

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION  
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Review Petition No. 2 of 2023**

**Date of Hearing : 15.11.2023  
Date of Order : 28.11.2023**

**IN THE MATTER OF:**

Petition for review of the Order dated 04.01.2023 passed by the Hon'ble Commission in Case No. HERC/PETITION NO. 36 of 2022

**Petitioner (Review Applicant)**  
K2 Power Renewal Pvt Ltd

**Respondents**

1. Haryana Power Purchase Centre, Panchkula (HPPC)
2. Department of New and Renewable Energy, Haryana (HAREDA)

**Present on behalf of the Petitioner**

1. Shri Vipul Joshi, Advocate
2. Shri Rajpal Yadav, Director

**Present on behalf of the Respondents**

1. Ms. Sonia Madan, Advocate, HPPC

**Quorum**

**Shri Naresh Sardana**

**Member**

**ORDER**

**Brief Background of the case**

1. The present petition has been filed by K2 Power Renewal Pvt Ltd (M/s. K2), seeking review of order dated 04.01.2023 (Petition no. 36 of 2022 in the matter of determination of tariff for its 2.0 MW biomass-based gasified-based Power plant at Rewari).

**2. The petitioner (M/s. K2) has submitted as under:-**

Limitation Period:

- 2.1 That the impugned order dated 04.01.2023 was uploaded on the website of the Hon'ble Commission. However, the website does not specify the date on which the order was uploaded. The review petitioner received the certified true copy of the impugned order dated 04.01.2023 on or about 13.02.2023. Be that as it may, the review petitioner by an accompanying application for condonation of delay seeks condonation of 20 days of delay in filing the instant review petition along with affidavit in support.

GROUND:

- 2.2 That the impugned order in review herein dated 04.01.2023 has failed to take judicial notice of the following aspects:-
  - a) The review petitioner's Biomass Gasifier Power Plant met the eligibility condition of Regulation 6 of the HERC Renewable Energy Regulation 2021. Additionally, the

review petitioner had categorically sought to invoke the power of the Hon'ble Commission under Regulation 73 seeking relaxation of normative parameters notified in the said HERC Renewable Energy Regulation 2021 (HERC RE Regulations, 2021) after duly disclosing in the original tariff petition that the power procurement approval process and the PPA had identified the generic tariff to be made applicable to the review petitioner's power project.

b) The impugned order dated 04.01.2023 suffers from errors apparent on the face of the record as the occasion to non-suit the petitioner on the ground of maintainability viz., estoppel did not arise considering enabling provisions of project specific tariff determination read with power to relax stood vested in the Hon'ble Commission to be exercised by a reasoned, general or special order. The impugned order has failed to take judicial notice of the regulatory dispensation set-up under the HERC Renewable Energy Regulations 2021. The provisions of regulation 6 and Regulation 73 of the HERC Renewable Energy Regulations 2021 has not been considered in the impugned order dated 04.01.2023.

c) While Clause 2.1.1 of Article 2 of the PPA has been considered to non-suit the review petitioner's prayer for project specific tariff determination, clause 2.1.2 of Article 2 of the PPA has not been considered. Clause 2.1.2 of Article 2 of the PPA provides as under:

*"No additional payment whatsoever may be on any account shall be payable by the HPPC except those approved by the appropriate commission/court of law."*

d) In fact the errors come within the purview of the provisions of Section 114 and Order 47, Rule 1 of the Civil Procedure Code. The review petitioner relies on the following passage as confirmed and approved by the Hon'ble Supreme Court in the case of *Shri Ram Sahu (Dead) through LRs vs. Vinod Kumar Rawat & Ors [2020] SCCOnlineSC 896* wherein the decision of the Hon'ble Supreme Court in the *State of West Bengal vs. Kamal Sengupta (2008) 8 SCC 612* referring the decision of the Five Judge Bench of the Federal Court in *Hari Shankar Pal v. Anath Nath Mitter 1949 FCR 36* was confirmed:

*"8.2 In the case of State of West Bengal and Others vs. Kamal Sengupta and Anr. (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:*

*"22. 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.....

25. In *Hari Shankar Pal v. Anath Nath Mitter*, 1949 FCR 36 a five-judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held: (FCR p. 48)

That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code."

- e) An application for review may be necessitated by way of invoking the doctrine **"actus curiae neminem gravabit"** i.e., **an act of court can prejudice no one**. If a court/tribunal finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for the erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing should preclude the court from rectifying the error. [*Hon'ble Supreme Court in the case of Board of Control for Cricket in India vs. Netaji Cricket Club (2005) 4 SCC 741 and the decision of the Hon'ble Guwahati High Court in Dhanani Shoes Limited vs. State of Assam and Others (2008) 16 VST 228 (Gau)*].
- f) At the relevant time, the HERC Renewable Energy Regulations 2021 was not notified. The norms based on which the generic tariff order was to be determined and made applicable to the date of commissioning of the petitioner's power project was not in existence. The regulatory dispensation under the HERC Renewable Energy Regulations 2021 stood significantly changed from the previous regulatory dispensation notified by the Hon'ble Commission, for no fault and/or prior knowledge of the review petitioner.

3. **The respondent's (HPPC) reply: -**

- 3.1 That the petition is not maintainable in the present form as the generator, under the garb of the instant review, has sought reliefs which have already been deliberated and rejected by the Hon'ble Commission by passing a reasoned decision. As such, the answering respondent-HPPC is constrained to file this reply seeking dismissal of the review petition.

REVIEW TIME-BARRED:

- 3.2 That as per regulation 57 of the Haryana Electricity Regulatory Commission (Conduct of Business Regulation), 2019, the time limit to prefer the review petition is 45 days. The

order under review, was passed on 04.01.2023, as such the review petition was liable to be filed by 18.02.2023, however, as per the information available on the website of the Hon'ble Commission, the present review petition has been registered only on 31.03.2023 after a considerable delay i.e. after lapse of about 40 days from 18.02.2023. Moreover, no day-to-day explanation of delay is coming forth. Thus, the present petition is liable to be rejected at the threshold being time-barred.

#### PETITION AGAINST THE WELL-SETTLED PRINCIPLE OF 'REVIEW':

3.3 That the prayer for review of the order of the Hon'ble Commission has no basis since the review petitioner has failed to establish as to what constitutes in this case "mistake or error apparent on the face of record". The present petition is nothing but a reiteration of the original petition. Further, Regulation 57 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019, stipulates that all relevant provisions relating to the review of the decisions, directions and orders as provided in the Code of Civil Procedure 1908, as amended from time to time, shall apply *mutatis mutanda* for review of the decisions, directions and order of the Hon'ble Commission. As per the Code of Civil Procedure 1908, review of a judgment can only be entertained under following circumstances -

- (a) *If there exists an error apparent on the face of the record; or*
- (b) *If any new and important matter of evidence was discovered which after the exercise of due diligence, was not within the knowledge of or could not be produced by the party concerned at the time when the order or decision was made; or*
- (c) *for any other sufficient reason.*

3.4 That Hon'ble Supreme Court of India in the matter of ***Kamlesh Verma v. Mayawati and others*** [(2013) 8 SCC 320], has summarized the principles of Review under the Civil Procedure Code, 1908 in the following manner: -

*"19. Review proceedings are not by way of an Appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in disguise that an alternative view is possible under the review jurisdiction.*

#### **Summary of the principles**

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

#### **20.1. When the review will be maintainable:**

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

....

**20.2. When the review will not be maintainable:**

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.**
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.**
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.**
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”**

(Emphasis Supplied)

- 3.5 That in the case of **Jain Studios Limited through its President vs. Shin Satellite Public Co. Ltd.** [2006(3) RCR (Civil) 601], the Hon'ble Supreme Court while considering a petition for review of order has held as under: -
- “8. So far as the grievance of the applicant on merits is concerned, the learned Counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. **Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter.** It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. **A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.** When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the Arbitration Petition was heard

and was rejected, **the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.**"

(Emphasis Supplied)

However, despite the reasoning adopted by the Hon'ble Commission, it is quite evident that the present review has been preferred by the petitioner to re-argue the same matter which stands specifically negated. The present review petition is nothing but an appeal in disguise whereby a reasoned decision is sought to be reheard. Such an attempt of the review petitioner would not be maintainable and cannot be entertained. The petitioner in the present case has gone ahead to re-argue the complete matter from scratch expecting every merit to be reconsidered afresh. The present case, is, therefore, liable to be dismissed outrightly.

GROUND W.R.T. INVOCATION OF "POWER TO RELAX" MISCONCEIVED:

- 3.6 That a bare perusal of the present petition shows that the primary ground for review raised by the petitioner is that the Hon'ble Commission had failed to take into account the enabling provisions of Regulation 6 read with Regulation 73 of the RE Regulations, 2021 and had not granted relaxation to the petitioner.

In this regard, it is the case of the answering respondent, the ground raised by petitioner regarding exercise of the "Power to relax" is completely mis-conceived as no cause of action arose in the favour of petitioner to seek invocation of the power to relax the regulations. It is submitted that the power to relax cannot be used as a tool or an excuse to seek deviation from the regulations as well as the terms of PPA mutually agreed upon by the parties. The same cannot be exercised/invoked to confer some benefit on the petitioner.

- 3.7 That the petitioner, while stating that provisions of regulation 73 ought to have been considered, has relied upon the following paras of the judgment of the Hon'ble Apex Court in ***Shri Ram Sahu (Dead) through LRs Vs. Vinod Kumar Rawat & Ors. [2020 SCC Online (SC) 896]***:

*"25. In Hari Sankar Pal v. Anath Nath Mitter, 1949 FCR 36 a five Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to nonappealing party, whose position was similar to that of the successful appellant, held: (FCR p. 48)*

*When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives its jurisdiction to act in a particular way, that may amount*

to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.”

In this regard, it is submitted that the issue before the Apex Court was completely different and incomparable to the factual as well as legal aspect involved in the present matter. The judgment in **Shri Ram Sahu Case** does not relate to the ‘power to relax’ but relates to the power of the High Court to delete certain observations from the impugned judgment while exercising the review jurisdiction. Similarly, the case of **Hari Shankar Pal** cannot be relied upon as the same stands over-ruled by the judgment of Hon’ble Calcutta High Court in **Anima Saha Vs. The Kolkata Municipal Corporation**[2012 (15) RCR (Civil) 200] in the following terms:

**“22. The decision in Sir Hari Shankar Pal (supra) proceeds on non-consideration of a statutory provision. Such non-consideration might render a judgment per incuriam and, therefore, if in an appropriate case the Court considers it just and proper to reconsider its earlier decision, nothing stands in the way since each and every step that advances the cause of justice is permissible to be taken by a Court having plenary jurisdiction. However, in the present case, I am not concerned with non-consideration of a statutory provision by the tribunal while it dismissed the appeal of the petitioner.”**

(Emphasis Supplied)

3.8 That argument of the petitioner that the enabling provision of determination of project specific tariff read with the power to relax vested in the Hon’ble Commission was liable to be considered, is erroneous and worthy of no credence in view of the judgment of the Division Bench of Hon’ble Rajasthan High Court in **Hindustan Zinc Ltd. Vs. U.O.I.** [2013 (54) RCR (Civil) 854], wherein the Hon’ble Court held as under: -

**“11. The provisions of Rule 173L of the Rules read thus:**

...

173L. Refund of duty on goods returned to factory.

...

(4) The Commissioner may, for reasons to be recorded in writing, relax the provisions of this rule for the purpose of admitting a claim for refund.

...

13. **Coming to the exercise of power of relaxation under Rule 173L(4) of the Rules, we are of the considered opinion that for invoking power of relaxation under the said Sub-rule, the appellant was required to comply with the requirements of the Rules and satisfy the Commissioner in this regard, which relaxation was in fact never applied by the appellant and, on the other hand, it was contended that once it was found by the respondent that the requirements of Rule 173L(2) and 173L(3) of the Rules have not been fulfilled by the appellant, it was incumbent on the**

**Commissioner to invoke power under Rule 173L(4) of the Rules. We are afraid that putting such an interpretation to the requirements of Rule 173L of the Rules is not envisaged on a plain reading of the said Rule.**

(Emphasis Supplied)

3.9 That the power to relax can be exercised for achieving the object and purpose of the regulations and cannot be the unbridled power to nullify the very intention of the delegated legislation. Reliance in this regard, is placed on the observations made by the Hon'ble CERC in the matter of **NHPC Ltd, Faridabad Vs. Punjab State Electricity Board & Ors.** [Order dated 09.06.2009 in Petition No.100/2009]:

**“4. The power of relaxation under the tariff regulations is in general terms and its exercise is discretionary. It is settled law that exercise of discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. In the given circumstances, the discretionary relief of relaxation may be refused as it may involve exercising discretion in a judicious and judicial manner. In West Bengal State Electricity Board Vs Patel Engg. Co. Ltd. – (2001) 2 SCC 451, the Hon'ble Supreme Court held that where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the rules. In R.K. Khandelwal v. State of U.P., (1981) 3 SCC 592, the Supreme Court noted that**

**“6. Dr. Singhvi, who appears on behalf of the appellant, raised a further contention that the ratio 1:1 was relaxed from time to time by the University and that the appellant was discriminated against by the arbitrary refusal of the authorities to relax the ratio in his favour. We are prepared to accept that if there is a power to relax the ratio, that power must be exercised reasonably and fairly. It cannot be exercised arbitrarily to favour some students and to disfavour some others.”**

**5. The argument made in favour of relaxation is that the petitioner will face hardship and suffer financial losses in case the relaxation is not granted. In this context it may be fair to refer to the judgment of the Hon'ble Supreme Court in New India Sugar Works v. State of Uttar Pradesh & Ors. [1981] 3 SCR 29, wherein it was observed:**

**“It was next strongly contended that in fixation of the price of levy sugar the Government has not taken into consideration that fact that the petitioners would undergo a serious loss because the price would not be sufficient even to cover their manufacturing cost. We are, however, unable to agree with this argument. The policy of price control has for its dominant object equitable distribution and availability of the commodity at fair price so as to benefit the consumers. It is manifest that individual interest, however, precious they may be must yield to the larger interest of the community viz., in the instant case, the large body of the consumers of sugar. In fact, even if the petitioners have to bear some loss**



there can be no question of the restrictions imposed on the petitioners being unreasonable.” (Emphasis added)

...

7. Same considerations should govern to the causes before the Commission as regards exercise of power of relaxation. When viewed in the light of the observations of the Hon'ble Supreme Court in above referred cases, the terms and conditions specified by the Commission under the tariff regulations cannot be categorized as unreasonable so long as to justify resort to exercise of general power of relaxation. **The power of relaxation is exercisable in exceptional circumstances on case-to-case basis. The power of relaxation cannot be exercised in a manner so as to nullify the relevant provisions of the tariff regulations and render them otiose or completely redundant.** There cannot be any omnibus relaxation in the manner sought by the petitioner. Thus the present application for relaxation is beyond the scope of regulation 44 of the tariff regulations.”

NO REVIEW MAINTAINABLE AGAINST A CONSENT ORDER:

- 3.10 That the answering respondent HPPC had filed petition before this commission (PRO-16 of 2017) seeking approval of purchase of power from petitioner's 2000 KW capacity grid connected Biomass Gasifier Power Plant along with PPA. During the course of hearing of said petition, the petitioner gave categorical acceptance for supply of power at generic tariff determined by this Hon'ble Commission. The relevant extract of the Interim Order dated 21.08.2017 as regards the statement of the Counsel for the petitioner is reproduced as under:

“...Additionally, the Ld. Counsel cited various provisions of the Electricity Act, 2003, National Tariff Policy, 2016 and HERC RE Regulations, 2010 (1st Amendment, 2011) which casts statutory obligation on the State Commission to promote generation of power from RE Sources. **He further submitted that the Generic Tariff determined by the Commission from biomass gasifier based power plants shall be acceptable to them.**”

(Emphasis Supplied)

As such, once a consent decree has been passed, no review/ appeal/ petition is maintainable challenging the same. Reliance in this regard is placed on the following judgments:

1. ***Pushpa Devi Bhagat (D) Th. LR. Sadhna Rai v. Rajinder Singh*** [2006 (3) RCR (Civil) 479] wherein it has been held- “Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there

*was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court.”*

2. Similarly, in **Percept Advertising Ltd. v. M. Ravindran, Administrator, Anubhav Plantations Ltd.** [2003 (10) SCC 84] the Hon’ble Apex Court dismissed the SLP filed keeping in view that the impugned order was passed by consent of both the parties.
3. In **Daljit Kaur Vs. Muktar Steels Pvt. Ltd.** [2013(16) SCC 607] the Apex Court held that no appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.

Thus, in view of the aforesaid judgments, the present review petition is liable to be dismissed at the threshold being legally impermissible.

TERMS OF PPA ARE SACROSANCT AND CANNOT BE ALTERED BY COURT:

- 3.11 That it is the case of the answering respondent that in case the present petition is allowed, the same would amount to amending the provisions of the PPA entered into between the parties. The relevant clauses of the PPA are reproduced below: -

*“2.1.1 The HPPC after declaration of commercial operation shall purchase and except all such electrical energy up to 2 MW delivered at the interconnection point from the Seller’s facility, pursuant to the terms and Conditions of this agreement at the **generic tariff** determined by the Commission for such projects shall be applicable and payable by the Discoms/HPPC to IPP in case the plant is commissioned during the control period covered under the RE Regulations to be notified by the Commission.”*

- 3.12 That the PPA entered into between the parties is sacrosanct in nature, the terms of which are binding and enforceable by law. The petitioner has signed the said agreement with eyes open and had not made any reservations to this effect. Unless, the terms of the PPA are held illegal, they cannot be revoked/ modified by the Hon’ble Commission when the same has been validly executed between the parties. The Hon’ble Supreme Court in Civil Appeal no. 6399 of 2016 titled as **Gujarat Urja Vikas Limited versus Solar Semiconductor Power Company (India) Private Limited and others** has held that the terms of the contract between the parties cannot be substantially altered so as to prejudice the interest of parties. The relevant part of the order of Hon’ble Supreme Court is reproduced hereunder: -

*“In the case at hand, rights and obligations of the parties flow from the terms and conditions of the Power Purchase Agreement (PPA). PPA is a contract entered between the GUVNL and the first respondent with clear understanding of the terms of the contract. A contract, being a creation of both the parties, is to be interpreted by having due regard*

to the actual terms settled between the parties. As per the terms and conditions of the PPA, to have the benefit of the tariff rate at Rs.15/- per unit for twelve years, the first respondent should commission the Solar PV Power project before 31.12.2011. It is a complex fiscal decision consciously taken by the parties. In the contract involving rights of GUVNL and ultimately the rights of the consumers to whom the electricity is supplied, Commission cannot invoke its inherent jurisdiction to substantially alter the terms of the contract between the parties so as to prejudice the interest of GUVNL and ultimately the consumers.”

- 3.13 That the present petition is liable to be dismissed as the procedure contemplated under Article 12.2 of the PPA, reproduced below, has not been followed by the petitioner: -  
“12.2 In the event of such differences or disputes, between the parties, either party may by written notice of 30 days to the other party, request the other party for resolution of dispute.”

SUBMISSIONS W.R.T. FUEL COST CANNOT BE RAISED/RE-AGITATED:

- 3.14 That insofar as the contention of the petitioner that the Commission has determined the generic tariff for biomass based plants and not for mustard husk based power plants is concerned, the same has been sufficiently answered by the Hon’ble Commission vide order dated 04.01.2023 as under:

*“The Commission has also observed that the petitioner itself has agreed during the proceedings before this Commission, for approval of PPA, way back in the year 2019, recorded in the interim order dated 21.08.2017 (HERC/PRO-16 of 2017), that generic tariff determined by the Commission for biomass gasifier based power plants shall be acceptable to them.*

*In view of the above, it is not open for the petitioner to re-agitate the issue and argue that the PPA has mentioned generic tariff for such projects, whereas the Commission has determined generic tariff for biomass gasifier based power plants and not for Mustard Husk based power plant. Infact biomass can be of various types e.g. woody fuels, agriculture/forestry residue, various types of crops residue, animal waste etc. and generic tariff is not determined for each type of biomass fuel and other State Commissions.”*

It is well settled that review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

- 3.15 That insofar as the reliance of the Hon’ble Commission on the recommendation of fuel cost made by the Maharishi Dayanand University (MDU) Rohtak is concerned, it is submitted that the challenge to the MDU’s report cannot be made by way of a review. The scope of the review petition is limited. The decision on the correctness and veracity of the report of the university is beyond the scope of the present petition. Further, no cause of

action has arisen in the favour of the petitioner to challenge the MDU's report belatedly without objecting to the same at the relevant time.

**UNSUBSTANTIATED AND BASELESS AVERMENTS RAISED:**

- 3.16 That throughout the petition un-substantiated averments regarding the procurement of fuel, fuel cost, capital cost, cost of storage, loss of GCV etc. has been raised. None of the documents appended with the present review petition evince or support the claim made by the review petition. For instance, the copy of the sanction letter dated 01.02.2023 issued by IREDA does not give any bifurcation as to where the amount is being utilised and only gives a composite cost. As such, the present petition is liable to be rejected on the sole ground of being without any cogent documentary proof.
- 3.17 That, the plant is not working at its optimal capacity. The recent bills of the generator appended herewith show that the performance is not up to the mark and very less power is being generated. Despite the high capital cost being claimed by the petitioner, the result is not optimal. Thus, grant of undue financial benefit to the petitioner would be inapt in case the intended result is not reaped.
- 3.18 That in view of the preliminary objections raised above, it is humbly submitted that the issue of maintainability, which goes to the root of matter, may kindly be adjudicated at the preliminary stage without adverting to the merits of the case. However, the answering respondents reserves its right to file the detailed reply on merits as and when deemed fit or as directed by the Hon'ble Commission at the appropriate stage.

**4. The petitioner's rejoinder:**

- 4.1 That the respondent has raised preliminary objections on maintainability by making legal submissions and relying upon case laws in the said reply. The review petitioner is therefore not giving a para-wise rejoinder for reasons of brevity.

**REVIEW TIME BARRED**

- 4.2 That the review petition was filed on 28.02.2023 with an application for condonation of delay of 10 days. At the time of filing of the petition, the petitioner had submitted court fees of Rs. 50,000/-. The balance amount of Rs. 1.55 lakhs was submitted by bank transfer on 02.03.2023, upon the registry notifying the petitioner on 28.02.2023 that the total court fees to be submitted was Rs. 2.05 lakhs.
- 4.3 This letter records the date of filing of review petition as 28.02.2023. The letter was necessitated as on the date of filing of the instant Review Petition (28.02.2023) the petitioner had only submitted an amount of Rs. 50,000/- as court fee and was directed to

pay the deficit court fee of Rs. 1,55,000/-. This letter also enclosed the RTGS/ NEFT details of the bank transfer for an amount of Rs. 1,55,000/-. Subsequently by its letter dated 22.03.2023, the Ld. Secretary of this Hon'ble Commission notified defects and granted a period of 14 days to cure the same. The defects pointed out in the aforesaid letter were cured within time and refiled under cover of the petitioner's letter. Soft copy of the review petition was provided vide email dated 30.03.2023.

#### PETITION AGAINST THE WELL SETTLED PRINCIPLE OF 'REVIEW'

- 4.4 That the review petition categorically demonstrates the grievance of the petitioner with respect to the impugned order dated 04.01.2023 as attracting the well settled principles for exercising the review jurisdiction by pointing out the mistake or the error apparent on the face of record and principles analogous thereto. The reliance on the decisions of Hon'ble Supreme Court in the matter of *Kamlesh Varma vs. Mayawati and Ors.* [(2013) 8 SCC 320] and *Jain Studios Limited through its President vs. Shin Satellite Public Co. Ltd.* [2006 (3) RCR (Civil) 601] by the Respondent is misconceived. These decisions do not support the case of the respondent.

#### GROUND W.R.T INVOCATION OF "POWER TO RELAX" MISCONCEIVED:

- 4.5 That the contention of the respondent that such power to relax is discretionary and petitioner has no vested right to seek such relaxation, completely misses the point of law canvassed in the review petition. The error apparent on the face of record is the non-consideration by the Hon'ble Commission of statutory provisions available to it under its Regulations published and notified under Electricity Act, 2003. The error apparent on the face of record is the non-suiting of the petitioner in its tariff petition for project specific tariff determination on the ground of maintainability. The non-suiting of the petitioner is at the threshold by wrongly relying on the order dated 21.08.2017 passed by this Hon'ble Commission notwithstanding the fact that the order 21.08.2017 was passed at the time when the concerned RE Regulations providing normative benchmarks and tariff orders thereunder had not been notified and without reference to the enabling provisions under those Regulations which permitted project specific tariff determination.
- 4.6 That the contention of the respondent that the power to relax cannot be used as it would become a tool or excuse to seek deviation from the regulations or the terms of the PPA is misconceived and demonstrates the fallacious interpretation put forth by the respondent which is in stark contradiction to the very judgments it places reliance on. The reliance placed by the respondent on the decision of Hon'ble Calcutta High Court in *Anima Saha vs. Kolkata Municipal Corporation* (2012 15 RCR (civil) 200) is denied. The respondent has indulged in out of context extraction of one passage from the Judgement. The petitioner craves leave to make appropriate submission at the time of hearing. The

petitioner reiterates the reliance placed by it on the decision of the Hon'ble Supreme Court in the case of *Shri Ram Sahu (dead) through LRs vs. Vinod Kumar Rawat & Ors.* [2020 SCC Online (SC) 896]. The respondent's contention that the said judgement is different and not comparable to the facts and legal issues that arise for adjudication in the present matter is denied. The five Judges Bench decision of the federal Court in *Hari Shankar Pal vs. Anath Nath Mittar*, (1949 FCR 36) has been relied upon by the Hon'ble Supreme Court in the aforesaid decision of *Ram Sahu (Supra)*. The reliance placed by the respondent on the decision of Hon'ble Rajasthan High Court (*Hindustan Zinc Ltd. vs. UOI*, [2013 (54) RCR (Civil) 854] and the Central Electricity Regulatory Commission decision in the matter of *NHPC Ltd. Faridabad vs. Punjab State Electricity Board & Ors.*, [Order dated 09.06.2009 in Petition No. 100/ 2009] is misconceived. These decisions do not support the contentions of the respondent in any manner. The respondent has clearly failed to appreciate the circumstances and material facts of this case which have constrained the petitioner to seek review of the impugned order dated 04.01.2023.

**NO REVIEW MAINTAINABLE AGAINST A CONSENT ORDER:**

- 4.7 The contention of the respondent that no review is maintainable against a consent order; is grossly inaccurate and misleading. The order in question is an interim/ interlocutory order dated 21.08.2017. This order is annexed to the Review Petition and records the submission of the counsel of the petitioner. The submissions made by the counsel of petitioner are as recorded in the order dated 21.08.2017 which read that "*he submitted that the generic tariff determined by the commission from biomass gasifier-based power plants shall be acceptable to them*", does not act as an estoppel against the petitioner from seeking reliefs as available to it under the very regulations by which the generic tariff was to be determined. Particularly when at the time of this submission of the petitioner's counsel, the concerned RE regulations had not even been published for stakeholder comments.
- 4.8 The contention of the respondent that this Interlocutory Order is a consent order; is absurd since even the power purchase agreement which stood approved by the Hon'ble Commission subsequently does not restrict the rights of the petitioner to seek reliefs as available to it in accordance with law. The reliance placed by the Respondent on the decisions of the Hon'ble Supreme Court in *Percept advertising Ltd.*, [2003 (10) SCC 84] and *Daljeet Kaur* [2013 (16) SCC 607] is misconceived. The reliance placed by the Respondent on the Judgment in the matter of *Pushpa Devi Bhagat (Dead) through LR Sadhna Rai vs. Rajinder Singh*, [2006 (3) RCR (Civil 479)] is again misconceived.

**TERMS OF PPA ARE SACROSANCT AND CANNOT BE ALTERED BY COURT:**

- 4.9 That the contention of the respondent that in case the present review petition is allowed it would amount to amending the provision of the PPA which are sacrosanct and cannot be altered by court is a grossly inaccurate and misconceived objection. The reliance placed by the respondent on clause 2.1.1. is misconceived. The evident purpose of the clause 2.1.1. cannot be read in isolation as clause 2.1.2. of the PPA (extracted in the Review petition) also needs to be fully factored. As has been submitted herein above the concerned regulations which was to govern the parties was not even published for stakeholder comments at the time of approval of PPA. This fact was fully in the knowledge of the parties as it is categorically recorded in clause 2.1.1. of the PPA. Clause 2.1.2. is therefore of vital importance as it permits payment of tariff as approved by this Hon'ble Commission. The regulations as notified also recognise this aspect of project specific tariff determination not being circumscribed or restricted by election of generic tariff by the parties in facts and circumstance of appropriate case. Reference in this regard is also placed to the statement of reason issued by this Hon'ble Commission in support of the above stated RE Regulations. The reliance placed by the Respondent on the decisions of the Hon'ble Supreme Court in Civil Appeal No. 6399 of 2016 titled as *Gujrat Urja Vikas Limited vs. Solar Semiconductor Power Company (India) Private Limited and Ors.* is misconceived.
- 4.10 That without prejudice to above, unlike the decision of Hon'ble Supreme Court in *Gujrat Urja Vikas Nigam Ltd. case (supra)* which dealt with the exercise of inherent power, the instant case before this Hon'ble Commission pertains to project specific tariff determination by virtue of the enabling provisions of the RE Regulations.
- 4.11 That without prejudice it is further submitted as under: -
- I. That the substantive intent behind the HERC (Terms and Conditions for determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2021, in relation to Biomass and Biomass Gasifier Projects has to be seen. The said regulations are ex-facie indicative of the intent of the Commission in ensuring that the agricultural and/or municipal waste is minimized and instead of burdening the waste disposal infrastructure of the authorities it is put to productive use for generating power.
  - II. That the waste material available locally would vary depending upon various aspects of the geographic landscape such as the industries functioning, the crops grown, etc. in the local area where the RE Generator is situated. Therefore, the fuel and consequently the fuel costs would vary, particularly when reference is also had to the varying amount of energy generated by the said fuel.

- III. That the plant of the petitioner is using mustard husk as fuel since the same is available in sufficient quantities within the local vicinity of the petitioner's plant. The plant is located in Village Kosli, District Rewari. Unlike the other parts of the state, there is not much cultivation of Paddy crops. District Rewari falls in the southern belt of Haryana. The submissions made in the Review petition is reiterated and relied upon in this regard. It is submitted that the Hon'ble Commission when deciding the variable costs in its tariff order dated 21.03.2022 used only Paddy Husk as a reference whereas the same is not a good reference for projects like those of the Petitioner. A bare perusal of the order dated 21.03.2022 would show that the Hon'ble Commission did not consider the aspect of fuels other than Single Paddy and Paddy Mix fuels.
- IV. That Mustard Husk unlike Paddy Husks are moisture absorbent and as a result their specific fuel consumption is much higher than most fuel and fuel mixes. As mentioned in the review petition filed, the specific fuel consumption of the petitioner's plant is higher at 1.6 kg/kWh at load condition, due to the moisture, dirt and dust content present in Mustard Husk.
- 4.12 That the contention of the respondent that the present petition is liable to be dismissed since the procedure contemplated under Article 12.2 of the PPA i.e., issuance of notice requesting the respondent for resolution of dispute, has not been followed by the petitioner is misconceived. The relevant Article 12.2 does not divest the power available with this Hon'ble Commission pursuant to the Electricity Act, 2003 and RE Regulations for adjudication of the dispute between the parties or mandate that the Hon'ble Commission cannot proceed to hear the matter in the absence of notice to the respondent seeking resolution of the dispute.

**SUBMISSIONS W.R.T. FUEL COST CANNOT BE RAISED/ RE-AGITATED:**

- 4.13 That the contention of the respondent that submission w.r.t. to fuel cost cannot be re-agitated by the petitioner in review jurisdiction is again incorrect and misconceived. The petitioner in its review petition has placed grounds for review with supporting documentation to demonstrate how there are errors apparent on the face of record in the order dated 04.01.2023. The submission made by the respondent with respect to the MDU Rohtak Report being beyond the scope of review is therefore wholly inaccurate and a non-appreciation of the grounds as raised in the review petition.

**UNSUBSTANTIATED AND BASELESS AVERMENTS RAISED:**

- 4.14 That the contention raised by the respondent that the review petition raised unsubstantiated and baseless averments are denied. The report of MDU was never made public. MDU Rohtak never sought comments of petitioner as a stakeholder despite being



the only biomass gasifier power plant based in Haryana and the district of Rewari not having any substantive paddy cultivation.

- 4.15 That the contention of the respondent that unsubstantiated averments regarding procurement of fuel, fuel cost, capital cost, cost of storage, loss of GCV has been raised by the review petitioner is denied. The contention of the respondent that the review petition does not evince through supporting documents, the claim of the review petitioner of having incurred higher fixed and variable cost is denied. The sanction letter dated 01.02.2023, issued by IREDA, identifies the earlier approved project cost at Rs. 1706.34 lakhs and identifies the additional increase approved at Rs. 2212.50 lakhs i.e., an increase by Rs. 506.16 lakhs. This increase was under the head of GST implications, additional cost due to customs duty non-waiver and interest during construction. These aspects have been pleaded in the review petition and also part of the capital expenditure placed by the review petitioner in the project specific tariff petition. Further, an amount of Rs. 151.87 lakhs stood allowed as IREDA financed this amount over and above the normative equity of Rs. 151.87 lakhs invested by the promoter as part of loan. All the above referred amounts have been duly identified in the IREDA's sanction letter. Furthermore, the project specific tariff petition filed before the Hon'ble Commission by the review petitioner had annexed the balance sheet for the relevant years. The amounts reflected with respect to GST implication, additional cost owing to non-waiver of customs duty, interest during construction period and promoter loan are duly identified in the balance sheet of the review petitioner which is also part of the record. In the circumstances, the contention of the respondent that the claims are unsubstantiated is incorrect and denied. The Petitioner reiterates that its claim for project specific tariff determination considering the approved and increased capital cost/ project cost along with variable cost should be allowed.
- 4.16 That contrary to the allegation of the respondent, the technology is proven and recommended by MNRE. IREDA sanctions loan only on such proven technology. The Technology has also been approved by HAREDA. The reason for less generation has been due to force majeure event of fire at the plant on 03.06.2022. HAREDA and HPPC are fully aware of the accident.
- 4.17 That the Insurance settlement of the plant is pending, therefore, the plant can only operate at full capacity upon its reinstatement. Earlier, OEM had agreed to reinstate the plant to full capacity with the payment at later stage. Accordingly, the plant was operated at full capacity during November 2022 for commercial operation on the basis of maintenance spares supplied by the OEM. However, the settlement of insurance claim is still pending, this delay had let to dispute with the OEM on the issue of non-payment as the OEM took the supplied spares back. In any event, the plant is a mustard husk plant with billing at actual generation and therefore the objection raised by HPPC is devoid of any merit to

the facts of the instant case. The petitioner has now procured required spares and is in process of restoration of the plant.

### **Proceedings in the Case**

5. The case was initially heard on 19.07.2023, wherein Shri Jagbir Singh appearing on behalf of petitioner pleaded for adjournment of the case, due to ongoing trouble in the plant caused by heavy rain. The hearings scheduled for 08.09.2023 and 13.09.2023 were also adjourned on the request of the petitioner. The case was subsequently heard on 15.11.2023, wherein the respondent (HPPC), mainly reiterated the contents of its reply, which for the sake of brevity have not been reproduced herein again. However, the petitioner again requested to adjourn the case as he was not prepared for arguments. The Commission observed that the petitioner has sought adjournment on various occasions on one pretext or the other. Notwithstanding the same, acceding to the request of the petitioner, the Commission allowed to file its written arguments within one week. The petitioner filed its written arguments on 20.11.2023, which is mere repetition of the contents of its rejoinder. Hence, for the sake of brevity, the same is not reproduced herein again.

### **Commission's Order**

6. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties.
7. At the outset, the Commission condons the delay in filing of the present review petition. The delay of 40 days, as per the application seeking condonation, was occurred due to procedural aspects, which is not grave. Having condoned the delay and before going into the merits of the issues raised under review, the Commission has considered it appropriate to settle the issue of maintainability of the present review petition filed against the Commission's impugned order dated 04.01.2023, The case laws cited by the respondent (HPPC), provides that the scope of an application for review is much more restricted and in order to be maintainable, the conditions precedent laid down for the purpose under Order 47 Rule 1 of Code of Civil Procedure 1908 must be satisfied (Kamlesh Verma v. Mayawati and others [(2013) 8 SCC 320]). The summary of principles set by the Apex court are reproduced hereunder: -

#### ***“When the review will be maintainable:***

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

#### ***When the review will not be maintainable:***

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*

- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”*

Per-contra, the petitioner has vehemently argued that there are errors apparent on the face of the record. The petitioner has submitted that the errors apparent on the face of record are non-consideration by the Commission of statutory provisions available to it under its regulations published and notified under Electricity Act, 2003, non-suiting of the petitioner in its tariff petition for project specific tariff determination on the ground of maintainability, by wrongly relying on the order dated 21.08.2017 notwithstanding the fact that the order 21.08.2017 was passed at the time when the concerned RE Regulations providing normative benchmarks and tariff orders thereunder had not been notified and without reference to the enabling provisions under those Regulations which permitted project specific tariff determination.

In order to examine the averments of the petitioner, the Commission perused the impugned order dated 04.01.2023. The Commission in its impugned order dated 04.01.2023 had ordered as under: -

*“The Commission has carefully examined clause 2.1.1, Article 2 of the PPA as reproduced hereunder:-*

*“2.1.1 The HPPC after declaration of commercial operation shall purchase and accept all such electrical energy up to 2 MW delivered at the interconnection point from the Seller’s facility, pursuant to the terms and conditions of this agreement at the generic tariff determined by the Commission for such projects shall be applicable/payable by Discoms/HPPC to the IPP in case plant is commissioned during the control period covered under the RE Regulations to be notified by the Commission.”*

*The Commission has also observed that the petitioner itself has agreed during the proceedings before this Commission, for approval of PPA, way back in the year 2019, recorded in the interim order dated 21.08.2017 (HERC/PRO-16 of 2017), that generic tariff determined by the Commission for biomass gasifier based power plants shall be acceptable to them.*

*In view of the above, it is not open for the petitioner to re-agitate the issue and argue that the PPA has mentioned generic tariff for such projects and whereas the Commission has determined generic tariff for biomass gasifier based power plants and not for Mustard Husk based power plant. Infact biomass can be of various types e.g. woody fuels, agriculture/forestry residue, various types of crops residue, animal waste etc. and generic tariff is not determined for each type of biomass fuel.*

*Further, the issue of non-receipt of subsidy by the petitioner is also not relevant, as the power was tied up with the viability arrived at on the understanding that capital subsidy of Rs. 1.50 crore/MW shall be available to the project, which was applicable at the time when the MoU was signed by the petitioner with HAREDA i.e. on 01.04.2016. Therefore, it is apparent that the capital subsidy could not be availed by the petitioner, due to laxity of the petitioner in establishing the power plant and related time overrun. Further, Ministry of New and Renewable Energy (Waste to Energy Division), has issued 'National Bioenergy Programme', vide letter dated 02.11.2022, under which it has been provided that application for Central Financial Assistance (CFA) received upto 31.03.2021 as well as the projects commissioned during the period from 31.03.2021 till 02.11.2022, may also be considered under this programme, which has provided CFA of Rs. 15,000 per KWE with for the biomass gasifier projects 100% gas engine for electrical application. The petitioner is advised to pursue its case for grant of CFA under the ibid guidelines."*

It is evident from the above that the issue of subsidy was also considered and accordingly the petitioner was advised to pursue its case for CFA before the appropriate authorities. Hence, it is up to the petitioner to pursue its case for CFA before the appropriate authority.

The Commission, in its impugned order dated 04.01.2023, has given adequate reasoning to hold that the petitioner is entitled to the generic tariff as mutually agreed in clause 2.1.1 of the PPA dated 28.09.2018 executed between the parties. The fact of applicability of generic tariff has been agreed by the petitioner itself, as recorded in the interim order of the Commission dated 21.08.2017 (petition no. 16 of 2017). The draft PPA was approved by the Commission vide its order dated 14.11.2017. However, the petitioner is now seeking project specific tariff determination by this Commission, in exercise of its powers to relax as provided in Regulation 6 read with Regulation 73 of the HERC RE Regulations,

2021 on the grounds that the HERC RE Regulations, specifying norms of tariff determination, were not notified at the time of passing of the order 21.08.2017 and were notified on 31.07.2018. In this regard, the Commission observes that the RE Regulations are notified from time to time for a particular control period. Further, the PPA was signed on 28.09.2018 and at that time HERC RE Regulations, 2017, was already notified for the control period from the FY 2017-18 to FY 2020-21. However, the applicable generic tariff would be the tariff determined by the Commission for the financial year **in which the project is commissioned**. The project of the petitioner was commissioned on 10.02.2022. Therefore, the levelized tariff determined by the Commission, in respect of biomass gasifier projects for the FY 2021-22, is squarely applicable to the petitioner, in terms of article 2.1.1 of the duly executed PPA dated 28.09.2018. Moreover, the Hon'ble Apex court in numerous judgements has held that the terms of the PPA are sacrosanct in nature which are binding and enforceable by law. The reference made by the petitioner to clause 6 (3) of HERC RE Regulations, 2021 which provides for determination of project specific tariff in respect of RE Projects up to an installed capacity of 2 MW, is of no significance, since the petitioner has consented to the generic levelized tariff as per duly executed PPA and the Commission has determined the same under HERC RE Regulations, 2021. We can gainfully extract from a recent judgement dated 06.04.2023 rendered by the Hon'ble Supreme Court in Haryana Power Purchase Centre vs. Sasan Power Ltd. & Ors. (Civil Appeal No. 11826 of 2019). The relevant part of the said judgement is reproduced as under:-

*“All that we are holding is that in a case where the matter is governed by express terms of the contract, it may not be open to the Commission even donning the garb of a regulatory body to go beyond the express terms of the contract.”*

Additionally, the Commission has perused the case laws cited by the HPPC viz. Pushpa Devi Bhagat (D) Th. LR. Sadhna Rai v. Rajinder Singh [2006 (3) RCR (Civil) 479], Percept Advertising Ltd. v. M. Ravindran, Administrator, Anubhav Plantations Ltd. [2003 (10) SCC 84] and Daljit Kaur Vs. Muktar Steels Pvt. Ltd. [2013(16) SCC 607] and tends to agree with HPPC that “review is not maintainable in a consent order”. Admittedly, while signing the PPA, the petitioner herein consented to the generic tariff as determined by the Commission.

8. In view of the above discussions, the Commission is of the considered view that in the garb of invoking review jurisdiction of this Commission, the petitioner is seeking re-consideration of the issue involved in the present case. The Regulations/Statutes and Case Laws encompass the scope of Review Jurisdiction in very narrow confines. The Commission, upon perusal of the records available and averments made by the parties,

is of the considered view that it was the conscious decision of the Commission while passing the impugned Order dated 04.01.2023 to uphold the provisions of the duly executed PPA which provides that the generic tariff determined by this Commission shall be the applicable tariff. Hence, it is not open for the petitioner to re-agitate the issues without identifying errors apparent or bringing to the table new facts and figures that were not available at the time of passing of the impugned order. A manifest illegality must be shown to exist or a patent error must be shown in an order to review a judgement. No such grounds or patent error have been shown by the review petitioner. The bar against re-consideration of its own decision is a settled principle in adjudicatory jurisprudence. Once a case has been finally heard and adjudicated upon by the authority concerned, the resultant adjudication can be re-opened for consideration only in appellate jurisdiction.

In terms of the above discussions, the present petition seeing review of the Commission's order dated 04.01.2023, is dismissed.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 28.11.2023.

Date: 28.11.2023  
Place: Panchkula

(Naresh Sardana)  
Member