

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

Case No. HERC/RA-17 of 2019

Date of Hearing : **09.09.2019**
Date of Order : **24.09.2019**

In the Matter of

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 78 of the HERC (Conduct of Business) Regulations 2004 seeking review of the consequential order dated 30.04.2019 passed by the Hon'ble Commission pursuant to the judgment dated 13.03.2019 passed by the Hon'ble Appellate Tribunal for Electricity in Review Petition No 5 of 2015 in Appeal No 107 of 2015 and Appeal No 117 of 2015.

Petitioner: Lanco Amarkantak Power Ltd. Lanco House, Plot No. 397, Phase III
Udyog Vihar, Gurgaon – 122016

V/s

Respondent No 1: PTC India Ltd., 2nd Floor, NBCC Tower15, Bhikaji Cama Place, New
Delhi – 110066

Respondent No 2: Haryana Power Purchase Centre, 2nd Floor, Shakti Bhawan, Sector –
6, Panchkula 134109, Haryana

Present on behalf of the Petitioner: Deepak Khurana, Advocate, LAPL
Anil Sharma, Sr. VP, LANCO

Present on behalf of Respondent No 1: None

Present on behalf of Respondent No 2: Sonia Madan, Advocate, HPPC
Ravi Juneja, AEE-HPPC
Vikrant Saini, AEE-HPPC

Quorum

Shri D.S. Dhesi
Shri Pravindra Singh
Shri Naresh Sardana

Chairman
Member
Member

ORDER

Brief background of the Case

1. The Petitioner has filed the review petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 78 of the HERC (Conduct of Business) Regulations 2004 seeking review of the consequential order dated 30.04.2019 passed by this Commission pursuant to the judgment dated 13.03.2019 passed by the Hon'ble Appellate Tribunal for Electricity in Review Petition No 5 of 2015 in Appeal No 107 of 2015 and Appeal No 117 of 2015.
2. The brief facts leading to filing of the present Petition are as under:-
 - i. That vide Order dated 03.01.2014 passed in Appeal No. 65/2013, the Hon'ble Appellate Tribunal for Electricity ('APTEL') directed this Commission to re-determine the tariff for coal based 300 MW Thermal Power Plant (Unit-II) of the Petitioner for supply of power to the Respondents PTC/HPPC.

- ii. That pursuant to the directions issued vide the aforesaid Order dated 03.01.2014 of the Hon'ble APTEL to this Commission to re-determine the tariff, this Hon'ble Commission determined the tariff vide Order dated 23.01.2015.
- iii. That both the Petitioner and the Respondent No. 2 herein challenged the said Order on various grounds set out in their respective Appeals, bearing number 117 of 2015 and 107 of 2015, filed before the Hon'ble APTEL. Essentially, whilst the Appellant sought upward revision in the tariff determined by the Commission in the Tariff Order, the Respondent No. 2 sought setting aside of the Tariff Order itself.
- iv. That the said appeals were decided by the Hon'ble APTEL vide Order and Judgment dated 21.03.2018. Whilst the Hon'ble APTEL dismissed the Appeal filed by the Respondent No. 2 herein in entirety, the Appeal filed by the Petitioner was allowed to the extent of issue pertaining to Operation & Maintenance expenses of the Petitioner for Unit-II.
- v. That in the Order dated 21.03.2018, the Hon'ble APTEL framed and decided seven issues, however, apart from the issue of Operation and Maintenance Expenses, the Hon'ble APTEL did not upset the findings of this Commission rendered in the Tariff Order dated 23.01.2015.
- vi. That the Petitioner herein filed an Application being R.P. No. 5/2018, seeking review of the decision of the Hon'ble APTEL on two issues decided in the Order dated 21.03.2018, namely; Issue (E) pertaining to Computation of Energy Charges and Issue (G) pertaining to Non-Recovery of Fixed Charges Corresponding to Share of 5% Power Supplied to State of Chhattisgarh.
- vii. That the Hon'ble APTEL vide Judgment and Order dated 13.03.2019 was pleased to allow the issue pertaining to fixed charges for supply of 5% power to the Chhattisgarh State at variable charges, in favor of the Petitioner and therefore the review petition was allowed in part. The Hon'ble Appellate Tribunal vide its Judgment and Order dated 13.03.2019 directed this Commission to pass consequential orders in line with its observations in the Judgment and Order dated 13.03.2019.
- viii. That subsequent to the hearing held on 25.04.2019, this Commission passed consequential Order dated 30.04.2019 pursuant to the judgment dated 13.03.2019 passed by the Hon'ble Appellate Tribunal. The operative part of the said order is reproduced below:

“.....the Commission, in accordance with the Order dated March 13, 2019 passed by Hon'ble Appellate Tribunal for Electricity in review petition no 5 of 2018 in appeal no 107 of 2015 and appeal no. 117 of 2015, allows the petitioner to claim additional fixed cost corresponding to 3.25% of total fixed cost approved by the Commission for each year in accordance with the orders of the Hon'ble Appellate Tribunal for Electricity over and above the fixed cost corresponding to the 65% share of Haryana Power Utilities from the Unit II of LAPL.”

8. The amount so calculated shall be paid to the petitioner in ten equal monthly installments starting in 10 months from the date of this Order. In case of any delay, the Distribution licensees shall pay interest as prescribed in the MYT regulations.”

- ix. That the Petitioner had supplied power to the Respondents from 07.05.2011 onwards, and accordingly it became entitled to receive the tariff for the same as and when the power was supplied, however, part of the tariff is being paid now to the Petitioner in terms of the Order passed by this Commission. Therefore, due to time-lag, the Petitioner is entitled to receive interest on the said differential amount as it is a settled principle by the Hon'ble Supreme Court & various judgments of the Hon'ble APTEL. In this regard, it is pertinent to mention that the issue of the Petitioner's entitlement to interest on the afore-mentioned fixed charges has not been considered by this Hon'ble Commission in its order dated 30.04.2019.
- x. That the Petitioner had addressed a letter dated 07.06.2019 to the Secretary of this Commission in order to bring the above facts to the notice of this Commission with a request to pass an Order directing Respondent No. 2 HPPC to pay interest @ 1.25% per month on the differential amount of Rs 12. 88 crore to the Petitioner. The Petitioner also sought revision of direction of the Hon'ble Commission to make the payment of differential amount in three equal monthly installments instead of 10 equal monthly installments as permitted by this Hon'ble Commission. However, the Petitioner has been informed vide letter dated 07.06.2019, that request in the form of letter would not be entertained & the Petitioner may prefer proper Petition, if it may be so advised.
- xi. That the Petitioner respectfully submits that non-grant of interest on the differential amount of Rs. 12.88 crores is clearly on account of a mistake /oversight. It is submitted that the Petitioner is entitled to receive interest @ 1.25% per month on the differential amount of Rs. 12.88 crores from the date on which the payments for the power supplied (w.e.f. 07.05.2011) to the Respondents became due till the actual date of payment of the said differential amount.
- xii. That in case this Commission is not inclined to grant interest to the Petitioner as stated/prayed for above, this Commission may allow computation of interest in line with the recent Hon'ble CERC's order dated 13.06.2019 in Petition no. 251/MP/2018, order dated 11.03.2019 in Petition No. 249/MP/2018 & order dated 17.09.2018 in Petition No. 235/MP/2015 in the case of Adani Power (Mundra) Ltd. and order dated 16.05.2019 in Petition No. 8/MP/2014 & Petition No. 284/MP/2018 in the case of GMR Warora Energy Ltd., wherein Hon'ble CERC has allowed carrying cost to the generators considering the actual working capital interest rate paid by the respective Generating Companies. In this regard, the Petitioner has enclosed herewith copy of the Auditor's certificate showing the year

wise average rate of interest on working capital as per the books and records maintained by the Petitioner Company with the petition.

- xiii. That the said Order dated 27.03.2017 of the Hon'ble Commission was challenged by the Petitioner before the Hon'ble APTEL by filing an Appeal being Appeal No. 308/2017. Recently, the Hon'ble APTEL vide its order dated 22.05.2019 has allowed the appeal of the Petitioner and held that the interest is payable by HPPC on the principal amount of Rs. 88.123 crore from the date of commencement of supply (07.05.2011). The Hon'ble APTEL has further directed this Hon'ble Commission to pass consequential Order in the light of the observations made in the said judgment.
- xiv. That the principles laid down by the Hon'ble APTEL regarding grant of interest on delayed payment squarely apply to the present case as well. The parties are also the same and so is the supply of power and tariff payable to the Petitioner for the said supply. The differential amount payable by HPPC to the Petitioner emanates from the HERC tariff order dated 23.01.2015.
- xv. That the Petitioner is therefore entitled to interest @ 1.25% per month on the said amount of Rs. 12.88 crores from the date on which the payments for the power supplied (w.e.f. 07.05.2011) to the Respondent No. 2 became due till the actual date of payment of the said differential amount.
- xvi. Accordingly, the Petitioner is preferring the present Application seeking review of the Order dated 30.04.2019 on the following amongst other grounds, which are without prejudice to each other:
 - a. Because the differential amount of tariff, which will now be paid to the Petitioner, became payable when the power was supplied from 07.05.2011 onwards, will be paid after a gap of several years & therefore in accordance with well-established principle of law based on time-value of money, the Petitioner is entitled to receive interest on the said amount. Non-consideration of the said aspect & consequently grant of interest in the Order dated 30.04.2019 is a mistake/error/oversight, which may kindly be rectified in the interest of justice by this Hon'ble Commission.
 - b. Because the Hon'ble Supreme Court as well as the Hon'ble APTEL has granted interest in similar matters as a consequence of re-determination of tariff, inter alia, on the principle that interest is not a penalty, but a normal accretion on capital & is payable on the principle of time value of money & that interest is only compensation for the money denied at the appropriate time. The following, amongst others, judgments are squarely applicable to the present case:-
 - (a) *SLS Power Limited V. Andhra Pradesh Electricity Regulatory Commission and Ors. in Appeal Nos. 160, 166, 168, 172, 173 of 2011 and 9,18,26,29 and 38 of 2012.*

- (b) The judgment of the Hon'ble Tribunal in SLS Power case has been reaffirmed by the Hon'ble APTEL in *Adani Power Limited v. Central Electricity Regulatory and Ors. in Appeal No. 210 of 2017.*
 - (c) The judgment in Adani case has been reaffirmed by the Hon'ble Appellate Tribunal in its decision dated 21.12.2018 in *Appeal No. 193 of 2017- GMR Kamalanga Energy Ltd. v. CERC.* The judgment in Adani case has been reaffirmed by this Tribunal in its decision dated 21.12.2018 in Appeal No. 193 of 2017- *GMR Kamalanga Energy Ltd. v. CERC.*
 - (d) *Alok Shanker Pandey v. Union of India (2007) 3 SCC 545*
 - (e) *Enviro Legal Action v. UOI & Ors. (2011) 8 SCC 161*
 - (f) *Maharashtra State Electricity. Dist. Company Ltd. Vs. Respondent: Maharashtra Electricity Regulatory Commission through its Secretary and Ors. in Appeal No. 15 of 2007 (decision dated 05.02.2008)*
 - (g) *PTC India Limited v. Gujrat Electricity Regulatory in Appeal Nos. 47 and 62 of 2013 (decision dated 30.06.2016)*
- c. Recently, in similar cases, the Hon'ble CERC's order dated 13.06.2019 in Petition no. 251/MP/2018, order dated 11.03.2019 in Petition No. 249/MP/2018 & order dated 17.09.2018 in Petition No. 235/MP/2015 in the case of Adani Power (Mundra) Ltd. and order dated 16.05.2019 in Petition No. 8/MP/2014 & Petition No. 284/MP/2018 in the case of GMR Warora Energy Ltd., wherein Hon'ble CERC has allowed carrying cost to the generators considering the actual working capital interest rate paid by the respective Generating Companies.
- d. Because non-consideration/grant of interest on the principle amount to by the Respondent is a self –evident error/mistake/oversight apparent on the face of the Order dated 30.04.2019. There are sufficient reasons to review the Order to the extent stated above otherwise it would lead to miscarriage of justice as the Petitioner is entitled to grant of interest on the differential amount in view of well settled legal position. The said Order deserves to be reviewed to this limited extent being a fit and proper case for this Hon'ble commission to review and modify the said Order to the extent as prayed hereunder in the interest of justice.
- e. Because the direction to pay the amount over an unduly long period of 10 months needs to be reviewed & the time be restricted to three installments. In the afore-said context it is pertinent to mention that this Hon'ble Commission vide its orders dated 12.07.2016 and 31.10.2018 had directed HPPC to pay to the Petitioner, the differential amounts emanating from HERC tariff order dated 23.01.2015 in three equal monthly installments and the said differential amounts were paid by HPPC to the Petitioner.
- xvii. That the Applicant submits that it has not preferred Appeal against the decision, direction, or order, i.e. Order dated 30.04.2019 sought to be reviewed, in any

Court of Law. The Applicant undertakes that in case the Applicant files an appeal of the decision, direction or order of which review is being sought i.e. Order dated 30.04.2019, the Applicant shall immediately inform the Hon'ble Commission regarding the fact of filing the appeal.

- xviii. The petitioner has made the following prayers:
- a) allow the present Petition and review and modify the Order dated 30.04.2019 to the extent of directing payment of interest @ 1.25% per month from the date on which the payments for the power supplied (w.e.f. 07.05.2011) to the Respondents became due till the actual date of payment of the said differential amount; or in the alternative in line with principle laid down by the Hon'ble CERC as stated in Para 15 (Annexure P-4);
 - b) review and modify the Order dated 30.04.2019 to the extent of directing the Respondent No. 2 (HPPC) to make payment of differential amount in three equal monthly instalments instead of ten monthly instalments;
 - c) pass such other and further Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.
3. In response, HPPC (R-2) filed its reply, submitting as under:-
- i. That the instant Petition is untenable in its present form. The Petitioner has under the garb of review sought a relief which has not been allowed by this Hon'ble Commission after due consideration of facts of this case. The Order of the Hon'ble Commission dated 30.04.2019 is categorical and specific. There is no omission / error apparent on the reading of said Order. The Petitioner has in fact claimed additional reliefs in the present application, which cannot be considered in review jurisdiction. The Hon'ble Commission has passed the Order dated 30.04.2019 in line with the Order of the Hon'ble APTEL dated 13.03.2019 and has consciously allowed payment of principal differential amount without interest in 10 monthly instalments. It is a matter of record that no clarification was ever sought by the Petitioner from the Hon'ble APTEL with respect to Order dated 13.03.2019 for payment of differential amount along with interest. An application seeking modification of the Order for allowing claim that has not been allowed despite similar grounds being urged in main petition cannot be considered in review jurisdiction. The instant application is therefore, an abuse of process of law and liable to be rejected as not maintainable.
 - ii. That it is pertinent to reproduce the law settled by the Hon'ble Supreme Court in judgment dated 8th August, 2013 under Writ Petition (CRL.) 135 of 2008 with respect to scope of Review under law. The relevant part of the said judgement is reproduced below:-

"This Court has repeatedly held in various judgements that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."

Also in *Sow Chandra Kante & Anr. Vs. Sheikh Habib* (1975) 1 SCC 674, Apex Court held as under:-

“Mr. Daphtary, learned counsel for the petitioners, has argued at length all the points which were urged at the earlier stage when we refused special leave thus making out that a review proceeding virtually amounts to a re-hearing. May be, we were not right in (sic.) refusing special leave in the first round; but, once an order has been passed by this Court, a review thereof must be subject to the rule of the game and cannot be lightly entertained”

The prayer for review of the order of the Hon'ble Commission has no basis in view of the fact that the Petitioner has failed to establish as to what constitutes in this case **“error apparent” or “sufficient grounds” and “sufficient reasons”** as enshrined in the law for seeking review of an order / direction including a misconception of fact or law or even a misapprehension of the true state of circumstances.

In view of the foregoing, it is respectfully submitted that Petitioner have failed to set up any case fit for review of order of this Hon'ble Commission dated 30.04.2019.

- iii. That without prejudice to the foregoing, it is submitted that even otherwise the claim of the petitioner with respect to grant of interest on differential Fixed Cost is not maintainable on merits. The principle regarding payment of interest is to compensate the aggrieved party on account of act of the erring party. However, the answering Respondent had been making payments in terms of the tariff assessed by this Hon'ble Commission. Moreover, the issue with respect to payment of differential fixed cost was not allowed by this Hon'ble Commission in earlier Petition filed by the Petitioner, i.e Pro-5 of 2014 The Order passed by the Hon'ble Commission in PRO-5 of 2014 dated 23.01.2015 was further challenged by the Petitioner before Hon'ble APTEL in Appeal no 117 of 2015. However, the Hon'ble APTEL also in its Order dated 21.03.2018 passed in Appeal no 107/2015 & 117/2015 did not allow the payment of differential cost to the Petitioner. The said differential cost was allowed only in Review Application filed by the Petitioner against order of the Hon'ble APTEL dated 21.03.2018. Even in the said order dated 13.03.2019, no direction with respect to payment of interest has been made. The Answering Respondent cannot be penalised for the period for which the payment was disallowed by the Hon'ble Commission and Hon'ble APTEL and the matter remained subjudice. Thus, the Answering Respondent cannot be held liable for any non-payment as they had complied with the orders of the Hon'ble Commission and Hon'ble APTEL. In that view of the matter, the relief sought by the Petitioner is unjustified and contrary to the settled position in law.
- iv. That the Petitioner has claimed interest on the ground that it is a normal accretion on capital. However, the peculiar facts of the instant case are different from the case laws referred by the Petitioner. It is worthwhile to bring to kind notice of the Hon'ble Commission that in several cases, the courts have denied interest/ carrying cost as the delay was not attributable to the payee's account. The principle that carrying

costs shall be denied in the event the default is not intentional has been settled by the Hon'ble Tribunal. Such burden should not be passed on to the consumers.

- v. That Section 34 of Civil Procedure Code deals with the provision of granting interest. As per the said Section where and in so far as a decree for the payment of money, the court *may* in the decree, order interest at such rate as the court deems *reasonable* to be paid on the principle sum adjudged. It is well settled that the use of the word 'may' in Section 34, CPC confers a discretion on the Court to award or not to award interest or to award interest at such rate as it deems fit. Such interest so far as future interest is concerned may commence from the date of the decree and may be made to stop running either with payment or with such earlier date as the Court thinks fit. Such discretion is expected to be exercised judiciously and reasonably considering the peculiar facts and circumstances of the case.

Central Bank of India vs. Ravindra and Others, (2002) 1 SCC 367: Award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 CPC dehors the contract between the parties. In a given case if the court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner. Reliance is placed upon the following judgments of the Hon'ble Courts, where the use of discretionary power of the court was exercised in view of the peculiar facts of the case –

Clariant International Ltd. v. Securities & Exchange Board of India, (2004) 8 SCC 524: it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefor, for which a written demand is mandatory. It was further held that in absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction.

ASJS Rice Mills Owners v. State of Punjab AIR 2004 P&H 320 (DB): It was observed that the court must balance the equities between the claim of the petitioners and the liability of the respondents to pay interest. Award of such interest is not based upon the principle of enrichment of a kind of compensation which is awarded to the petitioners against the state functionaries for their delayed action, particularly unsupported by any plausible cause.

C.K. Sasankan Versus The Dhanalakshmi Bank Ltd. AIR 2009 SC 3171: The Court reduced pendent lite interest granted from 25% to 9% stating it to be exorbitant.

Narendrabhai S. Joshi v. Post Master General, Gujarat Circle AIR 2002 Guj 180: The court held that the post office could not be saddled with the liability to pay interest, especially when they were technically justified in withholding payment.

In light of the foregoing decisions, the Hon'ble Commission may consider the peculiar facts of present case where the answering respondent is not at fault at any stage and may therefore, kindly reject the prayer of the Applicant for award of interest summarily.

- vi. That it is further pertinent to point out that the Hon'ble Supreme Court in Civil Appeal Nos.5399-5400 of 2016, titled as Energy watchdog versus Central Electricity Regulatory Commission, while considering the issue of determination of compensatory tariff on account of force majeure had observed that for the operation period of the PPA, compensation for any increase / decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. In that view of the law settled by the Hon'ble Supreme Court, this Hon'ble Commission cannot adjudicate upon the prayer of the petitioner for grant of interest as compensation for Fixed Cost not paid to them.
- vii. That without prejudice to foregoing submissions, if the Hon'ble Commission is inclined to grant interest to the Applicant, it shall be paid reasonable interest as against the exorbitant interest demanded by the applicant @ 1.25% per month. It is further submitted that the Hon'ble Commission shall consider that the lowest rate of interest shall be considered in terms of interest specified in Hon'ble HERC regulations, actual carrying cost or prevailing market rate. The Applicant may also be directed to provide actual carrying cost certified by the Statutory Auditor.
4. Further, a rejoinder to the reply filed by Haryana Power Purchase Centre/ Respondent was submitted by the Petitioner, wherein the petitioner refuted the arguments of the respondent HPPC and submitted additional arguments that grant of interest is a logical sequitur to the grant of principal amount.

Proceedings in the Case

5. The Commission heard the case on 09.09.2019 where the Ld advocates for the petitioner and for the Respondent -2 (HPPC) reiterated their written submissions, which, for the sake of brevity, are not reproduced herein. None was present for the Respondent – 1(PTC).

Commission's Analysis and Order

6. In Order to examine the scope of review jurisdiction, the Commission has perused the provision of Regulation 57 & 58 of the HERC (Conduct of Business) Regulations, 2019, which empowers the Commission to exercise review jurisdiction. The relevant regulation is reproduced 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.”

7. Further, the grounds of review have been specified as per ORDER XLVII of the the Code of Civil Procedure 1908 as below:

1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from 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 judgement to the Court which passed the decree or made the order.

8. The Commission observes that the scope of Review under law has been settled by the Hon'ble Supreme Court in various judgements as cited by the respondent HPPC. Further, the Commission has also perused the judgment of 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. Nirmla 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 conceivably 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” in *M/s Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi*”.

9. The Commission observes that the impugned order dated 30.04.2019, was passed by this Commission, strictly within the four corners of the judgment dated 13.03.2019, passed by the Hon'ble Appellate Tribunal for Electricity in Review Petition No 5 of 2018. The relevant portion of the judgment of the Hon'ble Appellate Court is reproduced below:

“For the forgoing reasons, as stated supra, the Review Petition No. 05 of 2018 in Appeal No.107 of 2015 & 117 of 2015 is partly allowed, so far it relates to Issue No.(G) only. In respect of Issue No.(E), we answer against the Review Petitioner. Accordingly, Haryana Electricity Regulatory Commission/ Respondent No.1 is directed to pass consequential orders in line with our observations as stated in para nos. 5.33 & 5.34 as expeditiously as possible at any rate within three months from the receipt of a copy of this Order.”

10. Further, para no. 5.33 & 5.34 are also reproduced under:

5.33 Having regard to the submissions and pleadings of both the parties, we are of the considered view that there is an error apparent on the face of the judgment dated 21.03.2018 of this Tribunal to the extent as pleaded by the Review Petitioner on this issue (Issue G). After taking a decision to that effect, we have critically analysed the provisions under the IA, PPA, JSERC Orders, various judgments and Govt. policies etc.. It is not in dispute that the Review Petitioner is obligated to supply entire (100 %) power to only two beneficiary states i.e. Chhattisgarh and Haryana in proportion of 35%: 65%. As there is no other source or option to recover the 5% fixed charges, petitioner is entitled to claim the fixed charges for 5% power being supplied to home state at variable cost through the balance 95% power from the beneficiary

states in the same proportion as to supply of power (35%: 65%) which works out to 1.75% from Chhattisgarh and 3.25% from Haryana. We, thus, inclined to accept the contentions of the Review Petitioner in the interest of justice and equity and having regard to the facts and circumstances of the case in hand.

5.34 *Accordingly, the Review Petition 05 of 2018 in Appeal No.107 of 2015 & 117 of 2015 is partly allowed for the reasons stated above, so far it relates to issue No. (G) only. In respect of the Issue (E), for the reasons brought out in Para 4.9 & 4.10, review is not being allowed.*

11. Thus, the Commission, strictly in accordance with the above orders, directed the beneficiary state (HPPC on behalf of Haryana) to pay 3.25% of the capital cost, in addition to that being paid by it for its own share of power, within the time period specified by the Hon'ble Appellate Court. In the eventuality of any delay in such additional payment, HPPC was also directed to pay penalty by way of interest.
12. The Commission further observes that the petitioner, in its review petition, has nowhere argued that this Commission has not complied with the Order dated 13.03.2019, passed by the Hon'ble Appellate Tribunal for Electricity in Review Petition No 5 of 2018. The Commission, therefore, in view of the compliance of the Orders of the Hon'ble Appellate Court, is of the considered view that the petitioner has failed to demonstrate any error apparent on the face of record and therefore the present petition does not fit into the narrow confines of review jurisdiction as also held by the Hon'ble Supreme Court in a catena of cases. The present petition is accordingly dismissed.
13. The Commission, keeping in view the totality of the issue, directs HPPC to release the balance outstanding payment, arising out of the order dated 13.03.2019 passed by the Hon'ble Appellate Tribunal for Electricity in Review Petition No 5 of 2018, to the petitioner, within 2 weeks of the issue of this order.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 24.09.2019.

Date: 24.09.2019	(Naresh Sardana)	(Pravindra Singh)	(D.S. Dhesi)
Place: Panchkula	Member	Member	Chairman