0.7% in Financial Year 2014-15 to 8.1% in Financial Year 2017-18. These facts signify that payments to wind generators is in a better position.*
- (ix) *The Review Petitioner has never been in any non-compliance or willfully disobeyed the order dated 29.07.2017. As submitted hereinabove, it has been making payments to the Respondent on regular basis as per availability of funds without any interventions. The diligent endeavors of the Review Petitioner is reflected in the fact that immediately after passing of the order dated 29.07.2017 and before filing of the Petition No.53/2017, an amount of about Rs.4.8 crores was paid and continued beyond that as well. As a result, only Rs.2.49 crores is pending as of 05.06.2018, including subsequent bills invoiced months of February to April, 2018.*
- (x) *The payments made by the Review Petitioner to all its generators is better and regular as compared to other States distribution companies in India which have accumulated huge liabilities and are not even able to make their most basic payments. This signifies that the Review Petitioner herein is performing much*

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*better and meeting its contractual and payment obligations in a better way. It is submitted most respectfully that the Review Petitioner, who has several power purchase agreements with several generators, is meeting all its obligations and making its due payment to all its generators in a time bound and efficient manner without discriminating against any other party.*

- (xi) Review Petitioner has huge payment obligations to MP Genco as well. But, payment to MP Genco is also done as per fund availability without any favorable discrimination. To meet all its payment obligations, the Review Petitioner had arranged Rs. 2400 crore funds from REC & PFC as medium term loan and Rs. 1580 crore as cash credit from banks and FIs during Financial Years 2017-18.*
- (xii) The endeavors of Review Petitioner is duly recognized by GoI in PRAPTI application launched recently, which depicts MP as one of the States with significantly better payment history to generators.*
- (xiii) The Review Petitioner herein is not in willful disobedience or non-compliant of the order dated 29.07.2017 to an extent to invite invocation of provisions of Section 142 of the Electricity Act by Hon'ble Commission and levy penalty of Rs. 1 Lakh. Rather, Respondent made misrepresentations of facts and circumstances to a great extent and calls for exemplary penalty on Respondent.*
- (xiv) The Review Petitioner had also filed an application under Order 21 Rule 46 of the Code of Civil Procedure wherein it had submitted that it was liable to recover certain monies from an associated company of the Respondent herein [by the name of the Adani Enterprises (Power Division)] to the tune of Rs.2 Crores 26 Lakhs. However, this Hon'ble Commission has not passed any order on the referred application. Despite that the Review Petitioner, without any prejudice to its right of recovery to be made from the associated company of the Respondent, has made payments to the Respondent on regular basis. It is therefore submitted that prima-facie no case was made out for taking action under section 142 of the Electricity Act, 2003. The initial copy of order was received by Review Petitioner on 09.05.2018 and the instant petition is within limitation.*

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(xv) *The Review Petitioner relies on the judgements of the Hon'ble Supreme Court reported in 2014 (16) SCC 204 "Ram Kishan Vs. Tarun Bajaj" in particular from para 11 to 16 and 2014 (14) SCC 446 "TC Gupta Vs. Bimal Kumar" in particular para 10, wherein the Hon'ble Apex Court has explained that the power of contempt is to punish for "Willful" disobedience and not to be exercised when the non-compliance is due to certain other factors. It is submitted that without prejudice there is no non-compliance of the order dated 29.7.2017 of this Hon'ble Commission as payments were made and are being made to the Respondent.*

11. The respondent vide the replies submitted on 05.10.2018 and 31.12.2018 has disputed and denied each and every averment made by the Petitioner in its review petition. The respondent further stated that the Review Petition is not maintainable and it should be dismissed with exemplary cost. This Review Petition has been evidently preferred purely as a dilatory tactic, to delay and deny substantial payments that are due and payable to the Respondent pursuant to the orders passed by the Commission. The respondent has broadly submitted as below:

(i) *At para 5 of the Review Petition, the Review Petitioner alleged that the Respondent misrepresented the Commission. The Petition No. 53 of 2017 was filed in the last week of October, 2017 and the Respondent is standing by it's written submission that the petition was reflecting true statement of account. Respondent, in the instant case, in its bona fide approach informed the Hon'ble Commission on 20.02.2008 about updated claim status.*

*It is relevant to point that out till date not a single penny has been paid for delay payment surcharge which is a continuous specific violation of the order of the Hon'ble Commission and even payments are not being made in terms of the Power Purchase Agreement.*

***In its own admission, the Petitioner stated the payments were made with the delay of around 7-8 months without any delay payment surcharge.***

(ii) *Review Petitioner at para 5 misguiding this Hon'ble Commission placing wrong document in its Annexure P-4 and Annexure P-5. Respondent crave leave of this Hon'ble Commission to submit relevant document to demonstrate that the Review*

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*Petitioner is misguiding this Hon'ble Commission and as a right to not make payment it is silent on delayed payment surcharge and erratic schedule.*

- (iii) Review Petitioner's continuous request letter to the Respondent for waiving delay payment surcharge and citing example of other developers demonstrate that they have been discriminating. The Hon'ble Commission in its order in Petition No. 53/2017 recorded submission of the Review Petitioner to the effect that the payments are being delayed due to liquidity crunch and other parties are being paid because of amicable settlement.*
- (iv) Review Petitioner, in the garb of the Review Petition is rearguing the case. Petition No. 14 of 2017 in clear terms state the payment should be done in terms of PPA and Tariff Order which stipulates payment within 30 days of the submission of invoice and delay shall attract delay payment surcharge.*
- (v) During the course of the hearing and in written submission, Review Petitioner went to the extent of the submission that the PPA does not stipulate a definite period of payment and the Developer is left with only two option*
  - a) Terminate the PPA; or*
  - b) wait till Review Petitioner does not decide to make payment.*
- (vi) Review Petitioner's own submission that at the time of the pronouncement of the order (i.e. 04.05.2018) only 1.83 crore was pending from the invoice of 29.07.2017 (For the record, the Respondent is challenging the details of the pending payment submitted by the Review Petitioner and crave leave of this Hon'ble Commission to submit requisite document at the time of hearing). For the sake of argument, even if we concede but not admit that only INR 1.83 crore was pending at the time of the order, can it be considered that the Review Petitioner was complying with the PPA/Tariff Order by delaying payment of Principal amount for more than one year, forget delayed payment surcharge. Review Petitioner is taking pride in continuous non-payment of the principal amount for more than one year.*
- (vii) Review Petitioner has nowhere submitted in the Petition that it has made any payment for delayed payment surcharge. It is a clear violation of the order of the*

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*Hon'ble Commission which specifically quoted paras from order dated 29.07.2017 to conclude that the*

- a) *Commission's order was to avoid delay in payment in future and*
- b) *to make payment of delayed payment surcharge.*

(viii) *Para 11 of the order is quoted herein below:*

*“The Commission is of the view that in spite of the Commission's order dated 29.07.2017 to make the payment to the petitioner in terms of PPA, the payments were not made to the petitioner which is clear non compliance of the Commission's order by the Respondent. **The Commission's order cannot be read as a direction for non-payment of bills till the life of PPA, as being contended by the respondent. The Commission's Order also directed the respondent to make suitable arrangements so that in future such delay is avoided. It clearly shows that Commission's order is to avoid such delay in payment in future, whereas the respondent is maintaining that it can continue to delay the payment including DPS in terms of PPA. This is completely wrong interpretation of the Commission's order and PPA, which needs to be read in totality.**”*

*Therefore, Commission in clear terms observed that there cannot be any delay payment.*

(ix) *It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In Parsion Devi and Ors. v. Sumitri Devi and Ors.: (1997) 8 SCC 715, Supreme Court held as under:*

*“9. Under Order 47 Rule 1 Code of Civil Procedure 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 Code of Civil Procedure. In exercise of the jurisdiction under Order 47 Rule 1 Code of Civil Procedure it is not permissible for an erroneous decision to be "reheard and corrected". A*

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*review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."*

*In the instant case, the Review Petitioner has devoted substantial portion of the Petition in demonstrating their genuine effort and there is not a single para which suggest error apparent on the face of the record, like all payments were being made in terms of the PPA etc.*

(x) *The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. (Rajender Kumar and Ors. vs. Rambhai and Ors. (18.04.2002 - SC)*

(xi) *Section 94 (1) f of the Electricity Act, 2003 ("Act") empowers Electricity Regulatory Commission to exercise same power as vested in civil court for reviewing its own decision.*

*Section 94 (1) (f) reads as under:*

*Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:*

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(f) *reviewing its decisions, directions and orders.*

(xii) *The power of a Civil Court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:*

*Order 47 Rule 1*

1. *Application for review of judgment-*

(1) *Any person considering himself aggrieved-*

(a) *by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

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*(b) by a decree or order from which no appeal is allowed, or  
(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

*(xiii) Bare perusal of various Judgments confirms following consideration for exercise of review jurisdiction:*

*a) An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions.*

*b) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.*

*c) The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review *ex debito justitiae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier.*

*(xiv) New Record produced by the Review Petitioner strengthen our case because it also reflects continuous delay payment and non-payment of delay surcharge and had it been produced at the stage of the hearing of the petition no. 53 of 2017, it*

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*would not have changed the outcome of the order. The Respondent is still pursuing case of non compliance by the Petitioner.*

- (xv) *Filing of this Review Petition even after continuous flagrant non compliance of the terms of the PPA/Tariff Order suggests following:*
- a) Review Petitioner considers delay payment as its right; and*
  - b) Payment for delay Payment surcharge in PPA / Tariff Order / Commission's Order is a mistake.*
- (xvi) *The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.*
- (xvii) *In the Instant case, the Petitioner has been rearguing its case and has failed to point out any legal for review. It has been alleged that the Respondent has misrepresented this Hon'ble Commission. Respondent is contesting this claim and requesting the Hon'ble Commission to impose exemplary cost on the Petitioner for this willful misleading submission. The Petitioner has not only submitted its updated claim in its petition Number 53/2017 (filed in last week of the October) and it even apprised this Hon'ble Commission about it's updated claim in its written submission filed on 20.02. 2018).*
- (xviii) *The Petitioner is even on date has not been complying with the order of the Commission for following reasons:*
- a) The Petitioner has not paid any amount towards its obligation of late payment surcharge till date;*

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b) *Payments are still being made on irregular basis.*

*Review Petitioner has nowhere submitted in the Petition that it has made any payment for delayed payment surcharge. It is a clear violation of the order of the Hon'ble Commission which specifically quoted paras from order dated 29.07.2017 to conclude that the*

a) *Commission's order was to avoid delay in payment in future and*

b) *make payment of delayed payment surcharge.*

(xix) *Para 11 of the order is quoted herein below:*

*“The Commission is of the view that in spite of the Commission's order dated 29.07.2017 to make the payment to the petitioner in terms of PPA, the payments were not made to the petitioner which is clear non compliance of the Commission's order by the Respondent. **The Commission's order cannot be read as a direction for non-payment of bills till the life of PPA, as being contended by the respondent. The Commission's Order also directed the respondent to make suitable arrangements so that in future such delay is avoided. It clearly shows that Commission's order is to avoid such delay in payment in future, whereas the respondent is maintaining that it can continue to delay the payment including DPS in terms of PPA. This is completely wrong interpretation of the Commission's order and PPA, which needs to be read in totality.**”*

*Therefore, Commission in clear terms observed that there cannot be any delay payment.*

12. The review of the Order of the Commission would be called upon from Section 94 (1)(f) of the Electricity Act, 2003 which stipulates as below:

94. Powers of Appropriate Commission. – (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

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(a) -----

(b) -----

(f) Reviewing its decision, directions and orders;

13. Regarding the review, the Commission observed that as per powers of Civil Court for review of its decision/ judgment under Section 114 of CPC, the grounds on which review can be sought are given in Order 47 Rule 1 of CPC, which are enumerated below :

- (a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;
- (b) on account of some mistake or error apparent on the face of the record or;
- (c) any other sufficient reason.

14. Having heard the Review Petitioner and the Respondent and after considering the facts and circumstances as brought before the Commission during the hearings held and submission made by the Parties, the Commission is of the view that review of an order has a limited purpose based on the aforesaid requirements. In the instant case, the Commission has observed that the petitioner could not produce any new and important matter or evidence for consideration of the Commission. Also, the petitioner could not establish either any error apparent on the face of the record or any other sufficient reason. The review petitioner could not show any additional matter or evidence which was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Commission earlier. As such there is no ground on the basis of which the review of the order dated 04.05.2018 could be considered.

15. In view of the above, the review petition no. 27/2018 stands disposed of.

Ordered accordingly.

**(Mukul Dhariwal)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**