CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 20/RP/2016
in
Petition Nos.207/GT/2013 & 260/GT/2014

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Date of Order: 7th July, 2017

In the matter of

Review of Commission's order dated 9.2.2016 in Petition Nos.207/GT/2013 and 260/GT/2014 pertaining to approval/revision of tariff after truing-up exercise based on actual capital expenditure incurred in respect of Muzaffarpur TPS, Stage-I (220 MW) for the period from COD of Unit-I (1.11.2013) to 31.3.2014.

And in the matter of

Kanti Bijlee Utpadan Nigam Ltd,
NTPC Bhawan, Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003 ……**Petitioner**

Vs

Bihar State Power (Holding) Company Ltd
(*formerly Bihar State Electricity Board*)
Vidyut Bhawan, Bailey Road
Patna -800021 **……..Respondent**

Parties Present:

Shri M.G. Ramachandran, Advocate, KBUNL
Ms. Anushree Bardhan, Advocate, KBUNL
Ms. Poorva Saigal, Advocate, KBUNL
Shri R.P. Singh, KBUNL
Shri Chandan Goyal, KBUNL
Shri R. B. Sharma, Advocate, BSPHCL

ORDER

The Commission by a common order dated 9.2.2016 in Petition Nos. 207/GT/2013 and 260/GT/2014 determined the tariff of Muzaffarpur TPS, Stage-I (220 MW) (the generating station) for the period from COD of Unit-I (1.11.2013) to 31.3.2014 in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations').

2. Aggrieved by the said order dated 9.2.2016, the petitioner has filed this petition seeking review of the said order on the following issues, on the ground that there are certain errors apparent on the face of the order:

(i) *Non-admittance of capital expenditure other than transfer price of Unit-I;*
(ii) *Non-admittance of IDC;*
(iii) *Double deduction of revenue earned from sale of infirm power;*
(iv) *Mismatch in value of taken over assets in auditor's certificate and physical valuation report;*
(v) *Non-consideration of liabilities discharged between 1.11.2013 and 31.3.2014;*
(vi) *Pro-rata reduction in IEDC due to time overrun.*

3. The matter was heard on 'admission' on 24.5.2016 and the Commission by interim order dated 1.6.2016 admitted the petition on the above issues and issued notice to the respondents. After completion of the pleadings in the matter, the parties were heard and the Commission reserved its orders on 28.7.2016.

4. The respondent, Bihar State Power (Holding) Company Limited (BSPHCL) has filed its reply and the petitioner has filed its rejoinder to the same. Based on the submissions of the parties and the documents available on record, we proceed to examine the reliefs prayed for by the petitioner as stated in the subsequent paragraphs.

Non-admittance of capital expenditures other than transfer price of Unit-I for the purpose of tariff

5. The Commission in paras 47 and 48 of the order dated 9.2.2016, decided as under:

> *"47. Additional requirement of funds arising out of variation between initial estimated cost and the revised cost and/ or final completed cost shall be arranged by Ministry of Power from Planning Commission under RSVY and by the state Government shall be released to BHEL/ NTPC for smooth execution of the work."*
>
> *48. It is clear from the above that in the entire project cost, only the asset takeover was envisaged through fund infusion by the Petitioner Company and all the other expenditure was to be met through Government funding. Any expenditure exceeding the estimated cost is required to be met by MoP, GOI and the State Govt. As such, the takeover price of Unit-I (as per Auditor certificate) amounting to Rs. 1368.00 lakh could only be allowed as the capital cost incurred by the petitioner as against the cash expenditure of Rs 4095.38 lakh. Accordingly, the admissible capital cost for Unit-I will be Rs. 1368.00 lakh."*

6. The petitioner in the review petition has submitted as under:

(i) The MOU was executed for deciding on modalities related to implementation of Renovation & Modernization/Life Extension Scheme (R&M/LE Scheme) wherein the Govt. of Bihar recommended M/s. BHEL as implementing agency for R&M/LE Scheme and

Planning Commission, GOI agreed to provide grants for implementation of R&M/LE Scheme.

(ii) It has also submitted that the funds for schemes under DPR were provided by GOI under RSVY and funds by GOI under RSVY were capped at ₹471.80 crore as per MOP, GOI letter dated 26.5.2009.

(iii) The petitioner has stated that the estimated cost of ₹471.80 crore as per approved DPR for R&M does not include Pre-commissioning expenses, IEDC expenses and Interest During Construction (IDC). It has submitted that the funding for these expenses for successful commissioning was arranged by the petitioner and this fact has escaped the attention of the Commission.

(iv) As against the total grant of ₹471.80 crore, the approved amount for Unit-I is ₹235.90 crore and therefore, the initial estimated cost for R&M of Unit-I was ₹235.90 crore and the final completed cost of R&M of Unit-I excluding Pre-commissioning expenses, IEDC, IDC is ₹237.98 crore (as per auditor's certificate dated 18.2.2014), and the same is within limits. Thus, the Commission has wrongly held that an excess expenditure of ₹44.24 crore has been incurred in the R&M of Unit-I.

(v) The capital expenditures disallowed for the purpose of tariff by the Commission, citing clause 2.1 (e) of MOU are Pre-Commissioning expenses, IEDC, IDC without which successful commissioning of units would not have been possible. These expenses were not part of R&M Scheme as approved by CEA and therefore same could not be considered for funding through grant from Planning Commission/Govt. Of India/ or the Government of Bihar. The petitioner has also taken up with the Govt. of Bihar, for funding of these additional associated expenses such as Pre-commissioning, IEDC and IDC etc. through letter dated 10.9.2013 which was agreed by the Govt of Bihar vide letter dated 11.10.2013 for funding of these additional expenditure in debt: equity ratio of 70:30.

(vi) The Commission has erred in concluding that the Pre-Commissioning expenses, IEDC, IDC were covered under R&M Schemes approved by CEA. These expenses were actually funded by the petitioner for successful completion of R&M of Unit-I and achieving its commercial operation and therefore, these expenses do not fall under the purview of Clause 2.1(e) of the MOU as wrongly considered by the Commission.

(vii) The Power Purchase Agreement executed on 22.8.2006 and all provisions of same were adopted as integral part of the GOB Transfer Notification [vide Clause 6(a)]. Also, clause 7.1.1(i) and 7.1.1(ii) of the PPA provides for treatment of capital expenditure that is incurred other than through grant.

7. Accordingly, the petitioner has prayed that the expenses incurred i.e. Pre-Commissioning expenses, IEDC, IDC may be allowed for successful commissioning of units as specified in the PPA for the purpose of tariff.

8. The respondent has submitted that the estimated cost of ₹471.80 crore does not include Pre-commissioning expenses, IEDC expenses & IDC. It has further submitted that the DPR of the petitioner did not include this amount as this was not the case of commissioning of the Unit, but re-commissioning after R&M. The respondent has also submitted that the petitioner is responsible for his own act of omission or commission as it could not justify the claim to the

CEA/MOP/Planning Commission. The respondent has pointed out that the funds by GOI were capped and the claim of the petitioner is therefore an afterthought.

9. We have examined the matter. It is observed that out of the total RSVY grant of ₹471.80 crore, an amount of ₹235.90 crore each was apportioned to Units –I and II of the generating station. It is also evident from order dated 9.2.2016 that the Commission, considering the fact that Unit-I of the generating station was in a more deteriorated condition as compared to Unit-II, allowed an higher expenditure of ₹280.14 crore (including IEDC and pre-commissioning expenses) towards R&M of Unit-I . This amount was ₹44.24 crore more than the apportioned cost of ₹235.90 crore of Unit-I. Also, from the letter dated 26.5.2009 of the MOP, GOI, it is evident that any expenditure over and above the estimated cost of ₹471.90 crore approved will be borne by State Govt. The relevant portion is extracted hereunder,

> *"proposal for undertaking the R&M of MTPS at a cost of ₹471.80 crore may be considered to be placed before Empowered Committee for its consideration subject to the following:*
>
> *i) Scope of work as finalized will not be altered.*
>
> *ii) Any firm time schedule be drawn for execution of work, which shall be vigorously followed.*
>
> *iii) Any expenditure over and above the estimated cost approved now will be borne by State Govt."*

10. In addition, the Commission in para 28 of the order observed as under:

> *"28.As regards the grants sanctioned/ availed for the project, the petitioner has submitted the details vide affidavit dated 25.11.2014 as under:*
>
> *R&M of BTG Package of Unit-I and Unit-II (BHEL Scope)*
> *Fund approved: ₹28476.00 lakh*
> *Fund received: ₹24967.00 lakh*
>
> *R&M of BOP (Common facilities) KBUNL Scope*
> *Fund approved: ₹18704.00 lakh,*
> *Fund received: ₹18000.00"*

11. It is evident from the above that the petitioner has received the total RSVY grant of ₹42967 lakh (24967 + 18000) for R&M package including BOP, but has only capitalized an amount of ₹28013.59 lakh up to the COD of Unit-I of the generating station. In our view, the petitioner has sought to reopen the case on merits which is not permissible in review. There being no merit in the submissions of the petitioner for review of the order dated 9.2.2016, the prayer of the petitioner is disallowed on this ground. However, the issue of treatment of expenditure incurred, if any over and above the grant amount of ₹471.80 crore towards R & M of Units- I & II of the

generating station shall be dealt with once the R & M of both the units are complete.

Non Admittance of IDC

12. The Commission in para 30 of the order dated 9.2.2016 observed as under:

> "*30. It appears from the above that the petitioner has not availed the cost free funds amounting to ₹4303.00 lakh receivable in the form of grants. The petitioner has instead, bridged the fund gap by an interest bearing loan from NTPC Ltd and has claimed IDC on the same."*

13. As regards the above observations, the petitioner in the review petition has submitted the following:

(a) The approved cost of R & M of Units-I and II was ₹471.80 crore to be funded through Govt grant. Out of this, ₹284.76 crore earmarked BHEL portion jobs (R & M of BTG) by BHEL and same were being released directly to BHEL by MOP and the petitioner has no control over those funds. As regards the grant of ₹187.04 crore the first tranche of grant was received by the petitioner on 28.1.2008. As no other funds was available with the petitioner for meeting the associated expenses of the commissioning, IEDC for R & M of units, loans were taken prior to the receipt of grant for funding of such expenses.

(b) Interest on loans taken from NTPC, paid upto 14.10.2010, amounting to ₹1070.47 lakh was capitalized on 14.10.2010 and the same was allowed in the interim tariff vide order dated 23.2.2012.

(c) Unit-II was taken under R & M with effect from 29.3.2012, interest paid on loans between 15.10.2010 and 29.3.2010 had not been capitalized and same was charged to P & L account of the company as per standard accounting procedures. Therefore, the petitioner has not claimed tariff for interest paid during the period when Unit-II was generating commercially.

(d) Out of the total interest of ₹316.67 lakh paid between 29.3.2012 to 31.10.2013 (upto COD of Unit-I) ₹223.51 lakh was capitalised on COD of Unit-I and same has been claimed as IDC for the purpose of tariff. Further the balance amount of ₹93.16 lakh was capitalised as on 14.11.2014 (COD of Unit-II after R&M) and same shall be considered subsequently.

(e) It is evident from the above that the petitioner had no other intention, as far as availing loan from NTPC is concerned, but to timely restore the units for meeting the requirements of power starved State of Bihar.

(f) As stated above, the interest free funds receivable in the form of grants were utilised by the Petitioner for R&M of units. However, the associated expenses of pre-commissioning, IEDC etc which were not within the scope of the grant but were essential in nature were met through funds provided by one of the promoter NTPC as loans, as there were no other funds available with the petitioner.

14. Accordingly, the petitioner has submitted that the Commission had erred in holding that the petitioner resorted for borrowing when funds from grant were available, while disallowing IDC of ₹2.23 crore. Based on this, the petitioner has prayed that the Commission may be pleased to allow the IDC for the purpose of tariff.

15. The respondent has submitted that the claim of the petitioner is an afterthought as the same is for timely restoration of units which the petitioner could not restore resulting in time overrun of 18.5 months. It has also submitted that no such expenses are necessary for R & M and hence the prayer of the petitioner may be rejected.

16. We have examined the matter. As discussed earlier, the entire project cost for the R&M of the generating station has been envisaged to be met through RSVY grant, and any variation in the final completion cost from the original estimate was to be funded by State government, and as such no borrowing was either approved or envisaged in the said scheme. While the petitioner has incurred the expenditure more than the amount of grant received, thereby leading to a funding gap, such funding gap was supposed to be met by State government as per approved scheme. It is noticed that the petitioner has not furnished any justification and/or document reasoning the necessity for availing an interest bearing loan from NTPC for bridging the funding gap instead of resorting to the methodology of approaching State government as per MOU for R&M scheme. From the submissions of the petitioner, there appears no justification for availing the loan. Moreover, as observed in para 32 of the order dated 9.2.2016, the Board Resolutions of the Petitioner Company dated 13.10.2006 and 31.12.2006 reveal that loans of ₹20.00 crore and ₹12.03 crore respectively were availed for meeting the working capital requirement only. Even otherwise, it is noticed from letter dated 10.9.2013 placed on record by the petitioner that the issue of funding the expenditure like pre-commissioning expenses, IEDC and IDC had been taken up with the State Government vide letter dated 11.10.2013. As such, we are not inclined to consider the said loan from NTPC as a project loan for availing IDC to be capitalized as part of the capital cost. Accordingly, the IDC accrued on the loan has not been allowed for capitalization for the purpose of tariff. In view of this, the prayer of the petitioner for review of the order dated 9.2.2016 is rejected.

Double deduction of revenue earned from sale of infirm power

17. The Commission in order dated 9.2.2016 has held as under:

> *"34. The petitioner vide affidavit dated 25.11.2014 has submitted that the revenue (excluding fuel cost) on account of injection of infirm power from the date of synchronization to the actual COD of Unit-I is Rs. 377.93 lakh and the same has been adjusted as per the audited certificate."*

18. The petitioner in the review petition has submitted that the Pre-commissioning expenses mentioned in Auditor's certificate are on net basis (after adjustment of revenue from sale of infirm power) and the word “Pre-Commissioning expenses (net)” is mentioned in auditor's certificate and under Note-13 of the balance sheet as on 31.10.2013. It has also submitted that the Pre-commissioning expenses of ₹23.47 crore forming part of capital cost was therefore already after adjustment of revenue from sale of infirm power. Therefore, the subsequent deduction of ₹ 377.93 lakh in the order dated 9.2.2016 amounts to double deduction of the said amount. Accordingly, the petitioner has prayed that error may be corrected and the amount of ₹377.93 lakh deducted be included in the capital cost.

19. The respondent has submitted that since no pre- commissioning expenses are allowed in R & M work, the claim of the petitioner is without substance and the question of double deduction on the revenue does not arise. It has also submitted that there is no error apparent on the face of the record as the information regarding infirm power from date of synchronization to actual COD was based on the affidavit of the petitioner dated 25.11.2014.

20. The matter has been examined. Regulation 11 of the 2009 Tariff Regulations provides as under:

> "*11.**Sale of Infirm Power.** Supply of infirm power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional or State UI pool account at the applicable frequency-linked UI rate:*
>
> *Provided that any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost."*

21. In terms of above regulations, any revenue from the sale of infirm power is required to be deducted from the capital cost incurred by the generating company and as admitted by the Commission. In the present case, the take-over price of Unit-I (as per auditor’s certificate) amounting to ₹1368.00 lakh has been allowed as the capital cost incurred by the petitioner in order dated 9.2.2016 as against the cash expenditure of ₹4095.38 lakh. Accordingly, in terms of the above regulation, the revenue from sale of infirm power has been deducted from the admissible capital cost of ₹1368.00 lakh for Unit-I, though the project cost claimed by the petitioner is "net" of sale of infirm power. Thus, the submission of the petitioner that there is

double deduction under this head is not accepted. Accordingly, the prayer of the petitioner for review of order is disallowed and review on this ground fails.

Mismatch in value of taken over assets in auditor's certificate and physical valuation report

22. The Commission in para 25 of the order dated 9.2.2016 decided as under:

> *"25. It is noticed from the table under para 22 above that the value of taken over assets as per Auditor certificate is Rs.1654.58 lakh. However, from the submission of the petitioner in affidavit dated 17.1.2011, the value of taken over assets of Unit-I was Rs.1368.00 lakh on the basis of physical verification and valuation done at the time of takeover. This variation of Rs. 286.58 lakh in the cost of taken over assets of Unit-I is not supported by any documentary proof. In view of this, the value of taken over assets of Unit-I is considered as Rs.1368.00 lakh."*

23. The petitioner has submitted that in the auditor's certificate value of taken over assets is Rs1654.58 lakh which includes IEDC of ₹286.00 lakh booked towards take-over of assets of Unit-I. It has also submitted that the actual value of taken over assets of Unit-I is ₹1368.49 lakh as submitted vide affidavit dated 1.7.2011. Accordingly, the petitioner has submitted that the total value of IEDC upto 31.10.2013 is ₹2154.93 lakh (₹1868.84 lakh in auditor certificate + ₹286.09 lakh booked in takeover assets of Unit-I) and the same may be considered for the purpose of calculation of IEDC in tariff.

24. The respondent has submitted that the value of assets had been correctly assessed and the same is based on the affidavit dated 17.1.2011 submitted by the petitioner and accordingly, the value of the assets had been correctly assessed. Accordingly, it has submitted that there is no error apparent on the face of record.

25. We have examined the matter. It is evident from the above that the Commission in its order dated 9.2.2016 had considered the taken over value of assets of Unit-I as ₹1368.00 lakh based on the submission of the petitioner vide affidavit 17.1.2011. Since the value of the assets as per auditor's certificate furnished by the petitioner vide affidavit dated 19.8.2014 of ₹1654.58 lakh and the variation of ₹286.58 lakh (1654.58-1368.00) was not supported by any documentary proof, the Commission by a conscious decision had considered the taken over value of assets as ₹1368.00 lakh for the purpose of capital cost. Accordingly, the submissions of the petitioner for review of order dated 9.2.2016 is not maintainable and the prayer of the petitioner on this count fails.

Impact of liabilities discharged between 1.11.2013 and 31.3.2014

26. The Commission in para 37 of the order dated 9.2.2016 had decided as under:

> *"37. The un-discharged liability as on COD of Unit-I as per the Auditor's certificate is ₹882.71 lakh. The petitioner has also submitted the party-wise statement of un-discharged liabilities as on COD and as on 31.3.2014. As per this, the un-discharged liability as on 31.3.2014 is ₹596.40 lakh. However, the petitioner has not furnished clarification as to whether the said reduction of ₹286.30 lakh in capital liability is on account of the actual discharge of liability or due to adjustment of liability. In view of this, the un-discharged liability as on COD is considered as ₹882.71 lakh."*

27. The petitioner has clarified that it has initially excluded the liability discharged from the capital cost as on 31.3.2014 in Form-9 for the purpose of tariff. The petitioner has also submitted that it had inadvertently taken liability as on 31.3.2014 as ₹596.40 lakh in place of ₹501.10 lakh. The petitioner has enclosed the liability flow statement and the revised from-9 including the discharge of liability and has submitted that the reduction of liabilities was due to discharge and not on account of any adjustment. Accordingly, the petitioner has prayed that the information submitted may be considered and the impact of ₹381.60 lakh liabilities discharged during the period from 1.11.2013 to 31.3.2014 be allowed on annual fixed cost for the purpose of tariff.

28. The respondent has submitted that the un-discharged liability as on COD is in accordance with the auditor's certificate as against the party-wise statement, and since no clarification was submitted, the Commission had considered the Auditor's certificate. Accordingly, the respondent has submitted that there is no error apparent on the face of the record.

29. The matter has been examined. It is noticed that the petitioner has clarified that reduction in the liabilities is on account of discharge and not due to any adjustment. Considering the fact that the capital cost allowed for the purpose of tariff is without any deduction towards capital liabilities, there would be no impact on the capital cost due to change in closing value of the un-discharged liability as on 31.3.2014, even if the submissions of the petitioner is accepted. Accordingly, the review of order dated 9.2.2016 on this count is not accepted.

Pro-rata reduction in IEDC due to time over-run

30. The Commission in para 17 of the order dated 9.2.2016 held as under:

> *"17. It is observed that the petitioner has not furnished the activity-wise, detailed analysis and the reasons for time overrun during each stage of R&M. However, from the submissions made by the petitioner, it is evident that the factors due to the delay in R&M are mainly on account of the delay in supply of equipment's by M/s BHEL. Also, the delay on the part of*

M/s BHEL to supply materials/equipment's is stated to be that R&M of 110 MW Turbine involves the re-engineering & retrofitting of old Skoda design turbine. The petitioner, in terms of the R&M contract has the option to impose LD on M/s BHEL for delay in completion of the said package. The petitioner, in our view cannot escape its responsibility stating that the agency BHEL had delayed the supply of materials/equipments and the delay is therefore not attributable to it. In our view, there has been slackness and improper coordination on the part of the petitioner with the contractor M/s BHEL to ensure the completion of R&M package and commissioning of Unit-I. Considering the factors in totality, we hold that the delay in the commissioning of Unit-I is attributable to the petitioner and there is no reason to condone the delay of 18.5 months in the declaration of COD of Unit-I of the generating station. Accordingly, in terms of the principles laid down by the Tribunal in the judgment dated 27.4.2011 [(situation (i)], the delay of 18.5 months cannot be said to be beyond the control of petitioner and hence cannot be condoned. Therefore, the increase in cost on account of the said delay has to be borne by the petitioner. However, the Liquidated Damages (LD) and Insurance proceeds if any, received by the generating company, on account of the said delay, could be retained by the generating company."

31. In respect of the observation that there has been slackness and improper coordination on the part of the petitioner with the contractor M/s BHEL, the petitioner has submitted that R&M of Units-I & II was undertaken based on MOU signed amongst BHEL, NTPC, GoB, GoI (MOP) and BSEB through special central assistance plan under RSVY i.e. in the form of 100% grant of GoI. It is also submitted that in terms of the MOU, MOP/Planning Commission has recommended BHEL as implementing agency for R&M and cost is to be vetted by CEA. As regards coordination with BHEL, the petitioner has referred to affidavit dated 19.1.2013 wherein it had submitted that the issue of delay in supply of the critical materials and execution of R&M works were discussed at various forum and meetings attended by CMD (NTPC), CMD (BHEL), Chairman (BSEB), Chief Secretary (Govt of Bihar), Senior officers of CEA, Ministry of Power and Planning Commission. In addition to the above, the petitioner had submitted that it had permitted diversion of certain materials from Unit-II which was taken under R&M w.e.f. 29.3.2012 for early commissioning of Unit-I. The petitioner had further submitted that it has always been pro-active and has vigorously followed up with officials of M/s BHEL for timely supply of materials and completion of R&M works. Accordingly, the petitioner had submitted that the time overrun in completion of R & M may be condoned and full recovery of IEDC may be allowed.

32. The respondent has submitted that the petitioner had questioned the order of the Commission on time overrun and the same is not acceptable as there is a clear distinction between an erroneous decision and an error apparent on the face of the record. It has submitted that while the first can be corrected by the higher forum, the later can only be corrected by exercise of review jurisdiction. It has also submitted that the time overrun is already borne by the

Govt, as the grant is interest free and the prayer of the petitioner to allow IEDC for time overrun would mean that the consequences of the time overrun of 18.5 months and the order of the Commission on this issue would be a nullity. It has further submitted that the review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for a patent error. Accordingly, the respondent has prayed that review on this ground may be rejected.

33. We have examined the matter. It is noticed that the Commission vide ROP of the hearing dated 13.10.2014 had directed the petitioner to furnish additional information on the following:

> *"(f) Reasons for the delay in completion for R&M for Unit-I as against the contractual timeline, along with the amount of LD recovered from the contractor, if any, due to delay in completion of R&M for Unit-I;"*

34. In response, the petitioner vide affidavit dated 25.11.2014 had submitted that the reasons for the delay in completion of R&M of Unit-I as against the contractual timeline was mainly due to delay in supply of Equipments /components of 110 MW Turbine of old Skoda Design. It had also submitted that a lot of re-engineering and retrofit technology was involved in the manufacturing and supply of equipments/components of 110 MW Turbine and old Skoda design. The Commission, in the light of the judgment of APTEL dated 27.4.2011 in Appeal No. 72 of 2010 and after examining the above submissions, had arrived at the conclusion that there had been slackness and improper coordination on the part of the petitioner with the contractor to ensure the completion of R & M package and commissioning of Unit-I. Accordingly, the Commission had not condoned the delay of 18.5 months in the declaration of COD of Unit-I. The petitioner has sought to reopen the case on merits which is not permissible in law. In our view, review cannot be an appeal in disguise and is primarily a route to rectify an apparent error. The petitioner has not pointed out to any error apparent on the face of order and hence the review on this count is not maintainable. Accordingly, the prayer of the petitioner is rejected and review on this ground fails.

35. Petition No. 20/RP/2016 is disposed of in terms of the above.

-Sd/-	***-Sd/-***	***-Sd/-***
(A. S. Bakshi)	**(A. K. Singhal)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Chairperson**