

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 16/RP/2022**

in

**Petition 108/GT/2020**

**Coram:**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 20<sup>th</sup> December, 2022**

**In the matter of**

Petition for review of the Commission's order dated 18.12.2021 in Petition No. 108/GT/2020 (Truing up of annual fixed charges for the period 2014-19 in respect of the Palatana Combined Cycle Gas based Power Project (726.6 MW)).

**And**

**In the matter of**

ONGC Tripura Power Company Limited,  
10<sup>th</sup> Floor, Core-4 and Central, Scope Minar,  
Laxmi Nagar, Delhi-110092

**...Petitioner**

Vs.

1. Assam Power Distribution Company Limited,  
Bijulee Bhawan", Paltan Bazar, Guwahati-781 001

2. Department of Power,  
Government of Arunachal Pradesh,  
Vidyut Bhawan, Itanagar – 791111

3. Department of Power,  
Government of Nagaland,  
Kohima – 797 001

4. Manipur State Power Distribution Company Limited,  
Government of Manipur, Keishampat,  
Imphal – 795001

5. Power and Electricity Department,  
Government of Mizoram, Aizawal,  
Mizoram – 796001



6. Meghalaya Energy Corporation Limited,  
Short Round road, "LUMJINGSHAI"  
Shillong – 793001, Meghalaya

7. Tripura State Electricity Corporation Limited  
Vidyut Bhawan, North Banamalipur,  
Agartala, Tripura – 799001

....Respondents

**Parties Present:**

Shri M.G. Ramachandran, Senior Advocate, OTPCL  
Shri Poorva Saigal, Advocate, OTPCL  
Shri Ravi Nair, OTPCL

**ORDER**

Petition No.108/GT/2020 was filed by the Review Petitioner, ONGC Tripura Power Company Limited, for truing-up of tariff of Combined Cycle gas based Palatana Power Project (726.6 MW) for the period 2014-19 and the Commission vide order dated 18.12.2021 (in short 'the impugned order') disposed of the said petition. Aggrieved by the impugned order dated 18.12.2021, the Review Petitioner has filed this Review Petition, on the ground that there is error apparent on the face of the record on the following issue:

*(A) Error in the treatment of discharge of liability in 2019-20, instead of 2014-15, as claimed in the Petition;*

**Hearing on 12.8.2022**

2. The Review Petition was heard on 'admission' through 'virtual conferencing' on 27.8.2022 and the same was admitted on the issue raised in paragraph 1 above, vide interim order dated 27.8.2022. Notice was ordered on the Respondents with directions to complete pleadings in the matter.

**Hearing dated 2.11.2022**

3. The Review Petition was thereafter heard on 2.11.2022. None appeared on behalf of the Respondents despite notice. Accordingly, the Commission, reserved its order in the matter.



4. Based on the submissions and the documents available on record, we proceed to examine the issue raised by the Review Petitioner in the subsequent paragraphs.

**A. Error in the treatment of discharge of liability in 2019-20, instead of 2014-15, as claimed in the Petition;**

5. The Review Petitioner, in Petition No. 108/GT/2020 had claimed the following discharge of liabilities in Form 9E as under:

*(Rs. in lakh)*

2014-15	2015-16	2016-17	2017-18	2018-19	Total
10700.00	14650.98	929.92	1307.65	155.48	27744.03

6. The Commission in paragraph 34 of the impugned order dated 18.12.2022 had allowed the discharge of liabilities as under:

*“34. The submissions have been considered. It is observed that the Commission in its order dated 30.3.2017 in Petition No. 129/GT/2015 had not adjusted LD, keeping in view that LD recovery under various packages were pending. By the said order dated 30.3.2017, the Petitioner was directed to place on record the details of settlement of LD with contractors at the time of truing up of tariff. Accordingly, the Petitioner has claimed the recovery of LD amount of Rs.10700.00 lakh in 2014-15 as „deemed discharge“ of liability. As LD settlement with M/s BHEL had taken place in 2019-20, the treatment of discharge of liability of Rs.10700.00 lakh (claimed in 2014-15) will be carried out in the year of settlement i.e., 2019-20. However, the claim of the Petitioner towards discharge of liabilities during the period 2015-19 is found to be in order and is, therefore, allowed. Accordingly, the discharge of liabilities allowed during the 2014-19 tariff period is summarised as follows:*

*(Rs. in lakh)*

2014-15	2015-16	2016-17	2017-18	2018-19	Total
0.00	14650.98	929.92	1307.65	155.48	17044.04

***Submissions of the Review Petitioner***

7. The Review Petitioner has submitted that in Petition No.108/GT/2020, it had filed additional information vide affidavit dated 6.10.2020, placing on record that the final LD settlement with M/s BHEL was Rs. 107 crores, instead of Rs. 201 crores, and that the amount of Rs.107 crores, may be considered as deemed discharge of liability, with effect from 2014-15 onwards. The Petitioner has also submitted that in compliance to the directions of the Commissions vide ROP of the hearing dated 17.3.2021, it had, vide additional submissions dated 31.5.2021, furnished the requisite information in Form 18 - Liability Flow Statement' along with its reconciliation with the audited



accounts. Pointing out to the observations of the Commission in the impugned order dated 18.12.2021 that since the LD settlement with M/s BHEL had taken place in 2019-20, the treatment of discharge of liability of Rs.10700.00 lakh (claimed in 2014-15), will be carried out in the year of settlement i.e., 2019-20, the Review Petitioner has submitted that the treatment of discharge of liability from 2019-20, instead of 2014-15 (as claimed in Petition No.108/GT/2020) is an error apparent on the face of the record and there is sufficient cause for reviewing the said order. Accordingly, the Review Petitioner has submitted the following:

(a) The liability to pay M/s BHEL (the contractor) of an amount exceeding Rs107crores had accrued in the year 2015 and was being demanded by BHEL. In the ordinary course and in the absence of any dispute with BHEL, the Review Petitioner would have paid the amount to BHEL in the said financial year itself. In fact, the Review Petitioner, considering the above liability and the obligation to discharge, had proceeded to withhold the money payment to BHEL against the liquidated damages claims of the Review Petitioner. This can be likened to the Review Petitioner paying the amount of Rs 107 crore to BHEL towards BHEL's claim for the capital assets and services related thereto against a counter deposit of Rs 107 crore by BHEL to the Review Petitioner, by way of liquidated damages for the delay. However, on account of the disputes between the Review Petitioner and BHEL, the adjustment in the accounts was not carried out then and was carried out in a deferred manner in 2019-20;

(b) The liquidated damages amount of Rs 107 crores (out of Rs 201 crores retained by the Review Petitioner) may have been ultimately adjusted in the books with BHEL in 2019-20, but the actual discharge of liability towards the capital assets and services of BHEL had taken place in FY 2014-15. There has been no actual cash outflow from the Review Petitioner to BHEL in the FY 2019-20 to the extent of Rs 107 crores. The mutual adjustment in the books of account were done with reference to the transaction of withholding an amount of Rs 107 crore by the Review Petitioner in 2014-15 and not with reference to any cash transfer/transaction which had taken effect in 2019-20. There was no such remittance to the extent of Rs 107 crore;

(c) Thus, there was no actual cash outflow to BHEL to the extent of discharge of Rs 107 crore of the pending payments. The issue was clarified by the Review Petitioner in its rejoinder dated 1.6.2021 to the reply filed by Respondent No. 1 APDCL;



(d) In the facts and circumstances mentioned above, when, under the 2014 Tariff Regulations, this Commission is proceeding on the basis of discharge of liability by actual cash or cash equivalent adjustments, the action taken on the part of the Review Petitioner in withholding the amount of Rs 107 crore in 2014-15, which was finally confirmed by BHEL to be a valid action on the part of the Review Petitioner in 2019-20, should be appropriately considered as discharge of the liability in 2014-15;

(e) Accordingly, as on 31.3.2015, to the extent of Rs. 107 crore, the Review Petitioner had duly discharged its liabilities towards BHEL for all intents and purposes in regard to the conditions specified in the 2014 Tariff Regulations. The amount of Rs.107 crore may therefore be considered to have been discharged as a part of the capital cost as on 2014-15, instead of being deferred till 2019-20. In the circumstances, the amount of Rs. 107 crore should be considered as an 'expenditure incurred' by the Review Petitioner in 2014-15, as defined in Regulation 3(23) of the 2014 Tariff Regulations, and can be serviced as a part of the capital cost.

(f) The deferring of the servicing of the said Rs 107 crore from 2014-15 to the stage of truing up of 2019-24, will cause extreme prejudice and lead to severe cash flow issues to the Review Petitioner. Non-servicing of the cost at the relevant time would necessitate the incurring of short terms loans in order to meet the expenditure, which would cause additional burden on the Review Petitioner.

(g) Further, the inclusion of Rs 107 crores w.e.f from 2024-25 or later would cause a tariff shock to the beneficiaries. It would be appropriate that the recovery of Rs 107 crores is spread over a longer period of time to avoid tariff shock and simultaneously, would enable the Review Petitioner to meet its current obligations. The above would be consistent with the principles laid down in Section 61(d) of the Electricity Act, 2003

(h) In the facts and circumstances mentioned above, the Review Petitioner is not seeking any extra financial advantage. The only claim of the Review Petitioner is that the discharge of the liability to BHEL to the extent of Rs 107 crores be considered to be in 2014-15 when the Review Petitioner had taken, in a prudent manner, the step to retain the amount against the claim of liquidated damages. The Review Petitioner acted bonafidely in doing so and should not be penalized for such action, particularly when there has been no actual discharge of liability in the year 2019-20 and there was only a confirmation and acceptance by BHEL of the action already taken in 2014-15.



## **Analysis and Decision**

8. We have examined the submissions and the documents on record. The main grievance of the Review Petitioner is that the discharge of liability of Rs.107 crore in 2014-15, towards settlement of Liquidated damages (LD) with M/s BHEL, had been disallowed by the Commission, holding that since the LD settlement had taken place in 2019-20, the treatment of the said discharge of liability, will be carried out in the year of settlement (2019-20). The Review Petitioner has submitted that though the LD amount of Rs 107 crore was adjusted in the books of BHEL in 2019-20, the actual discharge of liability had taken place in 2014-15. It has stated that there was no actual cash outflow to BHEL to the extent of discharge of Rs 107 crore of the pending payments and therefore the said amount may be considered to have been discharged in 2014-15, instead of the same being deferred till 2019-20.

9. The submissions of the Review Petitioner are not acceptable. It is noticed from the submissions, that on account of disputes between the Review Petitioner and BHEL, the adjustment in the accounts was not carried out in 2014-15 by the Review Petitioner, and the same was carried out in a deferred manner in 2019-20. That being the case, the claim of the Review Petitioner, for discharge of Rs 107 crore in 2014-15, can only be construed as a 'deemed discharge' of liability (and not actual discharge of liability), which is not permissible in terms of the 2014 Tariff Regulations. Accordingly, the Commission, in the impugned order dated 18.12.2021 had disallowed the same, in 2014-15. Also, considering the fact that LD with BHEL was settled in 2019-20, the treatment of the same was permitted, in the year of settlement i.e., 2019-20. In our considered view, the disallowance of the discharge of liability in 2014-15 and permitting the treatment of the same in 2019-20, cannot be an error apparent on the face of record, warranting review of the impugned order dated 18.12.2021. The Review Petitioner cannot be permitted to re-argue the case on merits, in the review



petition. Accordingly, we find no reason to allow the prayer of the Review Petitioner and review on this ground.

10. It is further noticed that the Commission in its order dated 11.1.2022 in Petition No. 109/GT/2020, while considering the discharge of liability against LD settlement in 2019-20, had directed the Review Petitioner to provide the statement of reconciliation in respect of the un-discharged liabilities payable to M/s BHEL, along with audited accounts at the time of truing up of tariff. The Review Petitioner has submitted that deferring of servicing of Rs 107 crore from 2014-15 to the stage of truing-up of 2019-24 will cause extreme prejudice and lead to severe cash flow issues. This submission of the Review Petitioner cannot be considered in the present review petition, which relates to the disallowance of the discharge of LD amount in 2014-15 and the same being adjusted in the year of settlement in 2019-20. Since the aforesaid observations of the Commission to provide statement of reconciliation and adjustment of LD amount, at the time of truing up of tariff relates to order dated 11.1.2022 in Petition No. 109/GT/2020, which has not been challenged, the same is not considered in this order. Based on the above discussions, the prayer of the Review Petitioner, in the review petition, is not maintainable and is therefore rejected.

11. Petition No. 16/RP/2022 in Petition No.108/GT/2020 is disposed of in terms of the above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

