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

Case No. HERC/Review Petition No. – 7 of 2022
IA No. 19 of 2022

Date of Hearing	:	**14.09.2022**
Date of Order	:	**14.09.2022**

IN THE MATTER OF:

Application under Regulation 57 read with Regulation 65 and Regulation 71 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 praying for exclusion of period from 15.03.2020 till 28.02.2022 and a further period of 90 days in view of the Hon'ble Supreme Court order dated 10.01.2022 in filing the instant petition, in the interest of justice. (IA No. 19 of 2022).

AND

Petition under Section 94 (1)(f) read with Section 142 & Section 146 of the Electricity Act, 2003 read with Regulation 57 and Regulation 65 of the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 (the 2019 Regulations) (Review Petition No. 7 of 2022).

Petitioner

M/s. Siwana Solar Power Projects Ltd., Bhiwani

Respondent

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

Ms. Malvika Singh, Advocate

Present On behalf of the Respondent

M/s Sonia Madan, Advocate

Quorum

Shri R.K. Pachnanda	**Chairman**
Shri Naresh Sardana	**Member**

ORDER

1. The learned counsel appearing for the petitioner submitted that the present review petition has been filed, along with an application seeking condonation of delay in filing the present review petition, review of the impugned order dated 29.09.2020 (Petition No. 8 of 2020) passed by the Hon'ble Commission in petition no HERC/PRO-8 of 2020, ignoring the order dated 27.05.2019 passed by the Hon'ble APTEL wherein the order of this Hon'ble Commission dated 20.01.2016 granting the tariff of Rs. 6.44/kWh was upheld. This Hon'ble

Commission, vide its order dated 13.08.2014, had determined the generic tariff as Rs. 7.45 per unit for the Solar plants commissioned in the FY 2014-2015. However, the Commission, vide its order dated 20.01.2016 (HERC/PRO-24 of 2015) held that the applicant is entitled to tariff at Rs. 6.44/kWh, which was further reduced to Rs. 5.68/kWh, vide order of the Commission dated 10.05.2019 (HERC/PRO 5 of 2019). On 27.05.2019, the Appeal filed against the order dated 20.01.2016 came to be decided by the Hon'ble APTEL. The Hon'ble APTEL upheld the tariff of Rs 6.44 per unit in respect of the Applicant. The petitioner filed PRO 8 of 2020 before this Hon'ble Commission, praying for implementation of the directions of the Hon'ble Commission dated 20.01.2016, 10.5.2019 and the Hon'ble APTEL's order dated 27.05.2019. This petition was filed through ex-director of the applicant Mr. Vinod Mittal who was authorised to do so vide board resolution dated 10.01.2020. Mr. Vinod Mittal withdrew the instant petition by accepting a payment of Rs. 48,38,038/- as full and final settlement in respect of outstanding dues till September 2020. Resultantly, PRO 8 of 2020, was dismissed as withdrawn, vide order dated 29.09.2020 passed by this Commission.

2. The counsel further submitted that the decision of the Hon'ble Supreme Court dated 10.01.2022 has the effect of extending the limitation period till 28.02.2022 and further 90 days from 01.03.2022. The present review petition was filed on 04.07.2022 i.e., 35 days after the expiry of the period of limitation of 90 days. The delay of 35 days has taken place due to the fact that the authorized signatory for preferring the present petition was authorized only on 16.06.2022 vide Board Resolution dated 16.06.2022, without which the petitioner-Company could not have preferred the instant petition. Additionally, given the complex issue and voluminous record involved in the present case, a further period of 15 days was taken to prepare and file the case.

3. In view of the above, the present review petition has been filed seeking review of the apparent erroneous part of the order dated 29.09.2020 passed by the Commission and implementation of order dated 27.05.2019 passed by the Hon'ble APTEL. The learned counsel argued that a perusal of Board Resolution dated 20.01.2020 authorizing Mr. Vinod Mittal to file the petition (i.e., PRO 8 of 2020) shows that although he may have been authorised to file such a petition but he was not authorised to withdraw and/or settle the matter on behalf of the applicant. Thus, an un-authorized affidavit was given by Mr. Vinod Mittal on behalf of the applicant for arriving at the settlement above.

4. Per-contra, Ms. Sonia Madan, learned advocate appearing on behalf of the respondent averred, in the hearing, that she has no issue in view of the Supreme Court's judgement regarding extending the limitation period. However, the delay beyond that ought not to be on account of non-passing of Board Resolution in a timely manner or on account of

'voluminous record', which is negligence on the part of the petitioner herein. Following judgements were cited in the written submissions by the respondent i.e. HPPC.

i) ***Delhi Development Authority v. Ramesh Kumar [1996 (61) DLT 99]*** wherein the Hon'ble Delhi High Court held:

"4. … Even the administrative delays in filing the appeals have to be properly explained. ***If there is any negligence or indolence on the part of the appellant or its officers in pursuing the matter, the same cannot be condoned*** *merely because the appellant is a State or Government Undertaking."*

ii) In ***HUDA v. Jagdish Raj Sharma [2010 (9)RCR (Civil)350]*** the Hon'ble Punjab and Haryana High Court held:

"18. … The decision is to be taken by the court on the facts and circumstances of each case. If in view of the proposition of settled law and facts of case are seen, it would show, that absolutely no detail was given as to how the delay had occurred and whether the same was justified or not. ***Mere assertion that the delay occurred due to administrative procedure involved cannot be said to be 'sufficient cause' to condone the delay.*** *"*

(Emphasis Supplied)

iii) Hon'ble Delhi High Court in ***M/s M.S. Shoes East Ltd. Vs. Pressman Ltd. [2015 (9) RCR (Civil) 417]*** wherein it has been held as under:

"11. … While, dealing with such applications, one would have to keep in mind, not only the period involved, but also the quality of the explanation furnished to explain the delay. ***To my mind, the applicant/defendants explanation for delay, which is, that the record was voluminous, in this case, appears to be hollow.*** *The self-confessed stand of the applicant/defendant that it had, looking at the vastness of the record, filed an application for being supplied certified copy of the record, which was ultimately, "abandoned", only fortifies my view.*

12. Therefore, for the reasons given above, I am not inclined to condone the delay, the application is, accordingly, dismissed."

5. Ms. Madan, further argued that the impugned order was a consent order whereby the petition (HERC/PRO-8 of 2020) was withdrawn on the basis of a settlement arrived between the parties. In the impugned order dated 29.09.2020, no liberty was granted to the petitioner to initiate any fresh proceedings in respect of the same subject-matter, as such, the bar created by Order XXIII Rule 1(4), reproduced below, squarely applies to the facts of the present case:

"(4) where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) ***Withdraws from suit or part of a claim without the permission referred in sub-rule (3)****,*

he shall be liable for such cost as the Court may award and ***shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim."***

(Emphasis Supplied)

Reliance in this regard is placed on ***Hulas Rai Baij Nath v. Firm K.B.Bass and Co.***, *[**AIR 1968 SC 111]***, wherein the Hon'ble Apex Court while considering the provisions of Order XXIII Rule 1 of CPC, particularly sub-rule(3), in crystal clear words held that where plaintiff withdraws from a suit without the permission of the Court, he is precluded from instituting a fresh suit in same subject matter against the same parties.

In ***Ramesh Chandra Sankla & Ors. v. Vikram Cement***, *[**(2008) 14 SCC 58]*, the Apex Court after referring to the judgment in ***Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others, [(1987) 1 SCC 5]*** held as follows:-

"From the above case law, it is clear that it is open to the ***petitioner*** *to* ***withdraw a petition*** *filed by him. Normally, a Court of law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the Court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not start fresh round of litigation and the Court will not allow him to re-agitate the claim which he himself had given up earlier."*

(Emphasis Supplied)

Ms. Madan further averred that once the parties have agreed to a particular course of action i.e. mutual reconciliation/settlement agreement, it is not open for any of the parties to challenge this action. Reliance in this regard is placed on Order 24 Rule 3-A CPC, reproduced below for ready reference:

*"**3-A. Bar to suit.-** No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

6. Ms. Madan vehemently argued that the validity of compromise / authorisation etc. is a mixed question of law and fact and evidence is required to be adduced to prove the validity of the consent, especially when the same is not apparent on the face of record. In considering the validity of a consent order as well as the authorisation letter, presumption under Section 114 of the Evidence Act will have to be kept in mind. The official acts must be presumed to have been regularly performed and the common course of business is presumed to have been followed. Further, Sh. R.K. Jain, Advisor to M/s Siwana Solar was present on behalf of the petitioner at the time of passing of the impugned order. As per

Order III Rule 1 of the CPC , any 'act' required to be done by the party may be done by the pleader appearing, applying or acting on its behalf. No dispute has been raised by the petitioner with respect to the authority of Sh. R.K. Jain regarding the withdrawal of the petition. As such, the present review application is liable to be dismissed on the sole ground that the petition had been properly withdrawn/settled by the pleader on behalf of the petitioner.

7. Upon hearing both the parties at length, the Commission considered it appropriate to examine the issue of maintainability of the present review petition, before deliberating on the merits of the case. Accordingly, the Commission has perused the scope of review jurisdiction, as per the provisions of Regulation 57 and 58 of the HERC (Conduct of Business) Regulations, 2019. The relevant Regulation is extracted below:-

"REVIEW OF THE DECISIONS, DIRECTIONS, AND ORDERS:

57 (1) All relevant provisions relating to 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 mutandi for review of the decisions, directions and order of the Commission.
Provided that the Commission may on the application of any party or person concerned, filed within a period of 45 days of the receipt of such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission may deem fit.
(2) No application for review shall be considered unless an undertaking has been given by the applicant that he has not preferred appeal against the decision, direction, or order, sought to be reviewed, in any Court of Law.
(3) No application for review shall be admitted/ considered unless an undertaking has been given by the applicant that in case he files an appeal of the decision, direction or order of which review is pending adjudication, he shall immediately inform the Commission regarding the fact of filing the appeal.
58 The Commission may on its own motion or on the application of any party correct any clerical or arithmetical errors in any order passed by the Commission."

Additionally, the relevant clause of Order no. XLVII of Code of Civil Procedure 1908, has also been examined. The same is reproduced below: -

"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 applied for the review.

[Explanation - The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"

Similarly, Order XLVII Rule 4 of Code of Civil Procedure 1908, provides as under:-
"4. Application where rejected.– (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.
(2) Application where granted.– Where the court is of opinion that the application for review should be granted, it shall grant the same:
Provided that –
(a) No such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is appeal for; and
(b) No such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be adduced by him when the decree or order was passed or made, ***without strict proof of such allegation****.*

(Emphasis Supplied)

Further, the Commission has perused the judgment of the Hon'ble Delhi High Court in Aizaz Alam Versus Union of India & Others (2006 (130) DLT 63: 2006(5) AD (Delhi) 297. The relevant extract from the aforesaid judgment is reproduced below:-

"We may also gainfully extract the following passage from the decision of the Supreme Court in Meera Bhanja V. Nirmala Kumari Choudhury, where the Court, while dealing with the scope of review, has observed:

The 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. The review petition has to be entertained on the ground of error apparent on the face of record and not on any other ground (emphasis added). An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of

reasoning on points where there may conceivable be two opinions. The limitation of powers of courts under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the Orders under Article 226.

Applying the above principles to the present review petition, there is no gainsaying that the review of the Order passed by this Court cannot be sought on the basis of what was never urged or argued before the Court (emphasis added). The review must remain confined to finding out whether there is any apparent error on the face of the record. As observed by the Supreme Court in Lily Thomas and Ors.V Union of India & Ors., the power of review can be used to correct a mistake but not to substitute one view for another (emphasis added). That explains the reason why Krishna Iyer, j. described a prayer for review as "asking for the moon" M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi".

The Commission has also perused the following judgment of Hon'ble Supreme Court cited by the Respondent (HPPC):-

Kamlesh Verma Vs. Mayawati and others, (2013) 8 SCC 320

"17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

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.

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.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those

specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337: JT (2013) 8 SC 275]

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 negatived."

Commission's Order

8. The Commission heard the parties at length and has also perused the filings placed on record. It is observed that 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 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 Commission is not convinced with the arguments of the petitioner that the order dated 27.05.2019 passed by the Hon'ble APTEL supersedes/ over-rides the order dated 10.05.2019 passed by this Commission, since the order dated 10.05.2019 has neither been challenged by the petitioner nor the same has been set-aside by any Court/Tribunal of competent jurisdiction. Even otherwise also, the orders dated 10.05.2019 or 27.05.2019 are not executable, owing to the subsequent settlement arrived at between the parties which has been clearly recorded in the impugned order.

9. The Commission observes that the learned counsel for the petitioner has averred that the 'Director' Shri Vinod Mittal had no locus standi to withdraw the case under consideration of this Commission. The counsel read out the board resolution dated 10.01.2020 placed on record by them; the same is reproduced below: -

"RESOLVED THAT Mr. Vinod Mittal, Director of the Company is hereby authorized and empowered to sign/execute all the relevant documents to file the Petition ***and further necessary actions*** *in the matter of Court case with Haryana Power Purchase Centre, Panchkula.*

Signature of Mr. Vinod Mittal appended below is duly attested"

(Emphasis supplied)

10. The counsel for the petitioner further averred that she has nothing further to say including on the issue of any case laws in support of her arguments. Additionally, on a query from the Commission whether the petitioner company took any action legal or otherwise against the erring director or have any evidence to substantiate the fact that the said Director exceeded his authorisation; the counsel replied in negative. Further, the argument of decision taken by the Board of Directors of the petitioner Company to arrive at mutual agreement with the respondent Nigam was under "Economic duress" was also not substantiated by the petitioner.
11. A plain reading of the petitioner company's board resolution, reproduced at para 9 above, establishes the fact that Shri Vinod Mittal, then Director of the petitioner company, was duly authorised to do whatever was required in connection with the petition under consideration i.e. he was authorised and empowered to sign / execute all the relevant documents germane to the filing of the petition as well as to take "further necessary actions" in the case. Hence, for the petitioner, questioning his locus standi, after more than two years is nothing but an afterthought. Moreover, no action seems to have been taken by the Company against the alleged erring Director Shri Vinod Mittal.
12. 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 parties have mutually agreed to a particular course of action and the petition was withdrawn subsequent to the mutual agreement. Therefore, it is not open for any of the parties to challenge this action, in terms of Order 24 Rule 3-A of CPC, which provides that *"No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."*

13. Accordingly, without delving into the details of the delay in filing, the present petition along with the IA filed in the matter, is disposed of as not maintainable.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.09.2022.

Date: 14.09.2022	(Naresh Sardana)	(R.K. Pachnanda)
Place: Panchkula	Member	Chairman