



नई दिल्ली
NEW DELHI

याचिका संख्या. /Petition No. (Review): 34/RP/2018 in Petition No. 229/MP/2019

कोरम/Coram:

श्री पी. के. पुजारी, अध्यक्ष/ Shri P. K. Pujari, Chairperson
डॉ. एम. के. अय्यर, सदस्य/ Dr. M.K. Iyer, Member

आदेश दिनांक /Date of Order: 14th of May, 2019

IN THE MATTER OF:

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 103 of the CERC (Conduct of Business) regulations, 1999 for review of the Order dated 20.07.2018 passed by the Commission in Petition No. 229/MP/2017

AND IN THE MATTER OF:

Power Company of Karnataka Ltd.
KPTCL Building, 5th Floor,
Kaveri Bhawan, Bangalore – 560 009

...Review Petitioner

Versus

NTPC Vidyut Vyapar Nigam Limited
NTPC Bhawan, SCOPE Complex,
Institutional Area, Lodhi Road,
New Delhi – 110 003

...Respondent

Parties Present: Shri Darpan K. M., Advocate for PCKL
Shri M.G Ramachandran, Advocate, NVVNL
Ms. Anushree Bardhan, Advocate, NVVNL
Shri Shubham Arya, Advocate, NVVNL
Ms. Tanya Sareen, Advocate, NVVNL
Shri Anurag Gupta, NVVNL
Shri Sujoy Das Verma, NVVNL

आदेश/ ORDER

The instant review petition has been filed by Power Company of Karnataka Ltd. (hereinafter referred to as “Review Petitioner/PCKL”) seeking review of the Order dated 20.07.2018 passed by the Commission in Petition No. 229/MP/2017 whereby, inter alia, the issue of levying of ‘Liquidated Damages’ for the shortfall of energy including adjustment for transmission losses, from the payments due to the Petitioner from the various bills raised on 1st December 2016 for supply of electricity was determined. The Review Petitioner/PCKL has filed the review petition on the limited ground viz. for correction of error in multiplication for computation of energy scheduled as per copies of ‘Acceptance for Scheduling Letter’ issued by SRLDC and for consideration of the curtailed quantum of energy from 28.11.2016 to 30.11.2016.

2. The Review Petitioner/PCKL has made the following prayers:
 - a) Admit the present Review Petition;
 - b) Allow the Petition for Review and revise the liquidated damages to be paid by NVVN to the Review Petitioner/PCKL;
 - c) Stay the operation of the Impugned Order to the limited extent of payment of liquidated damages until disposal of the present petition; and
 - d) Pass such further order(s) as deemed fit and proper;

Background:

3. The Review Petitioner/PCKL invited bids for procurement of power for a quantum of 900 MW under short term arrangement for the period from 15.11.2016 to 30.11.2016 through tariff based competitive bidding process as per the Ministry of Power, Government of India

“Guidelines for short term (i.e. for a period of more than one day to one year) and such procurement of Power by Distribution Licensees through DEEP e-Bidding Portal.”

4. The Review Petitioner/PCKL selected NVVN (Respondent herein) through reverse auction and executed the contract for purchase of 100 MW (50 MW each from M/S BALCO TPS & JVPL, Madhya Pradesh) for the period from 17.11.2016 to 30.11.2016. Accordingly, the EMD (earnest money deposit) was submitted by NVVN. On 17.11.2016, as against the request for approval of 100 MW (50MW+ 50 MW) Open Access scheduling applications of NVVN, SRLDC approved open access scheduling only to the extent of 25 MW (12.5 MW + 12.5 MW). Accordingly, NVVN wrote to the Review Petitioner/PCKL appraising it of the situation, and accordingly offered to supply 37.5 MW from an alternate source. On 18.11.2016, PCKL gave its consent for change in power source for the quantum of 37.5 MW from M/s SembCorp Gayatri Power Ltd. instead of M/s JVPL for the period from 19.11.2016 to 30.11.2016. Subsequently on 21.11.2016, NVVN wrote to PCKL that the balance 37.5 MW can also be sourced from M/s SembCorp Gayatri Power Ltd instead of M/s BALCO TPS and sought for PCKL’s confirmation for the change in the source of power which was also allowed by the Review Petitioner/PCKL .
5. The Respondent (NVVN), as against contracted quantum of 100 MW could supply 92.5 MW (12.5 MW + 12.5 MW + 37.5 MW + 30 MW) of power to the Review Petitioner/PCKL and the balance 7.5 MW could not be arranged by NVVN on account of transmission corridor constraint. While admitting the bills raised by NVVN for the said supply, Review Petitioner/PCKL forfeited the EMD of Rs. 64.00 Lakhs & directed their DISCOMs namely BESCO, HESCO & CESCO to make payment accordingly.
6. Vide Order dated 20.07.2018, the Commission framed the following issues in Petition No. 229/MP/2017:

“a. Issue No. 1: Whether the Commission has the jurisdiction to adjudicate in the present Petition?

b. Issue No. 2: Whether the Respondent is entitled to forfeit the Earnest Money Deposit amounting to Rs. 64.00 Lakhs as deposited by the Petitioner?

c. Issue No. 3: Whether the Respondent is entitled to recover a sum of Rs. 13,65,295/- as Liquidated Damages for the shortfall in supply of electricity including adjustment for

transmission losses, from the payments due to the Petitioner from the various bills raised on 1st December 2016 for supply of electricity?

d. **Issue No. 4:** *Whether the Petitioner is entitled to recover a sum of Rs 77,65,295/- (Rs. 64.00 Lakhs plus Rs. 13,65,295/-) from the Respondent towards principal as on the date of the filing of the present petition together with interest computed at the rate of 15% per annum from the date of the filing of the petition till realisation”*

7. Vide Order dated 20.07.2018 in Petition No. 229/MP/2017, the Commission has held that:

“61. Issue No. 1:Hence, it is a case of inter-state and is covered under section 79(1) (b). Thus, the Commission is of the view that it has the jurisdiction to adjudicate in the matter.

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68. Issue No. 2 & 3: The Commission accordingly, is of the view that PCKL should compute proportionate amount of the forfeiture based on the ‘actual quantum and duration’ of energy supplied vis-a vis the ‘contracted quantum and duration’ of energy to be supplied and refund the balance amount to NVVN. As per the calculations placed below the Commission directs PCKL to forfeit EMD amounting to Rs. 6,07,708/- and to refund the balance amount amounting to Rs. 57,92,292/- to the NVVN.

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70. The Commission observes that PCKL has quantified liquidated damages with respect to the quantum of power to be supplied from “alternate source” i.e. M/s SembCorp in lieu of M/s Vedanta Ltd. (BALCO, Chhattisgarh) for 8 days (23.11.2016 to 30.11.2016) as below:

<i>Quantum of Energy should have been scheduled including approval of alternative source @ delivery Point</i>	<i>11599313 kWh</i>
<i>85% of above (approved quantum from original source and expected supply from alternative source of 75 MW)</i>	<i>9859416 kWh</i>
<i>Less: Actual energy scheduled @ delivery Point including supply of original source and alternative source</i>	<i>8039022 kWh</i>
<i>Difference in energy</i>	<i>1820393 kWh</i>
<i>Liquidated damages@ 20% of the tariff (Rs 3.75 per *20%)</i>	<i>Rs. 1365295</i>

71. From the documents submitted it appears that the above figures are based on

meter readings which reflect consumption/use on the part of PCKL and not necessarily the actual supply from NVVN sources. On the other hand, NVVN has provided the documentary evidence of energy scheduling and supply from SRLDC. This is clearly the actual energy scheduled/supplied. Accordingly, the Commission relies on these documents and finds the following position in respect of the 8 days i.e. from 23.11.2016 to 30.11.2016 for which liquidated damages has been computed by PCKL:-

<i>Quantum of energy should have been scheduled from alternative source @ delivery Point (37.5 MW X 8 Days X 24 Hrs. X 1000)</i>	<i>7200000 kWh</i>
<i>85% of above</i>	<i>6120000 kWh</i>
<i>Less: Actual energy scheduled (30 MW X 7 Days X 24 Hrs. X 1000) as per copies of 'Acceptance for Scheduling letter' issued by SRLDC</i>	<i>6627500 kWh</i>
<i>% of the energy supplied</i>	<i>92.05%</i>
<i>Difference in energy</i>	<i>Nil</i>
<i>Liquidated damages @ 20% of the tariff (Rs 3.75 per *20%)</i>	<i>Nil</i>

72. It is apparent from the above that the quantum of energy supplied by NVVN is 6627.5 MWh which is 92.05% of the energy contracted for 8 days i.e. from 23.11.2016 to 30.11.2016. Therefore, NVVN has supplied the quantum of energy within the permitted deviation of 15%. In view of the above, the Commission holds that PCKL has wrongly levied the penalty of Rs. 13,65,295/- which needs to be refunded to NVVN. Admittedly, PCKL has already recovered amount of Rs. 2,91,600/- that has been charged due to revision/cancellation of scheduled/approved quantum. Therefore, we direct PCKL to refund the entire penalty of ₹13,65,295/- to NVVN.

73. **Issue No. 4:** ... PCKL is directed to refund Rs. 71,57,587/- (Rs. 57,92,292/- plus Rs. 13,65,295/- to NVVN within 15 days of the date of the order failing which NVVN is entitled for late payment interest @ 9% per annum for the delayed period beyond 15 days."

8. Aggrieved by the order dated 20.07.2018, the Review Petitioner/PCKL has filed the instant Review Petition on the ground that there are errors apparent on the face of the order and has sought review on the following grounds:-
- Error in multiplication for computation of energy scheduled as per copies of 'Acceptance for Scheduling Letter' issued by SRLDC – Row 3 in Table at Para 71.
 - Non-consideration of the curtailed quantum of energy from 28.11.2016 to 30.11.2016.

Submissions by Petitioner and Respondent:

9. During the hearing on 12.12.2018, 12.02.2019 and 07.03.2019, the Review Petitioner/PCKL while reiterating the submissions made in the Review Petition has submitted that there is an arithmetical error in the computation made in the Row 3 of the Table contained in para 71 of the impugned order dated 20.07.2018. The energy scheduled as per copies of ‘Acceptance for scheduling letter’ issued by SRLDC has been calculated as (30MW X 7 Days X 24 Hrs. X 1000) which amounts to 5040000 kWh whereas, it is reflecting as 6627500 kWh. In light of the above arithmetical error, if the said computational error is rectified, then the liquidated damages amounting to Rs. 8,10,000/- become payable by NVVN to the Review Petitioner/PCKL as under:

Particulars	Revised computation
Quantum of energy should have been scheduled from alternative source @ delivery Point (37.5 MW X 8 Days X 24 Hrs. X 1000)	7200000 kWh
85% of above	6120000 kWh
Less: Actual energy scheduled below (30 MW X 7 Days X 24 Hrs. X 1000) as per copies of Acceptance for Scheduling letter issued by SRLDC	5040000 kWh
% of the energy supplied	70.00
Difference in energy	1080000 kwh
Liquidated damages @ 20% of the tariff (Rs.3.75 per *20%)	Rs. 810000

10. Further, the Review Petitioner/PCKL has submitted that while considering the liquidated damages, the Commission has not considered the curtailment of quantum of energy by NVVN from 28.11.2016 to 30.11.2016. Calculations of liquidated damages are based on the Open Access quantum approval obtained by NVVN from SRLDC. As per SRLDC implemented schedule data, energy had not been scheduled from alternative source from 28.11.2016 at 23:00 Hrs. onwards till 30.11.2016 @ 24:00 hours. The quantum which was not scheduled during this period has to be considered for liquidated damages. To substantiate the fact of curtailment of quantum by NVVN from 23:00 hours on 28.11.2016 to 24:00 hours on 30.11.2016, the Review Petitioner/PCKL has submitted following documents:
- a. The implemented scheduled data downloaded from SRLDC from 19.11.2016 to 30.11.2016.

- b. November 2016 REA published by SRPC for energy scheduled at Regional periphery.
- c. NVVN had submitted the bill for energy scheduled for the month of November 2016 in which energy scheduled from original source and as well as energy scheduled from alternative source has given. In the bill NVVN had shown only the energy which was scheduled from 24.11.2016 to 28.11.2016 upto 23:00 Hrs. from alternative source.

11. The Review Petitioner/PCKL has submitted that after the curtailment of quantum of two days from 28.11.2016 to 30.11.2016 is considered, the computation of liquidated damages pertaining to power supplied by NVVN from alternate sources will be as under:

Particulars	Revised computation
Quantum of energy should have been scheduled from alternative source @ delivery Point (37.5 MW X 8 Days X 24 Hrs. X 1000)	72,00,000 kWh
85% of above	61,20,000 kWh
Less: Actual energy scheduled below (30 MW X 7 Days X 24 Hrs. X 1000) as per copies of Acceptance for Scheduling letter issued by SRLDC	5040000 kWh
Less: Energy was not scheduled 28.11.2016 at 23:00 Hrs. to 30.11.2016 at 24:00 Hrs. @ regional periphery	1470000 kwh
The energy scheduled as per REA of Nove-2016 @ regional Periphery	3570000 kwh
% of the energy supplied	49.58
Difference in energy	2550000 kWh
Liquidated damages@ 20% of the tariff (Rs.3.75 per *20%)	Rs. 1912500

12. Therefore, the liquidated damages of Rs. 19,12,500/- (Rs. Nineteen Lacs twelve thousand five hundred only) may be allowed to be recovered as liquidated damages.

13. Per contra, the Respondent (NVVN) has submitted that the issues raised by the Review Petitioner/PCKL is selectively referring to para 71 of the Order without referring to para 65 of the Order dated 20.7.2018 and without reading the order as a whole. The table in para 71 deals with some aspects and not the whole aspects dealt in para 65. In Para 71 of the impugned Order, there has been an inadvertent mistake in incorporating the quantum involved, whereas Para 65 of the Order correctly represents the quantum. The 1st row of the table in para 71 mentions the name of M/s SembCorp only though the energy supplied i.e.

6627.5 (3rd row) is from both M/s SembCorp and M/s Balco as referred to in Para 65. Further, the actually supplied quantum is 8191.625 MWh as can be seen from the Regional Energy Account (REA) - November 2016.

14. The Respondent has submitted that the table in Para 71 of the Order needs to be read in detail along with para 65 to consider the following aspects:-

- a. The total quantum of energy that should have been scheduled from M/s SembCorp as alternate source for M/s Balco (37.5 MW x 8 days x 24 hours x 1000) – 7200 MWh and from M/s Balco (original source)-1587.5 MWh (Para 65), Aggregating to 8787.5 MWh
- b. The quantum of energy scheduled from M/s Balco original source= 1587.5 MWh
- c. The quantum of energy scheduled from M/s SembCorp as M/s Balco alternate source =3570 MWh (Total approved quantum- 5040 MWh minus curtailment due to unit tripping – 1470 MWh)
- d. The quantum of energy supplied from M/s Balco on day ahead basis in addition to (b) and (c)= 3034.125 MWh
- e. Aggregate quantum of energy supplied from M/s Balco and alternate sources, namely, (b) plus (c) plus (d) above= 8191.625 MWh
- f. Difference in the quantum of energy supplied as against what should have been supplied from M/s Balco and alternate SembCorp [a minus (b) plus (c) plus (d) above] 595.875 MWh
- g. Percentage of energy supplied from M/s Balco and alternative source [(e)/(a)*100]= 93.22%
- h. Difference in energy supplied from M/s Balco and alternative source – [(f)/(a)*100]= - 6.78%

15. The Respondent has submitted that from above and from reading of Para 65 and 71 of the order together considering the supply from M/s Balco and M/s SembCorp as alternate of Balco, the calculation works out to be :-

S. No.	Particulars	Vedanta Ltd. (KWh)	M/s SembCorp (KWh)	Total (KWh)
A	Quantum of energy which should have been scheduled	1587500	7200000	8787500
B	85% of Above	1349375	6120000	7469375
C	Total Energy scheduled as per approvals including day ahead and contingency open access	4621625	5040000	9661625
D	Curtailement		1470000	1470000
E	Total Energy scheduled after curtailement and as per REA(C-D)	4621625 (November -2016, Regional Energy Account)	3570000 (November - 2016, Regional Energy Account)	8191625
F	% of energy supplied (E/A *100)			93.21906
As the energy supplied is more than 85% no compensation is applicable				

16. The Respondent has submitted that there has been non supply of energy of an aggregate of 49 hours due to curtailement of energy generation by M/s SembCorp from 28.11.2016 to 30.11.2016 referred to by the Review Petitioner/PCKL. Further, if the above details are considered as per para 65 of the order, the Respondent had arranged to supply much more than 85% of 92.05 MW (within the permitted deviation of 15%) as decided by the Commission in the Order dated 20.07.2018. The decision of the Commission on the liquidated damages for the shortfall in supply of electricity is correct on the consideration of the decision in entirety and there is no error, much less any error apparent on the face of record in the impugned Order.
17. The Respondent has submitted that the Review Petitioner/PCKL, while making the calculation for liquidated damages in the review petition, has taken into account only the data corresponding to M/s SembCorp (i.e. the alternate source) and not for M/s Vedanta Ltd. (Balco, Chhattisgarh) and M/s SembCorp together. This is contrary to the basis of the deduction made by the Review Petitioner/PCKL as set out in letter dated 20.01.2017 and in reply dated 28.5.2018 filed before the Commission in Petition No. 229/MP/2017. The Review Petitioner/PCKL is wrong in taking into account only the power supplied from M/s SembCorp which is the alternate source and not the power supplied from M/s Vedanta Ltd. (Balco, Chhattisgarh). Overall power supply from both the sources namely M/s SembCorp

and M/s Vedanta Ltd. (Balco, Chhattisgarh) need to be taken into account while computing the applicable liquidated damages, if any.

18. The Respondent has submitted that as the energy supplied by it to the Review Petitioner/PCKL from M/s Vedanta Ltd. (Balco, Chhattisgarh) and M/s SembCorp (alternate source) is within the 15% deviation permitted (after taking into account the curtailment to the tune of 1470000 Kwh), no liquidated damages is payable to the Review Petitioner/PCKL.
19. The Review Petitioner/PCKL in its rejoinder, has reiterated the submissions already made in the review petition. As such, the same are not being reproduced here for the sake of brevity. The Review Petitioner/PCKL has denied the stand taken by the Respondent in its pleadings and additionally submitted that it is incorrect of the Respondent to state that the percentage of energy supplied for the above period was 93.219%. The Respondent supplied quantum from original sources i.e. M/s Balco to an extent of 4625625 KWh at regional periphery as the quantum approved by SRLDC from 20.11.2016 to 30.11.2016. The quantum of energy which was to be supplied from M/s Balco was 1587500 kWh but the actual quantum of energy scheduled was 4621625 kWh. The quantum of open access approval given by SRLDC for the above period was 4621625 kWh. Therefore, there was 100% energy supplied from the original sources. PCKL had accorded approval for supply of power from alternate source to an extent of 37.5 MW at the request of the Respondent. However, the open access applied was only for 30 MW. Thereafter, the Petitioner had revised/curtailed the approved quantum even from the alternate source from 28.11.16 onwards. Therefore, the schedule quantum was less than the 85% of the approved quantum. Hence, liquidated damages have been deducted as per clause 23.3 of the RFP document. The liquidated damages calculated by the Petitioner in line with the submissions of Respondent is as tabulated below:

S. No.	Particulars	Vedanta (Balco) (kWh)	M/s SembCorp (kWh)	Total (Kwh)
A	Quantum of energy which should have been scheduled	4621625	7200000	11821625
B	85% of Above	3928381	6120000	10048381
C	Total Energy scheduled as per approvals including day ahead and contingency open access	4621625	5010000	9661625

D	Curtailement		1470000	1470000
E	Total Energy scheduled after curtailement and as per REA (C-D)	4621625 (As per REA of November 2016)	3570000 (As per REA of Nov-2016)	8191625
F	% of energy supplied			69.29

20. The Review Petitioner/PCKL has submitted that the total quantum of energy supplied from original and as well as alternate source worked out to 69.29%. The revised computation has been made in line with para 71 of the Impugned Order and now the amount which needs to be recovered from the Respondent towards liquidated damages works out to Rs.19,12,500/-. The computational errors are errors apparent on the face of record.

Analysis and decision:

21. We have heard the learned counsels for the Review Petitioner/PCKL and the Respondent and have carefully perused the records. The brief facts of the case are that aggrieved by the order dated 20.07.2018 in Petition No. 229/MP/2017, the Review Petitioner/PCKL has filed the instant Review Petition on the ground that there are errors apparent on the face of the Order and has sought review on the following grounds:-

- (A) Non-consideration of the curtailed quantum of energy from 28.11.2016 to 30.11.2016
- (B) Error in multiplication for computation of energy scheduled as per copies of ‘Acceptance for Scheduling Letter’ issued by SRLDC – Row 3 in Table at Para 71.

(A) Non-consideration of the curtailed quantum of energy from 28.11.2016 to 30.11.2016

22. The Review Petitioner/PCKL has submitted that while considering the liquidated damages, the Commission has not considered the curtailement of quantum of energy by NVVN from 28.11.2016 to 30.11.2016. It has submitted that calculations of liquidated damages are based on the Open Access quantum approval obtained by NVVN from SRLDC. The Review petitioner has further submitted that as per SRLDC implemented schedule data, energy had not been scheduled from alternative source from 28.11.2016 at 23:00 Hrs. onwards till 30.11.2016 @ 24:00 hours and the quantum which was not scheduled during this period has to be considered for liquidated damages. To substantiate the fact of curtailement of quantum

by NVVN from 23:00 hours on 28.11.2016 to 24:00 hours on 30.11.2016 the Review Petitioner has submitted the Bill for energy scheduled for the month of November 2016.

23. The Review Petitioner/PCKL has further submitted that after the curtailment of quantum of two days from 28.11.2016 to 30.11.2016 is considered, the computation of liquidated damages pertaining to power supplied by NVVN from alternate sources will be as under:

Particulars	Revised computation
Quantum of energy should have been scheduled from alternative source @ delivery Point (37.5 MW X 8 Days X 24 Hrs. X 1000)	7200000 kWh
85% of above	6120000 kWh
Less: Actual energy scheduled below (30 MW X 7 Days X 24 Hrs. X 1000) as per copies of Acceptance for Scheduling letter issued by SRLDC	5040000 kWh
Less: Energy was not scheduled 28.11.2016 at 23:00 Hrs. to 30.11.2016 at 24:00 Hrs. @ regional periphery	1470000 kWh
The energy scheduled as per REA of Nove-2016 @ regional Periphery	3570000 kWh
% of the energy supplied	49.58
Difference in energy	2550000 kWh
Liquidated damages@ 20% of the tariff (Rs.3.75 per *20%)	Rs. 1912500

24. Accordingly, the review petitioner has submitted that the liquidated damages of Rs. 19,12,500/- (Rs. Nineteen Lacs twelve thousand five hundred only) may be allowed to be recovered as liquidated damages.
25. **Per Contra**, the Respondent has submitted that there has been non supply of energy of an aggregate of 49 hours due to curtailment of energy generation by M/s SembCorp from 28.11.2016 to 30.11.2016 referred to by the Review Petitioner/PCKL. However, it had arranged to supply much more than 85% (92.05 MW which is within the permitted deviation of 15%) and as such the decision of the Commission on the liquidated damages for the shortfall in supply of electricity is correct. On the consideration of the decision in entirety, there is no error, much less any error apparent on the face of record in the impugned Order.

26. The submissions have been considered. It is observed from the above, that the Review Petitioner/PCKL and the Respondents have placed on record various new facts and documents through its pleadings in the review petition. To elaborate, the Petitioner/PCKL has placed on record the following new documents to substantiate its claim:
- a. The implemented scheduled data downloaded from SRLDC from 19.11.2016 to 30.11.2016.
 - b. Energy Scheduled at Regional periphery (REA) as published by SRPC for November 2016.
 - c. Bill submitted by NVVN for energy scheduled for the month of November 2016 in which energy scheduled from original source and as well as energy scheduled from alternative source has given. The bill shows the details of energy which was scheduled from 24.11.2016 to 28.11.2016 upto 23:00 Hrs. from alternative source.
27. Further, the Respondent (NVVN) has placed on record the following new facts to substantiate its claim:
- a. Details of curtailment due to tripping 1470000 kWh.
 - b. Details of quantum of energy supplied from M/s Vedanta Ltd. (Balco, Chhattisgarh) on day head basis and contingency open access.
28. Also, the data regarding the energy scheduled and energy supplied appears to be different from those furnished in the original Petition and there is a substantial difference in the claim for Liquidated damages. The Review Petitioner/PCKL had claimed that the difference/shortfall in energy was 1820393 kWh and accordingly had claimed the liquidated damages amounting to Rs. 13,65,295/- in the original petition. Whereas, in this petition, the Review Petitioner has claimed the difference/shortfall in energy equal to 2550000 kWh and accordingly has claimed the liquidated damages for Rs. 19,12,500/-. It is pertinent to mention that the Review Petitioner/PCKL had not appeared before the Commission during the hearings in the original petition, despite notice.
29. Order 47, Rule 1 of the Code of Civil Procedure, 1908, as under:

“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,

(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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the Appellate Court the case on which he applies for the review.”

30. As per Order 47, Rule 1 of the CPC, only discovery of new and important matters of evidence which after due diligence was not within the knowledge or could not be produced at the time when the order was made, shall be a ground for review. It is not clear from records as to why these documents could not be produced by the Review Petitioner in the Original Petition. Also, the Review Petitioner has not submitted the reasons for not filing the said information. In our view, the Review Petitioner had not made due diligence while submitting the information/documents in the original Petition. Therefore, the information/documents furnished by the Review Petitioner cannot be considered in review. The scope of review is limited and the Review Petitioner cannot be permitted to re-argue the case on merits. On the same line, the information/documents furnished by the Respondent cannot also be considered. Therefore, the ground for review on this count fails.

(B) Error in multiplication for computation of energy scheduled as per copies of ‘Acceptance for Scheduling Letter’ issued by SRLDC – Row 3 in Table at Para 71.

31. The Review Petitioner/PCKL has submitted that there is an arithmetical error in the computation made in the Row 3 of the Table contained in para 71 of the impugned order dated 20.07.2018. It has submitted that the energy scheduled as per copies of 'Acceptance for scheduling letter' issued by SRLDC has been calculated as (30MW X 7 Days X 24 Hrs. X 1000) which amounts to 5,040,000 kWh whereas, it is reflecting as 66,27,500 kWh. In light of the above arithmetical error, if the said computational error is rectified, then the liquidated damages amounting to Rs. 8,10,000/- become payable by NVVN to the Review Petitioner/PCKL. Per contra, the Respondent has submitted that the issues raised by the Review Petitioner/PCKL are selectively referring to para 71 of the Order without referring to para 65 of the Order dated 20.7.2018 and without reading the order as a whole. The table in para 71 deals with some aspects and not the whole aspects dealt in para 65. In Para 71 of the impugned Order there has been an inadvertent mistake in incorporating the quantum involved, whereas Para 65 of the Order correctly represents the quantum. The 1st row of the table in para 71 mentions the name of M/s SembCorp only though the energy supplied i.e. 6627500 kWh (3rd row) is from both M/s SembCorp and M/s Balco as referred to in Para 65. Further, the actually supplied quantum is 8191625 kWh as can be seen from the Regional Energy Account (REA) - November 2016.
32. The matter has been examined. It is noted that an arithmetical error had crept in the computation made in the Row 3 of the Table under para 71 of the impugned order dated 20.07.2018, wherein the energy scheduled has been inadvertently carried out as 6627500 kWh instead of 5040000 kWh (30MW X 7 Days X 24 Hrs. X 1000). This is an arithmetical error and the same is rectified in this Order as under:

Particulars	Revised computation
Quantum of energy should have been scheduled from alternative source @ delivery Point (37.5 MW X 8 Days X 24 Hrs. X 1000)	7200000 kWh
85% of above	6120000 kWh
Less: Actual energy scheduled below (30 MW X 7 Days X 24 Hrs. X 1000) as per copies of Acceptance for Scheduling letter issued by SRLDC	5040000 kWh
% of the energy supplied	70.00
Difference in energy	1080000 kwh
Liquidated damages @ 20% of the tariff (Rs.3.75 per *20%)	Rs. 810000

33. Accordingly, the Review Petitioner/PCKL is entitled to recover an amount of Rs. 8,10,000/- from the Respondent NVVN. The Commission also directs NVVN to deposit the liquidated damages with the Review Petitioner/PCKL within 15 days from the date of the Order, failing which the Review Petitioner/PCKL is entitled for late payment interest @ 9% per annum for the delay beyond 15 days.
34. All other terms of the Order dated 20.07.2018 remains unchanged. Review Petition No. 34/RP/2018 is disposed of in term of the above.

Sd/-
डॉ एम के अय्यर
सदस्य

Sd/-
पी के पुजारी
अध्यक्ष