Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Petition under section 94(1)(f) of the Electricity Act, 2003 read with Regulation 54 of the UERC (Conduct of Business) Regulations, 2014 for review of the Order dated 17.05.2018 passed by the Commission in the Petition filed by M/s Him Urja Pvt. Ltd. seeking adjustment of tariff.

In the matter of:

M/s Him Urja (P) Ltd. …Petitioner

AND

In the matter of:

Uttarakhand Power Corporation Ltd. … Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: August 14, 2018

Date of Order: September 17, 2018

The Order relates to the review Petition filed by M/s Him Urja (P) Ltd. (hereinafter referred to as "Petitioner" or "M/s HUPL") for review of Order dated 17.05.2018 passed by the Commission in the matter of adjustment of tariff for Vanala Small Hydro Power Project having capacity of 15 MW, necessitated due to additional capital expenditure incurred from FY 2013-14 to 07.07.2016, for restoration works caused to the plant under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act"), Regulation 54 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as "UERC CBR") read with the applicable provisions of the Code of Civil Procedure, 1908.

The Petitioner in the above Petition has prayed the following:

a. Admit the present Review Petition,

b. Review the impugned Order dated 17.05.2018 on the issues raised and revise the tariff in terms of the submissions made.

c. Pass such further order(s) as deemed fit and proper.

1. Background

1.1 M/s HUPL had filed a Petition for adjustment of tariff required due to additional capitalisation incurred from FY 2013-14 to 07.07.2016 for rectifying damages caused to the plant because of natural calamity which occurred in June/July, 2013. The Commission vide its Order dated 17.05.2018 has determined the tariff for the Vanala SHP.

1.2 M/s HUPL on 13.07.2018 filed a Petition seeking review of the above referred Order dated 17.05.2018. Copy of the Petition was forwarded to Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "Respondent") for submission of comments. In response, UPCL vide its letter dated 06.08.2018 submitted its comments. A hearing was also held in the matter on 14.08.2018. The Commission vide its daily order dated 14.08.2018 reserved the judgement.

1.3 The Commission has considered the replies/information submitted by the Petitioner as well as contentions raised by the Respondent and the same has been discussed at appropriate places in the Order alongwith the Commission's views on the same.

2. Petitioner's Submissions

2.1 The Petitioner submitted that it is a generating company in terms of Section 2(28) of the Act. The Petitioner had commissioned its Vanala SHP (15 MW) on river Nandakini, District Chamoli, in December, 2009. Subsequently, the Petitioner sought adjustment of tariff on account of additional capitalisation incurred for restoration work and protection works. The Commission vide its Order dated 17.05.2018 had allowed an additional tariff in the matter.

2.2 The present Review Petition has been filed under Section 94(1)(f) of the Act, read with the applicable provisions of the Code of Civil Procedure, 1908 seeking review of the

Commission's Order dated 17.05.2018 in the Petition filed by M/s HUPL for adjustment of tariff necessitated by additional capital expenditure incurred from FY 2013-14 to 07.07.2016 for restoration and protection works.

2.3 The Petitioner submitted that the Commission while determining the tariff adjustment on account of the additional capital expenditure incurred, has not considered certain aspects. Further, material evidence & data placed on record by it have not been fully considered by the Commission which amounts to errors apparent on the face of record and, therefore, is subject to the review jurisdiction of the Commission.

2.4 With regard to time overrun, the Petitioner submitted that the Commission in the impugned Order has attributed the reasons for delay to the Petitioner stating that the Petitioner was well aware of all the challenges and had itself set the schedule period of two years for completion of the restoration and protection works. Further, the Commission has also held that the Petitioner ought to have arranged required finances prior to execution of the work. The Petitioner submitted that firstly, the Commission has not considered the enormous scale of the restoration works carried out by it, and that such restoration work has rarely ever been attempted in actual execution. Therefore, in such circumstances, it is impossible to estimate the time frame in advance with accuracy and there is bound to be variation between the some estimated time frame and the actual time taken for completion. The Petitioner also submitted that it is not correct to blame the variation in the time frame on the Petitioner stating that there is delay. This would only worsen the Petitioners' already poor financial condition whereas the Petitioner has acted with utmost bona fide, put in substantial resources to complete the repair work.

2.5 The Petitioner submitted that a copy of its cash flow had been submitted to the Commission clearly showing that it was under tremendous financial strain and could not have taken up the works immediately. The additional loan facility of Rs. 22 Crore provided by the financial institution was used to save the account from becoming NPA. The Petitioner also submitted that the Commission has not considered the fact that it had to service the debt of the financial institutions also from the additional loan of Rs. 22.00 Crore. Therefore, the presumption that entire loan was available at the disposal of the Petitioner for carrying out works is erroneous and is subject to the review jurisdiction of the Commission. The Petitioner also submitted that it could start the major works only after receipt of Rs.12.27 Crore of insurance claim in year ending March 2015 & 2016. The Petitioner further submitted that the annual interest payment itself works out to be around Rs. 12 Crore most of which is financed out of the additional loan. The Petitioner submitted that the disaster was not the choice of the Petitioner or was made to happen by the Petitioner and the circumstances arising out of this situation were also fate accompli for the Petitioner. Therefore, to put any kind of blame on the Petitioner for the delay is not correct. The observation of the Commission that proper financial planning should have been done and it is internal matter of the company is misplaced. The poor financial health of the company is not the making of the Petitioner but the circumstances as it existed. The Commission may dwell upon the circumstances leading to such financial health of the company and could have intervened at appropriate stage. The finances cannot be generated by planning and it cannot be internal matter of the company as the Petitioner is operating in cost plus regime. Therefore, the above amounts to an error apparent on the fact of the record and is liable to be reviewed by the Commission.

2.6 The Petitioner submitted that the Commission has erred in considering its submissions regarding IEDC, and perhaps mistaking the claim with hard cost. The Commission has considered the cost of material as hard cost. The Petitioner also submitted that vide the Petition and its submissions it has already informed the Commission that works amounting to Rs. 20 Crore (approx) had been executed departmentally to save money by deploying own labour and no contractor has been deployed for these works. The Petitioner submitted that the Commission has failed to realise that the cement itself cannot form concrete unless it is mixed with sand and aggregate through manual labour & machines and thereafter placed in the shuttering mould to form concrete structure. The steel bars need to be cut to size and placed in the mould before concreting. Therefore, the Commission has erred in considering this cost as IEDC.

2.7 The Petitioner also submitted that in the Schedule of Rates of the PWD, the item rate is calculated after accounting for the cost of cement, steel aggregate & sand and thereafter the cost of items like labour, water and equipment is added to it to arrive at the final cost of the RCC works. The consultants appointed by the Commission have compared the rates at which works have been executed by the Petitioner with the rates in the schedule of rate and have come to conclusion that the rates adopted by the Petitioner in the DPR are much lower than the rates in schedule of rates. The Petitioner also submitted that the actual works executed are lower than the rates given in the DPR. This by itself establishes the prudence on the part of the Petitioner. Thus, there is no occasion to further reduce or disallow the cost incurred by the Petitioner. The Petitioner submitted that all these activities cannot be termed as incidental expenses but are a part of direct expenses required to bring the concrete structure into existence. These are termed as direct expenses and are not incidental expenses. All the expenses have been incurred directly on the capitalized asset and no part of it has been incurred for the O&M activities of the operational projects. The Petitioner also submitted that the bifurcation and details of all the expenses considered for IEDC had been provided to the Commission and is summarized below:

S. No.	Particulars	Rs. in Crore	Remarks
1.	Salary & Wages	7.44	The expenses of salaries of supervisory staff are Rs 95.34 lakh and the balance is daily wages for the labour deployed directly for execution of works. The details of muster rolls and voucher running into 5000 pages have already been provided.
2.	Hire Charges of Equipment & Vehicles	1.10	The details already submitted. The equipment has been hired on the basis of part use as required for the works.
3.	Repair & Maintenance of Equipments & Vehicles	0.23	The repairs of the equipment used in the construction activity.
4.	Vehicle Running Expenses	0.23	The vehicle running expenses for the O&M of the project are not part of these expenses. The expenses for the regular O&M activity has already been reduced from the gross amount.
5.	Freight & Cartage	0.06	The freight of the material transported from various places from site. The details are already provided
6.	Mining Royalty	0.02	This is royalty paid to government for use of the stone and sand for the concreting
Sub-Total		**9.09**	

Therefore, the Commission has erred in considering this cost as IEDC.

2.8 The Petitioner submitted that the Commission in its Order has granted liberty to the beneficiaries/UPCL to approach the Commission for upward revision of CUF for the purpose of recovery of approved AFC, in case the CUF remains higher than the approved CUF for three consecutive years. It is submitted that the design energy (CUF) is not dependent on the features of the plant and is only a function of the discharge available in the river. It is presumed that discharge available in the river is being fully utilized in the generation of electricity and all the components of the plant are designed accordingly. If for any reason the discharge available in the river is not being fully utilized in the plant, it has to be modified and cost to be allowed as additional capital expenditure and AFC adjusted accordingly, if such expenditure is not attributable to the default of the generator. The Petitioner also submitted that even in the large hydro plants, the design energy is not modified if generation is more than design energy. It is expected that the hydro station should generate more than design energy and earn profits. The generation above design energy is allowed to be paid at the tariff so determined. The Petitioner also submitted that the design energy (CUF) is based on the concept of probability. The AFC is distributed on design energy which has probability of being achieved even in the season when the discharge is lowest ever. The purpose being that the hydro station should be able to recover AFC even in the worst season. The provisions also exist for recovery of the AFC even when the generation is lower than design energy. No such provision exists in the case of small hydro station.

2.9 The Petitioner submitted that the Commission has directed that the design energy shall be recalculated in case the CUF remains higher for three years. The directions contained in this regard are contrary to the existing regulation on the subject. The Petitioner also submitted that the concept of the redetermination of the CUF does not find any mention in the regulation. The Regulations provide that the project specific tariff shall be determined on the basis of the CUF as stipulated in the DPR. Any energy over and above the CUF is allowed to the generator at the same rate as determined by the Commission.

2.10 The Petitioner submitted that it has been incurring losses for the last 9 years due to low CUF being achieved and the Petitioner had prayed for adjustment of tariff to recover these losses of more than Rs. 16 Crore in its Petition in 2012. The Petitioner also referred to Commission's Order dated 10.04.2014 vide which the prayer for recovery of losses due to lower CUF was rejected. The Petitioner also submitted that by the aforesaid Order, the Commission has accepted that the additional capitalization shall be allowed subject to prudence check. Relevant extracts of the Order is as follows:

"3.2.3 The Commission had examined the DPR of the Petitioner SHP's which contains the

projected generation for 90% dependable year as well as 50% dependable year as 61.17 MUs and 80.54 MUs respectively. The RE Regulations, 2010 does not specify whether the design PLF would be based on 90% dependable year or 50% dependable year. In this regard reliance is placed on Regulation 3(25) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2011 which defines design energy as under:

"Design Energy" means the quantum of energy which can be generated in a 90% dependable year with 95% installed capacity of the hydro generating station;"

Accordingly, the Commission has relied upon the generation in the 90% dependable year as calculated in DPR which is 61.17 MUs which has also been claimed by the Petitioner and which is in accordance with the Regulations. This in turns translates to a CUF of 46.55% which is higher than the normative CUF of 45% specified in the RE Regulations, 2010. Hence, the same has been considered as the CUF for recovery of AFC of the Petitioner's plant."

Accordingly, the Commission had noted that in a normal year generation could be as high as 80.54 MU, therefore, there cannot be any occasion to review the CUF. The Petitioner submitted that it has suffered losses of Rs. 30 Crore. Once the issue has been decided by the Commission it cannot be re-agitated and act as res-judicata. Further, if the losses due to low CUF of 30 to 34% were not shared by UPCL, it cannot be allowed liberty to share the profits of CUF beyond 46% in future years. The Commission already did not allow any sharing of low CUF for the past, hence, the same is equally binding on UPCL in case of higher CUF for future years.

2.11 The Petitioner submitted that CUF of all the projects varies from year to year. The Commission does not undertake review of all the projects all the time, and the Petitioner alone cannot be identified for such review. In fact, if such review is undertaken for all the projects, it would essentially mean that the small hydro station shall not be entitled to any incentive. Further, if review is done for upward revision of CUF, the same should be done for downward revision, and the same should be applicable to all other expenses incurred. The Commission in such circumstances would also have to necessarily allow annual true up for all small hydro projects, which is not provided for at present. Therefore, the question of review of only one aspect of CUF does not arise at this stage. The Petitioner also mentioned that the expenses incurred on the D tank were only Rs. 1.57 Crore of the total expenses of Rs. 22 Crore and requested the Commission to review the above issue of CUF.

2.12 With regard to the cap on future capitalisation, the Petitioner submitted that the Commission in the impugned order has observed as below:

> *"In this regard, the Commission is of the view that the Petitioner has already encased the pipeline to minimise the impact of disaster and there could still be additional remedial actions for minimisation of losses including protection of pipeline against natural calamity. However, remedial works of any type/nature cannot provide fool proof guarantee that the project shall not be damaged in future due to natural calamity. Accordingly, the Commission is of the view that it would not be appropriate to carry out more additional protection works. The Petitioner is advised to cover up any such further losses/damages, if any, through insurance instead of carrying out further capital expenditure in lieu of protection works in future resulting in burdening the beneficiary/end consumers by recovery of cost of such additional capital expenditure through tariff."*

2.13 The Petitioner submitted that while it is true that no additional works can provide fool proof guarantee that no damages shall be caused in future disaster, an engineer has to necessarily see the reasonable probability of providing protection to safeguard the structure. The building code mandate is to provide designs which are able to resist earthquake and such designs are provided in all the structures but even with such designs nobody can say that it is foolproof. The Petitioner submitted that the Consultant appointed by the Commission has opined that the works of RCC pad is necessary. The capacity to resist external impact load on pipe increases by 10 times is based on the existence of RCC pad. The developer cannot close its eyes and wait for the damage to occur and to claim insurance even for the erosion and damage to foundations of the structures of the project. No insurance can provide 100% recovery of the damages caused by the disaster and even to recover single penny from insurance company is full time cumbersome process and takes years. The possibility of loan becoming NPA always looms large. The developer has to arrange for the additional finances from its own resources to fund the reconstruction and servicing the loan which is almost impossible for small developers like the Petitioner who is already at the verge of financial insolvency.

2.14 The Petitioner submitted that while the consumer interest is important, but the same is to be balanced with that of the generator and the generator cannot be made to remain out of pocket. The generator's survival is also one of the important factors to be considered. Following this principle the Commission has allowed additional tariff of Rs. 1.34 per unit due to disaster in addition to generic tariff of Rs. 4.45 per unit to Himalayan hydro for Motighat project and Rs. 5.71 per unit to Sarju project of Uttar Bharat due to disaster during construction. The Petitioner submitted that as against the aforesaid orders, it has been allowed tariff of Rs. 4.74 per unit by the impugned order. The Petitioner requested the Commission to review the same.

2.15 With regard to Debt-Equity ratio, the Petitioner submitted that the Commission has adopted a debt-equity ratio of 84% to 16% for the purposes of calculation of tariff. The Petitioner submitted that in the Petition it had been submitted that the funds were utilized both for servicing the debt as well as restoration works. Therefore, considering entire debt for restoration work is contrary to financial arrangement obtained by the Petitioner. The Petitioner submitted that the Commission has not given any basis for the debt:equity ratio determined and debt equity ratio of 70:30 should be adopted for tariff determination.

2.16 With regard to the O&M charges on the additional capitalisation, the Petitioner submitted that its claim has been rejected on the basis that that no additional asset has been created or capacity has been enhanced. There is no such condition stipulated in any regulation for allowance of additional capitalisation. The Petitioner submitted that in the Petition the claim was in accordance with the existing regulation for large hydro power projects. The regulation for small hydro in project specific tariff does not prohibit such allowance but the discretion lies with the Commission. The Petitioner submitted that the claim may be allowed in accordance with the Regulation for large hydro projects.

3. Respondent's submission

3.1. UCPL, the Respondent submitted that the Petitioner has not given any ground of review as permissible under law for reviewing an order; the Petitioner has failed to show any error apparent on the face of the record.

3.2. With regard to the Petitioner's submission that the material evidence and data placed on record by it have not been fully considered, the Respondent submitted that the Petition did not qualify as error apparent on the face of record as for the purpose applicable of mind should not be required while Petitioner has claimed that the Commission has not fully considered the material evidence and data placed on record by it. The Petitioner has challenged the finding of the Commission. The Respondent submitted that the Petitioner has given the justifications with regard to the findings of the Commission and hence, cannot be considered.

3.3. With regard to Debt-Equity Ratio, the Respondent submitted that the Petitioner has mentioned that the Commission has not considered the fact that that it had to service the debt of the financial institution also from the additional loan of Rs. 22.00 Crore and the Petitioner has also pointed out that the Commission has erroneously considered that the entire loan was available at the disposal of the Petitioner and hence, the same does not fulfill the requirement for considering the same as review. The Respondent also submitted that the Petitioner has commented on the findings of the Commission and had declared it as "erroneous" or "mistaken" and later suffixed the same with their justifications. Nowhere the Petitioner has put up a single line that justifies or qualifies the same being the review Petition and hence the same is more of the sort of an appeal.

3.4. The Respondent submitted that the present Petition is an appeal in form of a review Petition and requires application of mind and reassessment of the issues and facts which have already been adjudicated by the Commission. The Supreme Court of India in catena of Judgments have laid down that the review Petition cannot be an appeal in disguise. The Respondent also submitted that the present Petition does not fulfill the criteria of review as per order 47 of Civil Procedure Code, 1908.

4. Commission's Views & Decisions

4.1. Before considering the Petitioner's contentions on merits of the case, it is necessary to see the scope of the power of the Commission for review of its order. Review of an order of the Commission can only be done if the Petitioner fulfils one of the grounds for review in accordance with the provisions of the Code of Civil Procedure, 1908. Section 114 of the Code of Civil Procedure (in short CPC) provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The grounds on which review can be sought are enumerated in Order 47, Rule 1 of CPC, which reads as under:

"1. Application for review of judgment

(1) Any person considering himself aggrieved:-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

Hence, the circumstances when review lies are:

(a) cases in which appeal lies but not preferred,

(b) cases in which no appeal lies,

(c) decisions on reference from Court of Small Causes; and

The grounds for review are:-

(i) discovery of new and important matter or evidence, or

(ii) mistake or error apparent on the face of the record, or

(iii) any other sufficient reason.

4.2. The Respondent vide its letter dated 06.08.2018 submitted its comments in the matter claiming that the present review Petition is not maintainable on the grounds stated below:

a) The petition had been filed under Section 94(1)(f) of the Electricity Act, 2003 and Regulation 54 of CBR, 2014 and the same cannot be applied in the present matter.

b) The Petition does not give any ground of review as permissible under law for reviewing an order, the Petitioner has failed to show any error apparent on the face of the record. The Petitioner has tried to create ground by using words so as to represent that grounds of review are maintainable where infact considering the very statement of the Petitioner it is apparent that the Petitioner has knowingly just incorporated the words as required to be pleaded when in fact no such deduction can be made from the facts of the case.

c) The contention of the Petitioner in para 8 of the Petition does not qualify as error apparent on the face of record as for the purpose application of mind should not be required while Petitioner himself has claimed that the Commission has not "fully considered" the material evidence and data placed on record by the Petitioner.

d) In para 11 & 12 of the Petition, the Petitioner has challenged the findings of the Commission and has even written to the extent that "this Commission has not considered the enormous scale of the restoration work carried out by the Petitioner". Further, the Petitioner has given the justification with regard to the findings of the Commission by mentioning that "it is not correct to blame the variation in the time frame on the petitioner stating that there is delay". Contentions made are self explanatory and clear that the Petitioner is atleast not trying for the review of the order but is putting up justifications against the finding of the Commission and hence cannot be considered.

e) In para 14 of the Petition, the Petitioner has himself written that the Commission has not considered the fact that the Petitioner had to service the debt of the financial institution also from the additional loan of Rs. 22.00 Crore. He further pointed out that the Commission has erroneously considered that entire loan was available at the disposal of the Petitioner and hence, the same does not fulfill the requirement for considering the same as review.

f) Throughout in the Petition, the Petitioner has commented on the findings of the Commission and declared them "erroneous" or "mistaken" and later suffixed the same with their justifications. Nowhere, the Petitioner has put up a single line that justifies or qualifies the same being the review Petition and hence the same is more of the sort of an appeal in disguise rather than a review Petition.

g) The Petition does not disclose any cause of action and there are no grounds of relief as are required to be stated. Further, the Petitioner has not given any details of remedies exhausted which is mandated to be disclosed.

h) The present Petition is basically an appeal in form of a review Petition and requires application of mind and reassessment of the issues and facts which have already been adjudicated by the Commission. The Hon'ble Supreme Court of India has in catena of Judgments have laid down that the review petition cannot be an appeal in disguise.

i) The present petition does not fulfill the criteria of review as per order 47 of Civil Procedure Code, 1908.

4.3. Several judgments have been cited on this aspect which reiterates the same principles. The principles laid down by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors** in this regard are being reproduced hereunder:

"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, AIR 1922 PC 112 and approved by this Court in Moran Mar BasseliosCatholicos v. Most Rev. Mar Poulose Athanasius &Ors. (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. &Ors****.*

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."*

4.4. While going into the merits of the Petitioner's contentions, the Commission is guided by the principles as aforesaid. It is clear from the nature of issues raised by the Petitioner at this stage in the Review Petition and also in its submissions before the Commission during the course of the hearing that the Petitioner wants to reopen the issues of capitalisation, disallowed time overrun, CUF, Debt equity ratio and O&M expenses. This Commission has given detailed reasons in its Order dated 17.05.2018 in support of the views on the determination of tariff in accordance with the provisions of the Act/Regulations after taking into consideration the submissions of the Petitioner. Concluded decision on initiation of adjudication proceedings cannot be reopened in this manner. Even if it is assumed for the sake of argument that the judgment of this Commission is erroneous, as held by the Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors,** a review is by no means an appeal in disguise whereby erroneous decision is reheard and corrected. Review lies only for correcting patent error or discovery of new and important matter or evidence which could not be produced by the parties at the time of the earlier proceedings or mistake or error apparent on the face of the record. Keeping the above discussion in view, the Commission has dealt accordingly with the Petitioner's contention as detailed in the following paras.

A. Time Overrun

4.5. With regard to time overrun, the Petitioner contended that the Commission has not considered the enormous scale of the restoration works carried out by it and that such restoration work has rarely ever been attempted in actual execution before. The Petitioner has further submitted that it was under tremendous financial strain and could not have taken up works immediately. The Petitioner has also stated that it could start the major works only after receipt of Rs. 12.27 Crore of insurance claim in year ending March, 2015 & 2016. The Petitioner also stated that the poor financial health of the company is not the making of it (Petitioner) but the circumstances as it existed and the finances cannot be generated by planning and it cannot be internal matter of the company as the Petitioner is operating in cost plus regime. The Commission has relied upon the DPR which was prepared by the Petitioner after taking into consideration all the required works to be done, i.e. restoration work and protection works. The Commission has already dealt on the issue in detail in the impugned order, and is of the view that there is no error apparent on the face of law. The relevant extract of the impugned order is reproduced hereunder:

> *"3.2.9 With regard to the schedule completion period of the works, the DPR dated 03.11.2013 states that 'the estimate of time required for completion of works may be around two years. Most of the site is not accessible through mechanical means of transport, therefore, it may take longer period'. It is pertinent to mention that the completion period for the project needs to be specific and any infinite time provided in the DPR will not make the developer accountable. Accordingly, as per DPR the schedule completion period of two years, i.e. by 03.11.2015, for the restoration and protection work has been considered. The Commission vide Order dated 15.03.2017 directed the Petitioner to submit the justification of time over run. In reply, the Petitioner vide letter dated 03.04.2017 submitted that the entire work was to be completed within two years, however, the work could not be completed within two years as the working sites were extremely difficult requiring carrying of material through head load to distance upto 2 km over the existing pipeline. There was extreme paucity of funds to complete the works in time stipulated in the DPR. The access road was cut for long period of time, therefore, it was not possible to transport materials. Subsequently, the Petitioner vide letter dated 06.10.2017 submitted that there was no time overrun in the repairs and it was able to complete the work early as the entire stretch of the area was not approachable through any type of mechanical vehicle.*
>
> *It is to be noted that as per DPR dated 03.11.2013, the scheduled completion period for restoration and protection works was set as two years. Further, the Petitioner itself has mentioned in the Petition that it could start assessment of the damages in August 2013 only and thereafter it was able to prepare methodology for restoration of the Project. In the DPR, the Petitioner has also discussed the ways and means to access the location of works at the project site. The relevant extract of the DPR is as follows:*
>
> > *"Access to the Project Site at the location of Works*
> >
> > *... therefore it was decided after discussion with the engineers to construct a ropeway across*

the river having a length of about 300 m and elevation difference of about 80m to carry the material at the pipe. Further, small ropeways were required o be constructed to carry the material at the various locations of the site which is otherwise inaccessible"

All the facts and geographical status of the Plant area was very well known to the Petitioner and the Petitioner itself has set such target to complete the restoration work as well as protection works considering all scenarios as mentioned in DPR.

Further, as far as the lack of funds is concerned, it is pertinent to mention that the Petitioner has made financial arrangements with M/s L&T Infra. The Petitioner has submitted that it had approached M/s L&T Infra to extend further loan to carry out the restoration works and M/s L&T Infra vide letter dated 12.09.2013 sanctioned the loan of Rs. 22 Crore by way of conversion of one year debt including interest obligation of the existing facilities in to Fresh Loan due to natural calamity and funds for critical repair and maintenance of the Existing projects. Further, the Petitioner should have made proper financial planning prior to execution of the work. Financial crunch is an internal matter of the company and time overrun on account of lack of funds cannot be justified.

As discussed above, the Petitioner was very well aware of the geographical situation of the project site as well as its financial position and therefore, the Petitioner itself, considering the factual position, had set the schedule period of two years for completion of the restoration and protection works. Further, the Petitioner was given an opportunity to submit the reasons for delay in completion of the restoration and protection work, however, the Petitioner submitted general statements without providing any documentary evidence. Accordingly, time overrun is not allowable."

Furthermore, with regard to the submission of the Petitioner that the Commission has not considered the enormous scale of the restoration work required to be carried out and also the tremendous financial constraint which it was facing while disallowing the time overrun, it is worth mentioning that the Petitioner in its DPR had provided the details of the restoration and protection works to be carried out and accordingly, the Petitioner was well aware of the scale of works required to be undertaken. Moreover, the Petitioner was also having knowledge of its financial position and financial crunches. Hence, the Petitioner should have factored these issues and devised a commensuratry work scheduled by also including the time required for arranging the required funds.

Further, the Petitioner has reiterated that there was a financial crunch and additional loan sanctioned by the financial institution was used to service the debt of the financial institution. In this regard, it is to be noted that the additional loan was provided for critical repair and maintenance of the existing project damaged due to natural calamity. It is an arrangement between the Petitioner and the financial institution that how and where the funds are utilized and hence, the time overrun cannot be justified on this basis.

The statement of the Petitioner that finances cannot be generated by planning and it cannot be internal matter of the company as it is operating in cost plus regime, is completely erroneous and devoid of any logic. Every developer is required to make its financial plan for arranging funds based on its project size, the growth and financial position. Moreover, under Project specific tariff, with regarding to Loan assistance including interest thereof the RE Regulation, 2010 clearly provide as follows:

*"**16. Financial Principles***

1. *Xxx*
2. ***Debt-Equity Ratio***

   The debt-equity ratio for generic and project specific tariff shall be as follows:

   (a) For generic tariff debt–equity ratio shall be 70:30.

   (b) For project specific tariff, the following provisions shall apply:

   If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan.

   Provided that where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff.

   Provided further that the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment.

   Provided further that subsidy available from MNRE, to the extent specified under Regulation 25, shall be considered to have been utilized towards pre-payment of debt leaving balance loan and 30% equity to be considered for determination of tariff.

   Provided further that it shall be assumed that the original repayments shall not be affected by this prepayment.

*17. **Interest on loan capital***

(1) The loans arrived at in the manner indicated in Regulation 16(2) shall be considered as gross normative loan for calculation for interest on loan. The normative loan outstanding as on April 1st of every year shall be worked out by deducting the cumulative repayment up to March 31st of previous year from the gross normative loan.

(2) For the purpose of computation of tariff, the normative interest rate shall be considered as average prime lending rate (PLR) (rounded off to 25 basis points) of State Bank of India (SBI) prevalent during the previous five years immediately preceding the control period plus 150 basis points, which works out to be 13.25%.

(3) Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed.

(4) Normative period of loan repayment shall be taken as 10 years."

It is explicitly clear from the above provision of the Regulations that the norms on the loan assistance including interest thereof do not put any restrictions on the developer with regard to arranging funds towards capital expenditure on the project. The developers have liberty to arrange any amount of debt funds from any financial institution based on its economic convenience.

Based on the above contentions of the Petitioner on the issue of time overrun are no ground for review under the Act and there is no error apparent from the record. Hence, the issue is rejected.

B. <u>Disallowance of Incidental Expenditure During Construction (IEDC)</u>

4.6. With regard to IEDC, the Petitioner has referred Accounting Standard 7 and submitted that the Commission has failed to realize that the cement itself cannot form concrete unless it is mixed with sand and aggregate through manual labour & machines and thereafter placed in the shuttering mould to form concrete structure. The Petitioner has further stated that the steel bars need to be cut to size and placed in the mould before concreting. Therefore, the Commission has erred in considering this cost as IEDC as submitted by the Petitioner.

4.7. The Commission would like to point out that the terminology IEDC used in the Order be read as 'Other charges' namely Salary & wages, Hire Charges of Equipment & Vehicles, Repair & maintenance of Equipments & vehicles, running expenses of vehicles, Freight & cartage and Mining Royalty, whose increase have definite Correlation with the delay in completion of construction activity. Further, it is worth mentioning that corporate accounting concepts are different from Regulatory accounting, therefore, certain modifications are required in the accounting principle while applying the same under regulatory regime. The 1st Proviso of Regulation 15(9) of RE Regulations, 2010 provides as follows:

> *"Provided that any additional expenditure of capital nature which becomes necessary on account of damages caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company)* ***<u>after prudence check by the Commission</u>****, shall be allowed as additional capitalisation after adjusting the proceeds from any insurance scheme for all the generating stations covered under these Regulations. For additional capital expenditure admitted, as above, appropriate adjustment in tariff shall be allowed for balance life of that project based on the norms given in Chapters 4 & 5 of the Regulations."*

(Emphasis added)

As per the above provision of the Regulations, additional capitalisation is allowed subject to prudence check by the Commission. Further, prudence check is a vast area which includes analysis of DPR, technical parameters, comparison of proposed quantity consumption and rate of material/labour with the actuals, price & quantity variation, cost overrun, time overrun etc. The Accounting Standards are silent about the treatment of cost overrun and time overrun. Infact as per the accounting principles all the direct costs related to an asset should be capitalised with the cost of the asset and other indirect costs for creation of multiple assets should be apportioned to different category of assets. Accordingly, all the direct costs namely Labour, equipment hiring charges etc. should have been capitalised as part of the asset under civil works or plant and machinery as applicable.

Further, as per Tariff policy, one of the objectives is to ensure availability of electricity to consumers at reasonable and competitive rates and it is one of the responsibilities of the Commission to make sure that any cost which could have been avoided by taking timely actions, should not be pass through to the consumer of the State. In the present case, if the developer would have completed the work within the scheduled time as per DPR, no additional labour/salary, hire & other charges would be required beyond the schedule date of completion.

Further, the Petitioner has also submitted that the Consultant appointed by the Commission have compared the rates at which works have been executed with the rates in the schedule of rate and have come to conclusion that the rates adopted by the Petitioner in the DPR are lower. In this regard, it is to be noted that the Commission has not disallowed any amount towards material/supplies on account of cost overrun. However, the Commission has disallowed those costs pertaining to labour, construction equipment charges etc that would have not been required to be spent additionally on account of time overrun if the Petitioner had completed the project within the scheduled completion period as mentioned in the DPR.

Therefore, the contention of the Petitioner in this regard is denied by the Commission as there are no grounds of review which were fulfilled.

C. <u>Adjustment of CUF in future</u>

4.8. With regard to CUF, it is to be noted that the Petitioner itself has submitted that all the components of the plant are designed based on the discharge available in the river. The Vanala SHP was commissioned in December, 2009 and subsequently, after the natural calamity occurred in June/July 2013, the additional augmentation of D-tanks have been carried out by the Petitioner which amounts to change in the design of D-tank system of the Project. Further, the Commission had appointed a Consultant for assessment of restoration and protection works carried out by the Petitioner due to catastrophe in the year 2013. In its report dated 02.05.2018, the Consultant had provided the justification for modification of D-tank System. The Relevant extract of the report is as follows:

"…. After 2013 disaster it was noticed that further landslides alongside the river have taken place thereby increasing the silt content during the monsoon months. Therefore it was decided to add on vortex type D Tank and the existing tanks were augmented by creating one additional D Tank chamber and also increasing the length of D Tanks by about additional 60m. The extension of the D tank was completed in the year 2016-17. During the year 2017 HUPL has been able to achieve PLF of 48.13% and is likely to further increase to 55% after the third chamber of the D Tank extension is ready…."

It is clear from the above that additional D-tank chamber was created and augmentation was also done which implies change in design of the water flow system of the plant necessitated by increase in the silt contest of the river during monsoon months. Further, the Petitioner has submitted that the regulations provide that the project specific tariff shall be determined on the basis of the CUF as stipulated in the DPR whereas the DPR dated 03.11.2013, as provided by the Petitioner, is silent about the CUF. The Commission would like to reiterate that there is a change in the design of the plant which had warranted an additional cost incidence on the consumers of the State and hence, the same required the review of CUF of the plant as with proposed modification the CUF of the plant would have increased and this approach of the Commission was also in line with the Judgment of Hon'ble APTEL in Appeal no. 50 & 65 of 2008 and IA. 98 & 143 of 2008. Hence, the Commission in the impugned Order directed UPCL to approach the Commission in case of CUF remains higher than the approved CUF consecutive for three years. Here, it is pertinent to mention that the CUF shall be reviewed only once to fix the same based on the modified design of the plant that is due to construction of additional Vortex type D Tank, one additional D Tank Chamber and increase in length of D tanks. Further, any subsequent change in the CUF, upwards as well as downwards, shall be considered for the incentive purpose only and no further redetermination of the CUF will be done.

The relevant extract of the Order is as follows:

"2.11 ......

It can be analysed from the above generation data, that the total generation i.e. 141.33 MU from the re-commissioning of the project till date (i.e. 37 months) is much higher than what the plant had achieved (i.e. 111.85 MU) from the original commissioning to the date of disaster (i.e. 43 Months). It is clear from the aforesaid details that with the construction/extension of the D-tank, the generation has increased. Further, the major additional capitalisation claimed were under the strengthening works which were basically for protection work and a nominal additional capitalisation of Rs. 0.60 Crore for E/M works which will not anyhow extend the life of the entire project. Accordingly, life of the entire project cannot be extended as there is no increase/value addition to P&M due to additional capitalisation, however, capitalisation pertaining to protection work will provide a safe guard against the future calamities.

Further, the Consultant vide its report dated 03.05.2018 submitted that the project was not able to perform optimally as projected during the monsoon months of July to September due to excessive silt in the river which has changed drastically during the monsoon months due to some construction activities upstream as also due to landslides. The Consultant also mentioned that the extension of the D tank has increased the PLF in year 2017 and after the completion of third chamber of D tank, the PLF will further increase to 55%. The relevant extract of the report is as follows:

"The Vanala D Tank was also designed for the same parameters as that for Rajwakti SHP. Therefore, Vanala project was not able to operate during the monsson months. The Vanala project was able to achieve PLF of 21% to 36% till 2016. After 2013 disaster it was noticed that further landslides alongside the river have taken place thereby increasing the silt content during the monsoon months. Therefore, it was decided to add on vortex type D Tank and the exiting tanks were augmented by creating one additional D Tan chamber and also increasing the length of D Tanks by about additional 60m. The extension of the D tank was completed in the year 2016-17. During the year 2017 HUPL has been able to achieve PLF of 48.13% and is likely to further increase to 55% after third chamber of the D Tank extension is ready. It can also be seen from the table of generation of the month July August September that the PLF has increased from 40% to 84%. It may noted that the according to water availability the plant runs at full capacity during June to Sept. Thus it can be seen that the expenses incurred on the D Tank have resulted in substantial improvement in generation from the project."

(Emphasis added)

With regard to PLF, Regulation 11(3) of RE Regulations, 2010 specifies as follows:

"11. Tariffs

(1) XXX

(2) XXX

(3) For projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR of the normative CUF specified under Chapter 5 for the relevant technology, whichever is higher."

Accordingly, based on the aforesaid Regulation, the Commission has considered the CUF of 46.55% for the purpose recovery of allowable annual fixed charges as levelised tariff in its

Order dated 10.04.2014.

In the present case, tariff being project specific in nature, as the actual allowable expenditure for the extension of the D Tank is to be recovered from the beneficiary as annual fixed charges, therefore, the benefit of increase in generation due to such extension should also be passed on to the beneficiary by way of increased CUF. Accordingly, the Commission is of the view that in case the CUF of the generating plant remains higher than approved CUF in Order dated 10.04.2014 for the purpose of recovery of the annual fixed charges consecutively for three years, the beneficiary may approach the Commission for upward revision of the CUF for the purpose of recovery of approved AFC in line with the Judgment of Hon'ble APTEL in Appeal no. 50 & 65 of 2008 and IA. 98 & 143 of 2008."

Further, with regard to the Petitioner's submission that in the present case, the tariff having been determined and the question of CUF having attained finality, the same cannot be reopened at this stage, the Commission would like to reiterate that the question of redetermination of CUF would not have arisen if the Petitioner had not changed the design of the plant/D-tanks System. In the present case, there is modification in the design of the plant/ augmentation of D-tank System due to which redetermination of CUF is required.

Hence, the contention of the Petitioner is rejected as there is no ground of review and there are no errors apparent from the record.

D. <u>Cap on future capitalisation</u>

4.9. On the issue of cap on future capitalization, the Petitioner has raised the contention that the Commission has allowed additional tariff of Rs. 1.34 per unit due to disaster in addition to generic tariff of Rs. 4.45 per unit to the Himalayan hydro for Motighat project and Rs. 5.71 per unit to Sarju project of Uttar Bharat due to disaster during construction. As against this, the Petitioner has been allowed tariff of Rs. 4.74 per unit by the impugned order. The Petitioner has further submitted that the consultant appointed by the Commission has opined that the works of RCC pad is necessary and the capacity to resist external impact load on pipe increasing 10 times is based on the existence of RCC pad. The Petitioner has also stated that it cannot close its eyes and wait for the damage to occur and to claim insurance even for the erosion and damage to foundations of the structures of the project.

In this regard, the Commission would like to mention that the tariff for the SHPs of the developers including Vanala SHP, have been worked out on the basis of prevailing RE Regulations. Admittedly, the Petitioner has incurred majority of the additional capitalization towards protection work whereas the other projects developers had either incurred cost towards restoration works or all such expenses incurred prior to CoD. Further, design energy vis-à-vis installed capacity of the project has bearing on the levellised tariff on per unit basis. Besides, the need for additional capitalisation varies from project to project based on the damages occurred due to natural calamity and type of works cannot be equated. Further, with regard to the opinion of the consultant, in its impugned Order dated 17.05.2018, the Commission has already stated that the consultant has submitted that remedial works of any type/nature cannot provide foolproof guarantee that the project shall not be damaged in future due to natural calamity. Further, enormous protection works in future will result in burdening the beneficiary/end consumers by recovery of cost of such additional capital expenditure through tariff.

The relevant extract of the Tariff Order is reproduced hereunder:

"3.2.7 ….. The Consultant also submitted that an additional RCC pad work has been proposed to minimise the impact of the stones falling free from a height of 5m on the encased pipeline. The work on the same is yet to be done. With regard to protection work, the Consultant also submitted that there could be many engineering solutions for estimates of forces and remedial measures and the developer has adopted one of many such possibilities.

In this regard, the Commission is of the view that the Petitioner has already encased the pipeline to minimise the impact of disaster and there could still be additional remedial actions for minimisation of losses including protection of pipeline against natural calamity. However, remedial works of any type/nature cannot provide foolproof guarantee that the project shall not be damaged in future due to natural calamity. Accordingly, the Commission is of the view that it would not be appropriate to carry out more additional protection works. The Petitioner is advised to cover up any such further losses/damages, if any, through insurance instead of carrying out further capital expenditure in lieu of protection works in future resulting in burdening the beneficiary/end consumers by recovery of cost of such additional capital expenditure through tariff."

The Commission has already given its view on the issue of capping of additional capitalization for protection works in its Order dated 17.05.2018 in the matter. Therefore, the contention of the Petitioner in this regard is denied as there are no grounds of review which were fulfilled.

E. Debt Equity Ratio

4.10. The Petitioner has submitted that the Commission has not given any basis for the debt : equity ratio determined and normative debt equity ratio of 70:30 should be adopted. The Petitioner has also submitted that the Commission has adopted a debt equity ratio of 84% to 16% for the purposes of calculation of tariff whereas the Petitioner had in the Petition submitted that the funds were utilized both for servicing the debt as well as restoration works.

With regard to utilization of loan is concerned, it is pertinent to mention that M/s L&T Infra vide letter dated 12.09.2013 sanctioned the loan of Rs. 22 Crore by way of conversion of one year debt including interest obligation of the existing facilities in to Fresh Loan due to natural calamity and funds for critical repair and maintenance of the Existing projects. The Commission has determined the debt equity ratio in accordance to Regulation 16(2)(b) of RE Regulations, 2010, debt component based on the sanctioned loan for critical repair & maintenance of the project and remaining equity. The Relevant extract of the Order are as follows:

"3.3.2 The Petitioner has considered 70% of the total spending as debt and the balance amount as equity. It is to be noted that the Petitioner has got the loan amounting to Rs. 22 Crore sanctioned from L&T Infra for the purpose of critical repair and maintenance for the Vanala Project. In this regard, the Regulation specifies that where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff. The Commission has observed from the books of accounts that during FY 2014-15 and FY 2015-16 funds through equity amounting to Rs. 0.50 Crore and Rs. 0.55 Crore have been raised. Further, the Petitioner has received an amount of Rs. 5.57 Crore on account of Material Loss and Rs. 8.20 Crore on account of Loss of Profit from the insurance company due to natural calamity occurred in Year 2013.

Further, it is to be noted that the Petitioner has incurred total hard cost of Rs. 11.04 Crore net of amount received from insurance company on account of material loss and IEDC of Rs. 9.09

Crore & IDC of Rs. 1.91 Crore. With regard to IDC, as mentioned under the head of Interest During Construction, the Petitioner has requested the Commission to consider the IDC worked out based on normative 70% debt month to month of actual expenditure incurred whereas based on the submission of the Petitioner, IDC worked out to Rs. 6.34 Crore (excluding penal interest and additional interest).

Accordingly, based on the above discussion, total additional capital cost incurred works out to Rs. 26.48 Crore considering the IDC worked out of Rs. 6.34. Further, considering the sanctioned loan from L&T Infra amounting to Rs. 22.00 Crore and the balance, i.e. Rs. 4.48 Crore has been considered as equity based on which Debt: Equity ratio works out to 83.07:16.93. The same has been applied on the approved additional capital cost of Rs. 21.55 Crore.

3.3.3 Accordingly, based on the above discussion, Debt-Equity claimed by the Petitioner and approved by the Commission is as follows:

Table-8: Debt:Equity Ratio Claimed and Approved

Particular	***Claimed***		***Approved***	
	Rs. In Crore	***%***	***Rs. In Crore***	***%***
Debt	*15.44*	*70.00*	*17.90*	*83.07*
Equity	*6.62*	*30.00*	*3.65*	*16.93*
Total	*22.05*	*100.00*	*21.55*	*100.00*

"

The Commission has already elaborated the methodology of determining the debt-equity ratio in its impugned Order. Therefore, the contentions of the Petitioner in this regard are denied as there are no grounds of review which were fulfilled.

F. O&M charges on the additional capitalisation

4.11. The Petitioner submitted that in the Petition the claim was made in accordance with the existing regulation for large hydro power projects. The RE Regulations for small hydro in case of project specific tariff provisions do not prohibit such allowance but the discretion lies with the Commission. The Petitioner requested to allow O&M expenses in accordance with the regulation for large hydro projects.

The Commission is of the view that Vanala hydro plant, being a SHP, shall be guided by the prevailing RE Regulations, 2010. Further, it is to be noted that the installed capacity of the plant remained the same as before at 15 MW even after such additional capitalisation. The new assets were appended to the existing assets.

Accordingly, the Petitioner's project is not eligible for any additional normative O&M expenses as no increase in installed capacity has resulted from these additional capital expenditure works. The relevant extract of the impugned order is as follows:

The Petitioner submitted that since beginning the O&M Charges have been allowed as percentage of capital cost as it is accepted that the O&M expenses are proportionate to the capital cost. Accordingly, the Petitioner requested the Commission to allow the proportionate O&M expenses as the capital cost of the project has increased due to additional capitalisation. ....

...

...

It is pertinent to mention that the Normative O&M expenses are linked to the capacity of the Small Hydro Plant and not with the capital cost of the plant. Further, the Petitioner vide Para 3.22 of the Petition has admitted that the work of restoration did not create any new asset capable of generating additional power capacity and no new generation capacity was added to the project. The capacity to generate power remains the same as before at 15 MW. The new assets were appended to the existing assets. According, the Petitioner's project is not eligible for any additional normative O&M expenses as no increase in installed capacity has resulted from these restoration and protection works.

Further, as far as the submission of the Petitioner regarding extra O&M expenses towards additional capitalisation incurred, the Commission is of the view that under the RE Regulations, 2010, there is no separate provision for O&M expenses on additional capitalisation."

Moreover, O&M expenses are normative as specified in the RE Regulations, 2010 and are linked to the capacity of the SHP and not on admitted capital cost of the project, hence, there was no rationale of allowing additional O&M expenses for additional capital works undertaken by the Petitioner. Accordingly, the Petitioner's request to allow O&M in accordance with the regulations applicable to Large Hydro plants is not tenable.

5. Therefore, in light of the provisions in the Statutes, the facts of the case, the submissions of the Petitioner and precedents set by the Hon'ble Supreme Court and the Hon'ble ATE, it is clear that the grounds stated by the Petitioner for review do not satisfy the grounds for review under the Code of Civil Procedure as there is no error apparent on the face of record or any new facts which could not be presented at the time of the proceedings in most of the issues. Hence, the instant Review Petition brought before the Commission is rejected and disposed off.

6. Ordered accordingly.

(Subhash Kumar)
Chairman