

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

Petition No. 53 of 2025

In the matter of:

Petition seeking review of the Order dated 13.05.2025 passed by the Commission in the Suo-moto proceedings in the matter of implementation of the Hon'ble APTEL's Judgment dated 28.08.2024 in Appeal No. 100 of 2017 and Appeal No. 389 of 2018, filed under Section 94(1)(f) of the Electricity Act 2003, read with Section 114, Order XLVII of the Code of Civil Procedure 1908 and Regulation 54 read with Regulation 59 of the Uttarakhand Electricity Regulatory Commission (Conduct of Business) Regulations, 2014.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

M/s Greenko Budhil Hydro Power Pvt. Ltd.

... Respondent

CORAM

Shri M.L. Prasad

Chairman

Shri Anurag Sharma

Member (Law)

Date of Order : October 06, 2025

Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "the Petitioner" or "Distribution licensee") has filed a Petition for review of Commission's Suo-moto Order dated 13.05.2025 (hereinafter referred to as "Impugned Order") passed by the Commission in the Suo-moto proceedings in the matter of implementation of the Hon'ble APTEL's Judgment dated 28.08.2024 in Appeal No. 100 of 2017 and Appeal No. 389 of 2018, under Section 94(1)(f) of the Electricity Act, 2003 (herein after referred to as "the Act") read with Section 144, Order XLVII of the Code of Civil Procedure 1908 and Regulation 54 read with Regulation 59 of the

Uttarakhand Electricity Regulatory Commission (Conduct of Business), Regulations, 2014 (herein after referred to as “UERC CBR”).

1. Background

1.1 M/s Greenko Budhil Hydro Power Pvt. Ltd. (hereinafter referred to as “M/s GBHPPL” or “the Generator” or “Respondent”) is a company incorporated under the Companies Act, 1956. M/s GBHPPL is a generating company falling within the definition under sub-section 28 of Section 2 of the Act and has developed a 70 MW (2x35 MW) Hydro Electric power project (hereinafter referred to as the “Project”). M/s GBHPPL had executed a PPA for 70 MW capacity with the distribution licensee, i.e. UPCL and had initiated scheduling of power w.e.f. 01.12.2015. M/s GBHPPL had filed a Petition for determination of tariff for supply of power from its project to UPCL from 01.12.2015 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

Subsequently, the Commission vide its Tariff Order dated 30.11.2016 had approved the Business Plan and Multi Year Tariff for M/s GBHPPL for the contracted capacity from 01.12.2015 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

1.2 Against the Commission’s Order dated 30.11.2016, M/s GBHPPL had approached the Hon’ble APTEL through its Appeal No. 100 of 2017 on the following issues:

- i) Erroneous computation of Design Energy owing to non-consideration of minimum environment discharge obligation at all time through the year;
- ii) Non-consideration of Tie-Line losses in the computation of saleable energy; and
- iii) Erroneous disallowance of Capital Cost of the Project on account of following:
 - (a) Interest During Construction (IDC) due to time overrun beyond control of M/s GBHPPL;
 - (b) Certain soft costs incurred by the project on account of time overrun due to factors beyond the control of M/s GBHPPL;
 - (c) Geological surprises beyond the control/contemplation of M/s GBHPPL.

1.3 Subsequently, against the Order dated 30.11.2016 of the Commission, UPCL had also

approached the Hon'ble APTEL on the following issues:

- i) Annual Plant Availability Factor (NAPAF) of Budhil HEP as 85% instead of 90%;
- ii) Issue of incentive in case Monthly Plant Availability Factor (PAFM) exceeds due to overloading conditions; and
- iii) Reconsidering the downward allowance of design energy and pass an appropriate Order for fixing the design energy as per Detailed Project Report (DPR).

1.4 On the above-mentioned Appeals, the Hon'ble APTEL vide its Judgement dated 28.08.2024 held as under:

A) Appeal No. 100 of 2017

- a. Design Energy for M/s GBHPPL shall be 280 MUs.
- b. Tie-line losses should be considered as part of saleable energy, and payment of energy is made at scheduled energy at ISTS metering point and the Commission is directed to re-calculate the claim of M/s GBHPPL as per the observation regarding saleable energy based on actual line losses.
- c. Wr.t. IDC, Soft Cost and geological surprises, the appeal is remanded to the Commission to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal,
- d. The Commission is also directed to re-determine the consequential tariff of the project.

B) Appeal No. 389 of 2018

- a. The Appeal was dismissed as devoid of merits.

1.5 The Commission had pointwise dealt with the following issues considering the judgement of the Hon'ble APTEL, submission of the generator and distribution licensee:

A) Computation of Design Energy,

B) Tie-line losses in the computation of Saleable Energy,

C) Disallowance of Time overrun due to delay in construction of evacuation system by other

agencies,

- D) Price escalation disallowed on account of geological breakdown, increase in length of HRT and increase in quantum of steel reinforcement for Diversion dam,
- E) Disallowance of Interest During Construction on account of time-overflow,
- F) Disallowance of associated soft cost on account of time-overflow,
- G) Disallowance of capital cost pertaining to Electro-Mechanical works

- 1.6 The Commission vide its Impugned Order had redetermined Tariff from the date of execution of the PPA, i.e. 01.12.2015 considering the Design Energy of 280.90 MUs as directed by the Hon'ble APTEL. Further, saleable energy was also re-determined from 01.12.2015 onwards considering Tie line losses of 0.19% from Budhil HEP to Chamara-III pooling station.
- 1.7 The Commission, based on the observation of the Hon'ble APTEL, had considered the time overrun on account of delay in finalization of the evacuation system and additional bay at NHPC Chamara-III switchyard, beyond the control of the generator and allowed the additional cost incurred due to time overrun. Further, the Commission based on the observations and direction of the Hon'ble APTEL had re-examined the issue pertaining to price escalation amounting to Rs. 71.51 Crore. The Commission had relied upon the final completion cost of the project as per the audited accounts for FY 2012-13. Besides in line with the view of the Hon'ble APTEL with respect to delays and geological surprises experienced by the project as being uncontrollable in nature, the Commission had accepted to allow the expenditure incurred on this head.
- 1.8 The delay in commissioning of the project was beyond the control of the generator and, hence, interest during construction was allowed to the generator as a component of capital cost. The generator was allowed IDC on actual basis after adjusting penal interest on account of default in payment towards principal amount and interest amount. Further, based on the directions of Hon'ble APTEL w.r.t disallowance of soft cost on account of disallowed time overrun, the Commission through its Impugned Order had allowed the expenditure towards LADA, PWD Roads, HP Entry Tax and Construction cess, 'Establishment charges', 'Design, Engineering, Construction & Supervision', 'Admn. & Other charges' as actually

incurred and expenditure towards 'HPSEB Survey & Investigation' was restricted due to delay in payment & 'Preliminary expenses' was restricted due to payment towards donation. Based on the above, the soft cost was approved by the Commission taking into consideration the fact that the time overrun was not attributable to the generator as held by the Hon'ble Tribunal.

1.9 The Generator had failed to provide invoices or contracts of Electro mechanical works amounting to Rs. 1.03 Crore during this proceeding and also since this amount was not agitated by generator in its Appeal before Hon'ble APTEL, the Commission had disallowed the same for re-determination of Capital Cost as on 01.12.2015.

1.10 Based on the above discussions, the capital cost approved in Tariff Order dated 30.11.2016, claimed by the generator and approved by the Commission through Impugned Order after implementing the directions/finding/conclusion of Hon'ble APTEL in judgement dated 28.08.2024 is as follows:

Particulars	Capital Cost allowed in Order dated 30.11.2016	Claimed by the Generator through submission dt. 13.12.2024	Admissible Capital Cost in present Order
Land	8.03	8.03	8.03
Civil Works			
Building	60.52	315.15	60.52
Other Civil Work	159.20		221.37
Hydro Mechanical Works	23.92		33.26
E&M works inc. transmission lines	146.15	147.18	146.15
Establishment charges	13.56	24.78	24.78
Design, Engg, Cons & Supervision	4.51	13.62	13.62
Pre-operative expenses			
a. LADA	6.30	6.30	6.30
b. HPSEB Survey & Investigation	6.17	10.66	6.17
c. PWD Roads	4.00	4.00	4.00
d. Admn & Other charges	1.21	2.13	2.13
Preliminary expenses	5.38	10.09	9.48
IDC & Other Bank Charges			
a. IDC	59.79	135.07	132.29
b. Other Bank Charges	5.30	7.19	7.10
HP Entry Tax	0.17	0.17	0.17
Construction Cess (BOCW)	1.01	1.01	1.01
Total Capital Cost	505.22	685.38	676.37

The Commission vide Order dated 11.05.2025 had re-determined the ARR for M/s Greenko Budhil Hydro Power Pvt. Ltd. in accordance with the observations and directions

of Hon'ble APTEL judgement dated 28.08.2024 and submissions of the Generator and the distribution licensee from the date of execution of the PPA, i.e. 01.12.2015 with UPCL till FY 2023-24 based on the above approved capital cost of Rs. 676.37 Crore in accordance with the prevailing UERC Tariff Regulations.

2. Petitioner's Submission

2.1 The Distribution licensee has filed a review Petition on the Impugned Order dated 13.05.2025 under provisions of Section 94(1)(f) of the Electricity Act, 2003 read with Section 144, Order XLVII of the Code of Civil Procedure 1908 seeking review of the said Order insofar as the following costs, allowed to the Respondent, are vitiated by error apparent on the face of record:

- a. Allowance of additional hard cost to the extent of Rs. 71.51 Crore.
- b. Allowance of additional soft costs under the heading "Design, Engineering, Construction, and Supervision Charges" to the extent of Rs. 9.11 Crore (over and above the sum of Rs. 4.51 Crore allowed by the Commission in the Order dated 30.11.2016).
- c. Allowance of the Interest During Construction ("IDC"), if any, incurred by the Respondent, in case the Respondent had obtained debt financing with respect to the additional hard cost of Rs. 71.51 Crore mentioned at sl. no. (a) above or the additional soft cost mentioned at sl. no. (b) above;
- d. Allowance of additional amount of Rs. 1.80 Crore towards "Other Bank Charges", insofar as the relevant Bank Charges were incurred by the Respondent while financing the costs mentioned at sl. nos. (a) and/or (b), above;
- e. Allowance of additional amount of Rs. 11.22 Crore towards "Establishment Charges", insofar as the same were incurred by the Respondent in connection with the costs mentioned at sl. nos. (a) and/or (b) above;

2.2 The Petitioner through the current Review Petition submitted that there is an error apparent on the face of the record in so far as this Commission while passing the said order and allowing the escalation in capital cost amounting to Rs. 71.51 Crore, failed to carry out prudence check regarding the quantum of the escalated capital cost and thus failed to

comply with the directions of the Hon'ble APTEL in its Order dated 28.08.2024.

- 2.3 The Petitioner submitted that on 15.12.2006, the Respondent and Lanco Infratech by mutual consent, caused the 2005 Contract to be amended and executed Amendment No. 1. Inter alia, the scope of works under Art. 1.1 of the 2005 Contract was amended, but the Contract Value remained at Rs. 170 Crore. The Petitioner also submitted that the scope of the Contractor's work under the 2006 Amendment against the Contract Value of Rs. 170 Crore, included an item namely "LOT-2 (x) Hydro-mechanical works" amounting to Rs. 12.54 Crore.
- 2.4 The Petitioner submitted that a meeting was held on 11.12.2009 between the Respondent and M/s Lanco Infratech Ltd. wherein the Respondent agreed to pay M/s Lanco Infratech compensation towards price escalation, overheads, & other charges allegedly incurred by M/s Lanco Infratech because of "*delay in work on account of reasons not attributable to the contractor*". The Petitioner also submitted that the minutes of the said meeting were not available with the Respondent. In the absence of the Minutes of the Meeting or any other relevant correspondence leading up to the Respondent's decision to "compensate" the Contractor, there is nothing on the record of the Commission to show that the demand for such "compensation" emanated from the side of the Contractor at all.
- 2.5 The Petitioner submitted that law regarding the liability of employers in cases where a contractor has to perform works, over a longer time-period than what was contemplated in the contract is stipulated by Section 55 of the Indian Contract Act, 1872. It is clearly provided in the said section that in case a contractor intends to demand costs from the employer, against losses incurred on account of doing work over a longer-than-planned period, the contractor must do so, prior to commencing the works at a stage beyond the contractually stipulated period.
- 2.6 The Petitioner submitted that the Impugned Order warrants review because the quantification of the claim for escalation costs at Rs. 71.51 Crore were not justified by the Respondent by producing any invoices, correspondences, or any other documents suggesting that the said quantum was arrived at based on bona fide negotiation. The Petitioner also submitted that the said quantum is merely based on the amount mutually

agreed upon as per the amended agreement dated 08.01.2010. The Respondent failed to place any communication before the Commission, suggesting that it sought any explanation or justification regarding the claim for additional compensation raised by the contractor.

- 2.7 The Petitioner submitted that although the 2010 amended contract characterizes the payment of Rs. 71.51 Crore as compensation for price escalation, overheads and other charges, the Respondent has failed to produce any material showing that such escalation in input prices or overheads was actually incurred by the contractor. In particular, the Respondent has not produced any escalation indices, contractor's accounts, or work-wise cost breakdowns to show that any of the specific milestone activities to which the payment was linked had, in fact, become more expensive on account of escalation.
- 2.8 The Petitioner submitted that there is no indication in the record of these proceedings that the item "LOT-2 (x) Hydro-mechanical works" which was deleted from the Contractor's scope in 2010, was thereafter executed through another subcontractor and, if so, at what cost. The Respondent has failed to disclose how it procured or executed the deleted item and whether any price savings were achieved. The omission to adjust for this deletion before allowing Rs. 71.51 Crore as escalated cost is an error apparent on the face of the record.
- 2.9 The Petitioner submitted that the Respondent itself admitted before the Commission in response to queries raised in the year 2016 that the Detailed Project Report (DPR) for the project suffered from estimation errors and failure to include several key items. The increased capital cost incurred for such missed-out items is thus attributable to the Respondent's own lack of due diligence. To the extent the impugned Order allows such costs to be passed through to the consumers, it is liable to be reviewed.
- 2.10 The Petitioner submitted that the cost incurred by the Respondent under the heading "Design, Engineering, Construction and Supervision Charges" exceeded the revised estimate by more than Rs. 9 Crore despite being incurred just 21 months after the revised estimate was submitted. The Petitioner submitted that the Commission erred in allowing the full amount as pass-through without scrutiny, and the same warrants review.
- 2.11 The Petitioner submitted that the Design Charges form part of the controllable cost

components of the project and are not subject to external price shocks or statutory levies. The escalation from Rs. 5.24 Crore to Rs. 13.62 Crore in such a short time-frame suggests inefficiency or imprudence in cost control by the Respondent. The Commission, however, allowed the entire amount as pass-through without evaluating whether such cost escalation could have been avoided by better project management. This failure to apply a prudence check to a controllable component constitutes a reviewable error. It is submitted that the Respondent has not produced any work orders, invoices, internal approvals, or basis of estimation to support the claim that an additional Rs. 9.11 Crore under Design Charges was actually incurred or reasonably necessary. The complete absence of supporting documentation or even a cost breakdown undermines the credibility of the claim and makes the allowance of such costs arbitrary.

2.12 The Petitioner submitted that the said impugned order warrants review also because it fails to consider the possibility that part of the increase in Design Charges arose due to the Respondent's own admitted lapses in preparation of the DPR. The missed-out components and estimation errors identified by the Respondent in its submissions to the Commission would have necessitated revisions, re-work, and additional design effort that would not have been required but for the Respondent's lack of diligence. Such costs, if any, are attributable to Respondent's inefficiency and ought not to have been passed through to the consumers.

2.13 The Petitioner submitted that in the event the Commission disallows the additional hard cost of Rs. 71.51 Crore and/or additional soft costs of Rs. 9.11 Crore to the Respondent, the following other sums allowed to the Respondent by way of the said Order would also warrant a fresh prudence check. The Petitioner, accordingly, prayed that the same may be disallowed subject to prudence check:

2.13.1 IDC, if any, incurred by the Respondent, in case the Respondent had obtained debt financing with respect to the additional hard cost of Rs. 71.51 Crore or the additional soft cost of Rs. 9.11 Crore;

2.13.2 Additional amount of Rs. 1.80 Crore towards "Other Bank Charges" allowed to Respondent under the said Order, insofar as the relevant Bank Charges were

incurred by the Respondent while financing the costs above;

2.13.3 Additional amount of Rs. 11.22 Crore towards "Establishment Charges" allowed to the Respondent under the said Order, insofar as the same were incurred by the Respondent in connection with the costs mentioned above;

2.14 The Petitioner submitted that the Respondent and the Contractor caused the 2005 contract to be further amended and executed "Amendment Agreement No.2" on 08.01.2010. The Petitioner submitted that by way of the said amendment, an item "LOT-2 (x) Hydro-mechanical works" amounting to Rs. 12.54 Crore was deleted from the scope of the Contractor's work and at the same time, the Respondent agreed to pay an additional Rs. 71.51 Crore to the contractor as compensation towards price escalation, overheads & other charges incurred due to delays in works on account of reasons not attributable to the contractor. Hence, although the Contractor was paid an additional sum of Rs. 71.51 Crore, the actual financial impact of the amendment on the Respondent was only Rs. 58.96 Crore. The Petitioner submitted that in neither amended contract dated 08.01.2010 nor in any other document on the record of the Commission, had the Respondent provided a breakup of Rs. 71.51 Crore paid to the Contractor.

2.15 The Petitioner submitted that the Respondent has failed to produce any invoices submitted by the Contractor wherein after completion of the milestones mentioned in amended contract 2010. The Petitioner also submitted that apart from granting compensation to its parent company, the Respondent also unilaterally waived its right to levy liquidated damages under contract 2005 and granted additional time till March, 2011 to the contractor to complete the works. The Petitioner submitted that GoHP approved the Revised Cost Estimates on 20.08.2010 after taking into account the prevailing delays. The Respondent is liable to explain any instance wherein the claimed actual costs incurred by it in completing the project are even higher than the provisions made in Revised Cost Estimates. In the absence of any explanation therefore, the same would indicate that the Respondent failed to manage the cost components.

2.16 The Commission fixed a hearing on 06.08.2025 on admissibility of the Review Petition and forwarded a copy of the Petition to the Respondent to submit comments on the admissibility

of the Petition with a copy of comments to the Petitioner and the Petitioner was directed to submit its rejoinder, if any, to the Commission within one week of receipt of reply from the Respondent.

The Respondent through its submission dated 31.07.2025 submitted its reply on the Review Petition. However, no rejoinder has been submitted by the Petitioner before the Commission.

3. Respondent's Submission

- 3.1 The Respondent through its submission dated 31.07.2025 submitted that it denies and disputes in totality the submissions made by the Review Petitioner and the reliefs sought in the present Petition and the Respondent further denies and disputes in totality all the averments made by the Petitioner.
- 3.2 The Respondent submitted that the Petition is devoid of any grounds of review and in effect, is an ill-fated attempt to re-open concluded findings of the Commission which are based on well-founded reasons after examination of material on record, and as such there is no apparent error on the face of records, warranting any interference under review jurisdiction. The Respondent also submitted that the facts or grounds stated in the Petition are beyond the scope of review jurisdiction. While examining a Review Petition, a court of law is necessarily required to exercise its jurisdiction strictly in accordance with the principles of review.
- 3.3 The Respondent submitted that Section 94 of the Act, 2003 provides for the review jurisdiction of the Commission. As per Section 94(1)(f), for reviewing its decisions, the Commission acts as a civil court and resultantly, the provisions of the Civil Procedure Code, 1908 become applicable. Respondent referred to the provisions of Order 47 Rule 1 of CPC, 1908 which states as follows:

"1. Application for review of judgment. –

Any person considering himself aggrieved –

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

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

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

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellant Court the case on which he applied for the review.

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

The Respondent submitted that from a reading of the aforesaid provision, the following statutory position with respect to the scope of review is clear:

- i. The scope of review is extremely limited;
- ii. A review can be filed only upon discovery of new or important matter or evidence, which could not be produced during the time of passage of an order, despite due diligence;
- iii. A review can also be filed if there is a mistake or error apparent on the face of record; and
- iv. A review can also be filed for any other sufficient reason, which are analogous to the provisions contemplated under Order 47 Rule 1.

The Respondent submitted that the above provision has been interpreted by the Hon’ble Supreme Court in a catena of judgements, and referred to certain judicial pronouncements some of which are mentioned hereinbelow:

- i. *Parsion Devi and Others v. Sumitri Devi and Others*, reported in (1997) 8 SCC 715, wherein the Hon’ble Supreme Court made the following broad observations:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake

or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(Underline Supplied)

- ii. *Kamlesh Verma v. Mayawati*, reported in (2013) 8 SCC 320, wherein the Hon'ble Supreme Court has held as hereunder:

"15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. This Court in Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715] held as under: (SCC pp. 718-19, paras 7-9)

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P. [AIR 1964 SC 1372] this Court opined: (AIR p. 1377, para 11)

'11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.'

8. Again, in Meera Bhanja v. Nirmala Kumari Choudhury [(1995) 1 SCC 170] while quoting with approval a passage from Aribam Tuleswar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389], the Court once again held that 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.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

(Underline Supplied)

- iii. *Thungabhadra Industries Limited v. Government of Andhra Pradesh* represented by Deputy Commissioner of Commercial Taxes, Anantapur, reported in AIR 1964 SC 1372, wherein the following was held (@ pg. 6 of the judgment-SCC version):

"...Similarly, even if the statement was wrong it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out."

(Underline Supplied)

- 3.4 The Respondent submitted that the principles espoused by the Hon'ble Supreme Court in the aforesaid judgements, are summarised as follows:

- i. a review cannot at all be an "appeal in disguise";
- ii. the issue raised in the review should not be "reheard and corrected";
- iii. if a "process of reasoning" is required to point out an error, the same cannot be termed as an "error apparent" on the face of the record justifying exercise of review

jurisdiction;

- iv. a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for a patent error. This means that even for an erroneous decision, a review cannot be filed, and that the only remedy available to an aggrieved party is to file an appeal; and
- v. That, where 'without any elaborate arguments' one could point out the error and demonstrate that a substantial point of law stares one in the face, only in such cases the review is maintainable.

3.5 The Respondent submitted that based on the dictum laid down in the above judicial renditions, there is no iota of doubt that the present Petition is nothing but an appeal in disguise and is, therefore, fallacious. Further, an application for review would be maintainable not only upon discovery of a new and important piece of evidence which, after the exercise of due diligence was not within the knowledge or could not be produced at the time when the decree was passed or order made. In the present case, the same is not attracted for the reason that no such document or piece of evidence has been placed on record by the Petitioner.

3.6 The Respondent also submitted that another ground on which a review petition can be entertained is on account of 'sufficient reason' as appearing under Order 47 Rule 1 of the CPC, 1908. However, the phrase 'sufficient reason' does not have a wide meaning. The same only means a reason sufficient on grounds at least analogous to those specified immediately previously, that is to say, to excusable failure to bring to the notice of the Court new and important matters or error on the face of the record. The Respondent referred some of the judgments of the Hon'ble Supreme Court explaining the ambit of 'sufficient reason' stated below:

- a) Judgment of the Privy Council in *Chhajju Ram v. Neki*, reported in AIR 1922 PC 112, wherein the following was laid down:

"If their Lordships felt themselves at liberty to construe the language of Or. 47 of the Code of Civil Procedure, 1908 without reference to its history and to the decisions upon it, their task would not appear to be a difficult one. For it is obvious that the Code contemplates procedure

by way of review by the Court which has already given judgment as being different from that by way of appeal to a Court of Appeal. The three cases in which alone mere review is permitted are those of new material overlooked by excusable misfortune, mistake or error apparent on the face of the record, or "any other sufficient reason." The first two alternatives do not apply in the present case, and the expression "sufficient," if this were all, would naturally be read as meaning sufficiency of a kind analogous to the two already specified, that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record. But before adopting this restricted construction of the expression "sufficient," it is necessary to have in mind in the first place, that the provision as to review was not introduced into the Code for the first time in 1908, but appears there as a modification of previous provision made in earlier legislation: and, in the second place, that the extent of the power of a Court in India to review its own decree under successive forms of legislative provision has been the subject of a good deal of judicial interpretation, not, however, in all cases harmonious. That, the power given by the Indian Code is different from the very restricted power which exists in England appears plain from the decision in *Charles Bright and Co. v. Seller* [[1904] 1 K.B. 6.] , where the Court of Appeal discussed the history of the procedure in England and explained its limits."

(Emphasis and Underline Supplied)

- b) Judgment of the Hon'ble Supreme Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasiiu*, reported in AIR 1954 SC 526, wherein the following was held as follows:

"32. Before going into the merits of the case it is as well to bear in mind the scope of the application for review which has given rise to the present appeal. It is needless to emphasise that the scope of an application for review is much more restricted than that of an appeal. Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record, and (iii) for any other sufficient reason. It has been held

by the Judicial Committee that the words “any other sufficient reason” must mean “a reason sufficient on grounds, at least analogous to those specified in the rule”. See Chhajju Ram v. Neki [LR 49 IA 144] . This conclusion was reiterated by the Judicial Committee in Bisheshwar Pratap Sahi v. Parath Nath [LR 61 IA 378] and was adopted by on Federal Court in Hari Shankar Pal v. Anath Nath Mitter] (1949 FCR 36 at pp. 47-48]. Learned counsel appearing in support of this appeal recognises the aforesaid limitations and submits that his case comes within the ground of “mistake or error apparent on the face of the record” or some ground analogous thereto. As already observed, out of the 99 objections taken in the grounds of review to the judgment of the majority of the High Court only 15 objections were urged before the High Court on the hearing of the application for review. Although most of those points have been referred to by learned counsel for the appellants, he mainly stressed three of them before us. We now proceed to examine these objections.”

(Emphasis and Underline Supplied)

The Respondent thus submitted that from a reading of the above judgments, the following is crystallized:

- i. That, the term ‘sufficient reason’ encapsulated under Order 47 Rule 1 of the CPC, 1908 does not, in any manner whatsoever have a wide aptitude;
- ii. That, the term ‘sufficient reason’ must mean a reason sufficient on grounds, at least analogous to those specified in the rule. In other words, the sufficient reason has to be in relation to the other two reasons for review jurisdiction viz., discovery of new or important document and mistake or error apparent in the order.

The Respondent submitted that as such, even the extensive/ elaborative grounds (which are nothing but appealable grounds) raised by the Petitioner in the present Petition does not fall either within the ambit of ‘sufficient reason’ or other parameters in terms of Order 47 Rule 1 of CPC, in terms as stated above. The alleged grounds raised by the Review Petitioner amount to re-arguing the entire case on merits, which is impermissible in law.

- 3.7 Further, the Respondent also mentioned that through the present Petition, UPCL has raised certain fresh arguments. In the matter, it is a settled position of law that a review cannot be claimed for seeking re-hearing of the original proceedings basis fresh arguments. In this

regard, reliance is placed upon the Judgment passed by the Hon'ble Supreme Court in the case of "*Ajit Kumar Rath v. State of Orissa*" reported as [(1999) 9 SCC 596], relevant extracts whereof are set out below:

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

It is clear from the above that review jurisdiction cannot be exercised merely on the basis of raising of fresh arguments. As such, the Petitioner cannot be allowed to raise fresh arguments at the stage of review Petition, as the same ought to have been raised at the time of tariff re-computation proceedings held by the Commission.

- 3.8 With regard to the contention of UPCL w.r.t. error apparent on the face of record insofar as pass through of cost escalation of Rs. 71.50 Crore is concerned, the Respondent submitted that by way of allegations, UPCL seeks to re-argue and re-agitate the very same issues already considered and decided by the Commission and also decided by the Hon'ble APTEL in its Judgment dated 28.08.2024 in Appeal No. 100 of 2017 & Batch. The same is not maintainable under Section 94(1)(f) of the Electricity Act, 2003 and Order XLVII Rule 1 CPC because it does not point out any apparent error on the face of the record. Rather, the present Review Petition has been preferred by the Review Petitioner by disguising an "appeal" in the form of "Review".

The Respondent submitted that through the present Review Petition, the Petitioner is essentially seeking re-appreciation of evidence/ documents, which were already on

record, which is completely beyond the scope of Review under the CPC as well as the Act, 2003. The same is all the more egregious since such documents/evidence have been available with the Petitioner since 2016 and have been subject of proceedings before the Commission in 2016, the Hon'ble APTEL thereafter and were once again placed before the Commission during the proceedings sought to be reviewed herein. Despite having several occasions to canvass such objections before the appropriate forums, the Petitioner is attempting to raise such objections at this stage which is impermissible and unsustainable. The Respondent stated that UPCL ought to have raised such contentions at the stage of hearing for implementation of the Hon'ble APTEL Judgment, while the Commission was conducting a prudence check while passing the impugned Order. It thus follows that raising such issues by UPCL through the present Petition, is impermissible on account of issue of estoppel. A new argument cannot be manufactured at the stage of review, and term it as error apparent or sufficient reason. It is thus stated that the above is nothing but an attempt to escape from making the payments towards the recomputed tariff and also delaying the implementation of the decision on the issue which has attained finality.

- 3.9 Without prejudice to the submissions as regards the maintainability of the review Petition made by the Petitioner, the Respondent further submitted that the Commission while passing the impugned Order, had undertaken a thorough prudence check for allowing the cost escalation of Rs. 71.51 Crore (as cost overrun), the above issue in part was also raised by UPCL at the time of passing of the impugned Order, and the same was duly recognized by the Commission while passing the said Order.
- 3.10 With regard to removal of Rs. 12.54 Crore against "LOT-2 (x) Hydro-mechanical works" from the total amount paid, i.e. Rs. 71.51 Crore against the amended contract dated 08.01.2010, the Respondent submitted that UPCL has raised a new argument by way of Review Petition, which is completely barred considering the limited scope of review. However, it is necessary to emphasize that the issue of cost escalation and change in scope of work in Work Contracts has been placed before the Commission by way of Affidavit dated 28.06.2016 during the original proceedings. The said affidavit was again provided to the Commission during the remand proceedings vide affidavit dated 06.03.2025. The submissions therein were clear and controversy with regard to the scope of works in the

Works Contracts dated 26.12.2005 (amended on 15.12.2006 and 08.01.2010) and Contract dated 10.07.2009 was clarified. Notably, the entire aspect of change in Contract dated 26.12.2005 qua Hydro Mechanical Works has been categorically brought to the attention of the Commission during the original proceedings itself.

Therefore, the Commission was provided with the entire facts and, after due prudence check and deliberation, it has decided to allow the claim in view of the specific submissions made by the Respondent. There is no error apparent or mistake, neither is there any new material or fact presented by the Petitioner meriting any interference with the Order issued by the Commission.

3.11 The Respondent submitted that UPCL has also made certain baseless allegations as regards GBHPPL acting in collusion with Lanco Infratech for passing on the cost escalation of Rs. 71.51 Crore to the electricity consumers. Respondent submitted that the above allegation made by the Petitioner is completely unsubstantiated, baseless and was never raised in the original proceedings, thereby being barred. It is stated that considering that the Commission had already conducted substantial proceedings for re-computation of tariff owing to passing of the Hon'ble APTEL Judgment, in case, the Petitioner was of the above view, it ought to have raised these allegations at the time of hearing of the abovementioned Petition. However, the Petitioner has deliberately chosen to raise the said allegations at the stage of review, which is impermissible in law. Further, the Respondent also denied that there was any collusion between GBHPPL and Lanco Infratech insofar as the cost escalation is concerned. It is stated that despite being related parties (parent and subsidiary), the transaction between the said parties was made on arms length basis, as per the Companies Act. With regard to the transaction, the Responded submitted as follows:

- a) The cost escalation of Rs. 71.51 Crore in civil works, expenditure of Rs. 15.42 Crore was incurred towards geological outbreak and balance Rs. 56.09 Crore was due to price escalation and additional work due to increase in length of HRT and increase in quantum of steel reinforcement for diversion dam.
- b) The Civil Contract dated 26.12.2005 executed by GBHPPL was amended on 03.10.2006; 15.12.2006; and 08.01.2010, wherein amount of Rs. 71.51 Crore was added towards

compensation pertaining to price escalation, as also the other expenditure mentioned above.

Further, through the Hon'ble APTEL Judgment dated 28.08.2024, the Hon'ble APTEL had allowed the entire time-overflow as claimed by GBHPPL. Since entire time overflow had been allowed by the Hon'ble APTEL, price escalation and other expenditure as mentioned above totaling to Rs.71.51 Crore, had to be consequentially allowed by the Commission.

- c) A perusal of the contract amendment dated 08.01.2010, reveals that the breakup of Rs. 71.51 Crore, as agreed between GBHPPL (earlier Lanco Green Power Private Limited) and Lanco Infratech Limited (being the contractor) is as under:

"2.2 The parties hereby agree for acceptance of additional claim and payment of Rs. 71,51,00,000/- as agreed between parties in the minutes of meeting dated 11.12.2009 which shall be paid as compensation towards price escalation, overheads and other charges incurred due to delay in works on account of reasons not attributable to the Contractor and the same shall be accepted and released in the following manner:

- (a) Completion of HRT Face-7 (1800 m) excavation – Rs. 22.43 Crore*
- (b) Completion of Dam Concreting up to EL. 1628 – Rs. 11.22 Crore*
- (c) Completion of excavation for balance component – Rs. 11.22 Crore*
- (d) Completion of HRT lining – Rs. 11.22 Crore*
- (e) Concrete placement in geological over breaks in HRT – Rs. 15.42 Crore."*

These amounts are milestone payments, linked to completion of specific civil works.

- d) The Commission had already allowed cost escalation of certain civil works but merely restricted the same upto the 'scheduled completion date'. After passing of the Hon'ble APTEL Judgment, it necessarily followed that the aforesaid expenses towards cost escalation on account of such time overflow should also be allowed.

Owing to the above price escalation of Rs. 71.51 Crore due to the amendment dated 08.01.2010 to the civil works contract, and time overflow being allowed by the Hon'ble APTEL, the Commission was of the view that such cost overflow of Rs. 71.51 Crore was due to delay (which has already been condoned by the Hon'ble APTEL). As such, there remains no scope of interference with the findings of the Commission.

3.12 The Respondent submitted that it has further been alleged that M/s GBHPPL failed to produce any documents to showcase that there was an actual increase in the costs due to delay in commissioning. In this regard, M/s GBHPPL craves to place on record the following submissions:

- a) This issue was also raised during the suo-motu proceedings initiated by the Commission for implementation of APTEL Judgment;
- b) It was submitted by M/s GBHPPL that requisite correspondences with the contractor were not available. However, it was submitted that the approved project cost and the audited accounts of M/s GBHPPL for FY 2012-13 reflects that the generator has actually incurred the increased costs as claimed.
- c) It was after taking into account the above submissions, the Commission passed the reasoned impugned Order.

The Respondent submitted that the above makes it clear that there was no error apparent on the face of record insofar as the prudence check to be conducted by the Commission is concerned. The raising of above issues amounts to re-arguing the entire case on merits, which is impermissible in a review proceeding. In view of the above-stated submissions, the allegations of UPCL that the payments to the contractors were ex-gratia are meritless and misleading. In fact, such payments were part of prudently incurred capital cost. Therefore, the contentions of UPCL ought to be rejected by the Commission.

3.13 The Respondent submitted that UPCL has also relied upon the provisions of Section 55 of the Indian Contract Act, 1872 to state that the Contractor would be entitled to “compensation” for doing works beyond 30.04.2008 (work completion date under the 2005 Contract), if and only if, prior to commencing works after 30.04.2008, the Contractor warned GBHPPL that while the Contractor would complete the works, it would demand costs due for any loss incurred due to prolongation.

In the matter, the Respondent submitted that the above contention was not raised by UPCL neither in the original proceedings nor in the remand proceedings, and as such are barred to be raised in the present review petition. In this regard, it is reiterated that review jurisdiction cannot be exercised merely on the basis of raising fresh arguments. As such, the

Petitioner cannot be allowed to raise fresh arguments at the stage of review Petition, as the same ought to have been raised at the time of tariff re-computation proceedings held by the Commission.

The Respondent submitted that reliance of UPCL on the Contract Act, is erroneous for the following reasons:

- (i) The delay of works stipulated in the contract was for reasons not attributable to either the contractor or GBHPPL,
- (ii) The ramifications of the delay were discussed between GBHPPL and the contractor during the meeting held between the parties on 11.12.2009 where it was agreed that compensation towards price escalation, overheads and other charges incurred due to delay in works on account of reasons not attributable to the Contractor would be payable.
- (iii) Further, under Section 55 of the Indian Contract Act, 1872, the contract would have been voidable at the instance of GBHPPL. However, considering that a large amount of sum had already been spent and the delay was not attributable to the contractor or GBHPPL, it was deemed fit that revision of costs may be incurred for execution of the generation project.

The Respondent submitted that the above arguments are fresh arguments, which were neither raised in the original proceedings nor in the remand proceedings. Accordingly, the above argument is barred and cannot be raised at this stage.

3.14 The Respondent submitted that the Petitioner has mentioned that despite the actual cost being within the limit of revised cost estimate approved by GoHP, M/s GBHPPL ought to have given substantial reasons for incurring higher than estimated costs with respect to controllable components like design charges, establishment charges etc.

The Respondent submitted that the contention raised by the Petitioner are completely beyond the scope of review jurisdiction. It may be noted that during the remand proceedings/Suo moto proceedings, UPCL completely failed to raise these contentions before the Commission. However by raising such arguments by way of the present Petition, UPCL is attempting to expand the scope of "Review Jurisdiction", thereby seeking re-

hearing of that case on the basis of fresh argument, which is barred under law.

The Respondent submitted that the design charges, establishment charges etc. were part of the soft costs dependent on the time factor. Through the Order dated 30.11.2016, the Commission had restricted such expenditure upto the SCOD on pro-rata basis. Further, the Respondent also submitted that the Commission in the above order had already done the prudence check towards such expenses and only thereafter it had restricted such costs incurred till the Scheduled COD. The relevant extract is as under:

“Soft cost dependent on time

...

Detail of the expenditure claimed and considered as part of the Capital Work for the tariff determination are as follows:

Table 4.9: Soft Cost dependent on time factor approved by the Commission (Rs. in Crore)

Soft Cost dependent on time factor	Claim	Admissible Expenditure upto SCOD
Establishment charges	24.78	13.56
Design, Engg, Cons & Supervision	13.62	4.51
Admn. & Other charges	2.13	1.21
Preliminary expenses*	10.09	5.38
Total	50.62	24.66

In the matter, the Respondent submitted that since the Hon’ble APTEL through its Judgment dated 28.08.2024, was pleased to allow the entire time-overrun in implementation of the Project by GBHPPL, all soft costs dependent on time ought to be allowed until the actual COD of the Project. The details of the soft costs incurred by GBHPPL upto the actual COD of the Project are as follows:

- i. Establishment charges of Rs. 24.78 Crore;
- ii. Design, Engineering, Construction and Supervision charges of Rs. 13.62 Crore;
- iii. Administrative and other charges of Rs. 2.13 Crore; and
- iv. Preliminary Expenses of Rs. 10.09 Crore.

Thus, since the time overrun was allowed by the Hon’ble APTEL, it followed that the entire claim of Rs. 50.62 Crore on account of soft cost dependent on time (incurred upto actual COD) was allowed by the Commission in the impugned Order. In case the review Petitioner is aggrieved by the lack of prudence check of such costs, it ought to have challenged the Order dated 30.11.2016 passed by the Commission on this ground.

Accordingly, the above contention of the Petitioner cannot be termed as an error apparent on the face of record thereby attracting review jurisdiction.

3.15 With regard to the Petitioner's submission on disallowance of IDC corresponding to the disallowance of Hard cost of Rs. 71.51 Crore, the Respondent submitted that the disallowance of IDC, which are a consequence of condoning delay of commissioning of the project by the Hon'ble APTEL. Accordingly, the above issue cannot form part of the present review proceedings. Further, the above contentions of UPCL make it clear that the Petitioner is attempting to file an "appeal" disguised as the present "Review Petition" and is simply trying to re-agitate the case on merits, which is completely not maintainable. To this extent as well, the Review Petition filed by UPCL is not maintainable, and the same deserves to be dismissed *in limine*.

3.16 With regard to the issue raised by UPCL w.r.t. failure of M/s GBHPPL to exercise due diligence while preparing the initial DPR for generation project leading to the escalation of the project cost, the Respondent submitted that the Petitioner ought to have challenge such issues through appropriate proceedings before the Hon'ble APTEL. Such contentions cannot be allowed to be agitated in the present Review Petition, particularly when the scope of "review" is extremely limited. Thus, the above averments made by the Petitioner merit no response from GBHPPL. However, liberty of the Commission is sought to place on record the submissions, in case the Commission deems fit.

The Respondent also submitted that UPCL through the Review Petition, has also sought consequent disallowance of IDC, Establishment Charges and Other Bank Charges. Towards this end, it is stated by the Respondent that the Petitioner has failed to provide any grounds for substantiating the contentions made, and has without any basis, sought disallowance of the above components. It is thus stated that considering that UPCL has failed to raise any grounds insofar as alleged "errors" in the impugned Order with respect to the abovementioned components are concerned, the same deserve to be rejected by the Commission.

3.17 The Respondent submitted that in view of the submissions advanced hereinabove, it is clear that the Petition as preferred by UPCL is not maintainable, where the scope of review is

limited in terms of CPC and the Act, 2003. Thus, it is prayed that the present Petition be dismissed by the Commission.

4. Post Hearing Rejoinder and Reply

The Commission heard the matter on 06.08.2025 on the admissibility of the Review Petition. Both the parties reiterated their submissions. Subsequent to the hearing, the Commission vide letter dated 25.08.2025 directed the Petitioner to submit its rejoinder to the reply dated 31.07.2025 submitted by the Respondent and also directed the Respondent to submit its reply on the issues raised by the Petitioner during hearing and additional submissions on the review Petition, if any, specifically on the issue raised by the Petitioner regarding removal of “LOT-2(x)- Hydro-mechanical works” amounting to Rs. 12.54 Crore from the scope of the contractor’s work when the contract executed on 03.10.2010 was further amended on 08.01.2010.

Subsequently, the Respondent vide its submission dated 02.09.2025 submitted the reply before the Commission in compliance to the directions issued by the Commission through its letter dated 25.08.2025. Further, the Petitioner vide letter dated 02.09.2025 requested the Commission to allow additional time for submission of its rejoinder. The same was accepted by the Commission and, accordingly, directed the Petitioner to submit the rejoinder by 15.09.2025. Thereafter, the Petitioner submitted its reply on 15.09.2025 in accordance with the directions of the Commission.

5. Post hearing Petitioner’s Submission

- 5.1 The Petitioner vide its submission dated 15.09.2025 submitted that it denies each and every assertion made in the reply dated 31.07.2025 of the Respondent. That the Petitioner submits that notwithstanding the unfounded submissions made by the Respondent in the captioned reply, the Petitioner has established good and sufficient grounds for review of the subject Order dated 13.05.2025 in the manner prayed for by it in the Review Petition.
- 5.2 The Petitioner submitted that the primary submission canvassed by the Respondent in the reply is that the Review Petition is not maintainable, since the grounds raised in the Review Petition allegedly do not fall within the parameters set out in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 which governs the admissibility of review petitions before

the Commission.

The Petitioner submitted that on the contrary, it is firstly submitted that, the Commission had assessed the financial impact of the 2010 Amendment on the value of works to be performed by Lanco Infratech Ltd under the 2005 Contract as an additional Rs. 71.51 Crore – the same is an error apparent on the face of the record. This is because by the very same 2010 Amendment, an item named, “LOT-2 (x) Hydro-mechanical works” valued at Rs. 12.55 Crore was deleted from the scope of works of Lanco Infratech Ltd and thus, without prejudice to the other submissions of the Petitioner, even on the Respondent’s showing, the financial impact of the 2010 Amendment could at most amount to Rs. 58.96 Crore only. Pertinently, the Respondent has not, in its Reply or otherwise, set out any case regarding the re-allocation of the said deleted scope to any other contractor and has not identified the exact costs, if at all, incurred by it in connection with any such re-allocation of scope. Thus, the Respondent’s reply in this regard ought to be treated as an evasive reply and as one that is lacking in material particulars. The Respondent, in fact, is guilty of suppression to the extent that it has not brought the fact of such scope-deletion to the attention of the Commission while claiming additional fixed costs before the Commission.

The Petitioner also submitted that the Commission has allowed additional post-SCoD fixed cost of Rs. 71.51 Crore to the Respondent in the impugned Order, review thereof is warranted in terms of Order XLVII Rule 1(1) of the CPC. The Petitioner also submitted that the said error is self-evident from a bare perusal of the record and does not require any process of reasoning to detect the same. Hence, the same qualifies as an error apparent on the face of the record under the decision of the Hon’ble Supreme Court in *Haridas Das v. Usha Rani Bank*, (2006) 4 SCC 78.

- 5.3 The Petitioner submitted that the second error apparent on the face of the record is that the Commission has accepted the claim of the Respondent that the additional amount of Rs. 71.51 Crore paid to Lanco Infratech qualified as “compensation” even though no invoices, correspondences, or other proof was produced by the Respondent to show that Lanco Infratech actually incurred higher-than-anticipated overheads or other additional costs in completing its scope of works under the 2005 Contract.

The Petitioner also submitted that the Commission has erroneously allowed the additional costs to the Respondent on the stated basis that these costs are reflected in the final completion cost of the project as per the audited accounts of the Respondent for FY 2012-13. The same constitutes a reviewable error because the germane consideration was not whether the said costs are reflected in the accounts of the Respondent – the germane consideration was whether these additional costs are reflected in the accounts of Lanco Infratech for the relevant years. If and only if, such additional costs were reflected in the accounts of Lanco Infratech, can the additional sum of Rs. 71.51 crore paid by the Respondent to Lanco Infratech be described as “compensation”.

- 5.4 The Petitioner submitted that the Petition is maintainable under Order XLVII Rule 1(3) of the Code of Civil Procedure, 1908 because the Commission’s failure to carry out prudence check as directed by the Hon’ble APTEL qualifies as a “sufficient reason” to review the subject Order.

The Petitioner submitted that the Respondent’s objection to the maintainability of the review Petition is further liable to be eschewed, because the Petitioner has submitted a “sufficient reason” for reviewing the subject Order – namely, that the Commission failed to adequately implement the binding directions in the Hon’ble APTEL’s Order dated 28.08.2024 in Appeal No. 100 of 2017 which required the Commission to carry out a “prudence check” with respect to the post-SCoD expenditures claimed by the Respondent. The Petitioner also submitted that the reliance is placed on the judgment of the Hon’ble APTEL in *Uttar Haryana Bijli Vitran Nigam Limited & ors. v. Central Electricity Regulatory Commission & ors.* (Judgment dated 18.11.2024 in Review Petition No. 3 of 2024 in Appeal No. 383 of 2022) wherein the Hon’ble APTEL held, *inter alia*, that one of the “sufficient reasons” for entertaining a review Petition could be that a binding precedent of a higher forum has been ignored in the subject Order or if the court has omitted to consider an applicable statutory provision. It is submitted that in the present case, review is sought of an order which was passed after remand from the Hon’ble APTEL, and to the extent that the binding directions contained in the remanding order have not been sufficiently complied with by the Commission while passing the subject Order, the subject Order is reviewable.

The Petitioner further submitted that the Hon'ble APTEL, in its Judgement dated 28.08.2024 in Appeal No. 100 of 2017 had expressly directed the Commission to allow only such post-SCOD fixed costs by applying "prudence check" as per the applicable Regulations. The relevant paragraphs of the Hon'ble APTEL's Judgement are extracted hereinbelow for convenient reference:

"165. Undisputedly, the time overrun impacts the capital cost, therefore, it is important to re-examine the additional cost claimed by the GBHPPL.

166. In the light of the aforementioned judgment of this Tribunal, the State Commission is directed to re-examine the impact of time overrun on the capital cost.

167. As claimed by the GBHPPL, the escalation of Rs. 71.51 Crore in civil works was due to the following reasons, the issue shall be examined afresh:

- i. Geological overbrakes, leading to cost escalation not envisaged in the DPR;*
- ii. Price escalations due to delays not envisaged in DPR;*
- iii. Increase in length of HRT from 6028 meters to 6265 meters;*
- iv. Increase in quantum of steel reinforcement for Diversion dam.*

168. The State Commission has restricted the soft cost only up to the scheduled COD of the Project, whereas, the actual completion was extended due to several factors observed and concluded herein.

169. Considering that the time overrun has been allowed, the State Commission shall determine the soft cost as claimed by the GBHPPL after re-examining the facts as placed before it.

170. Further, the State Commission has also disallowed the increased expenditures on account of IDC due to the abovementioned time overrun, while doing the same, it has been observed that since the time overrun beyond the SCOD is not being allowed, hence, considering that all the Capital Expenditures have been incurred till the SCOD, the IDC is being allowed on a pro-rata basis of the Capital Cost approved by the State Commission.

171. The appeal is allowed, and the appeal is remanded to the State Commission to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal, the State Commission is also directed to re-determine the consequential tariff of the project."

From the perusal of the above, it is clear that while the Hon'ble APTEL did find that

the time-overflow in the case of the Respondent's project was justified by uncontrollable factors, it did not take a final view on whether the actual post-SCOD expenditures claimed by the Respondent was casually linked to the aforementioned time-overflow or were necessarily prudent expenditures. Had the Hon'ble APTEL done so, there would be no necessity for the Tribunal to remand the matter to the Commission at all. It is submitted that to the extent that while passing the subject Order, the Commission failed to carry out prudence check as required by the Order dated 28.08.2024, the same warrants review.

- 5.5 The Petitioner submitted that the Hon'ble APTEL's direction to conduct prudence check falls to be construed in terms of Regulation 23(3) of the UERC Tariff Regulations, 2011 / Regulation 21(7) of the 2015 Tariff Regulations, 2015 which in relevant part provide (identically) as follows:

"Provided that prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time;

Provided further that in cases where benchmark norms have not been published, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff; [...]"

The Petitioner submitted that the Commission allowed the additional capitalization as claimed by the Respondent without evaluating the factors listed in the second proviso to Regulation 23(3), the subject Order warrants review. The Petitioner has set out the particular aspects as to which the Commission has not carried out due prudence check as directed by the Hon'ble APTEL. Article 2 of the 2005 Contract had stipulated that "*the total contract payment will be made and restricted to Rs. 170 crore only*". No price variation clause was included. The Petitioner also submitted that the Respondent unilaterally waived its right under Article 8 of the 2005 Contract to levy liquidated damages and granted the Contractor time until 31.03.2011 to complete the specified works. The reasonableness of these decisions of the Respondent cannot be assessed without the benefit of PERT chart or other data regarding the way the activities for execution of the hydroelectric plant were planned, sequenced, and managed by the Respondent. No such chart or data is available with the generator. Because the employer (i.e., the Respondent) and the contractor were related

parties, the Respondent simply obliged its related party. The same was done based on the collusive intention of the Respondent and the contractor to be able to foist these additional costs on the consumers of the State.

The Petitioner submitted that the Respondent submitted that quantification of the claim for escalation costs at Rs. 71.51 Crore were not justified by the Respondent by producing any invoices, correspondences, or any other documents suggesting that the said quantum was arrived based on bona fide negotiation. It is merely based on the amount mutually agreed upon as per the amended agreement dated 08.01.2010.

The Petitioner also submitted that the Respondent has failed to produce any material showing that such escalation in input prices or overheads was actually incurred by the contractor. In particular, the Respondent has not produced any escalation indices, contractor's accounts, or work-wise cost breakdowns to show that any of the specific milestone activities to which the payment was linked had, in fact, become more expensive on account of escalation.

- 5.6 The Petitioner reiterated that the Respondent itself admitted before the Commission in response to queries raised in the year 2016 that the Detailed Project Report (DPR) for the project suffered from estimation errors and failure to include several key items. The increased capital cost incurred for such missed-out items is thus attributable to the Respondent's own lack of due diligence. Although the Revised Cost Estimate approved by the Government of Himachal Pradesh on 20.08.2010 factored in the prevailing delays, cost incurred by the Respondent under the heading "Design, Engineering, Construction and Supervision Charges" exceeded the revised estimate by more than Rs. 9 Crore despite being incurred just 21 months after the revised estimate was submitted. Further, the Respondent has not demonstrated whether a transparent or competitive procurement process was followed when procuring the items from the market that had been missed out in the DPR and had to be sourced later.

The Petitioner also submitted that Design Charges forms a part of the controllable cost components of the project and are not subject to external price shocks or statutory levies. The escalation from Rs. 5.24 Crore to Rs. 13.62 Crore in such a short time-frame

suggests inefficiency or imprudence in cost control by the Respondent. The Respondent has not produced any work orders, invoices, internal approvals, or basis of estimation to support the claim that an additional Rs. 9.11 Crore under Design Charges was actually incurred or reasonably necessary. In the event that the Commission disallows the additional hard cost of Rs. 71.51 Crore and/or additional soft costs of Rs. 9.11 Crore to the Respondent, the following other sums allowed to the Respondent by way of the said Order would also warrant a fresh prudence check and the Petitioner prays that the same may be disallowed subject to prudence check:

- 1) IDC, if any, incurred by the Respondent, in case the Respondent had obtained debt financing with respect to the additional hard cost of Rs. 71.51 Crore or the additional soft cost of Rs. 9.11 Crore;
- 2) Additional amount of Rs. 1.80 Crore towards "Other Bank Charges" allowed to Respondent under the said Order, insofar as the relevant Bank Charges were incurred by the Respondent while financing the costs above;
- 3) Additional amount of Rs. 11.22 Crore towards "Establishment Charges" allowed to the Respondent under the said Order, insofar as the same were incurred by the Respondent in connection with the costs mentioned above;

5.7 That none of the judgments cited by the Respondent in support of its argument that the Review Petition is not maintainable, are in the specific context where a review is sought of an order which is passed pursuant to a remand. It is submitted that the present scenario is most closely comparable to the situation discussed by the Hon'ble APTEL in the judgment in Uttar Haryana Bijli Vitran Nigam Limited & ors. v. Central Electricity Regulatory Commission & ors. (supra) where the order under review has failed to consider a binding precedent. The relevant paragraphs of the said judgment are set out hereinbelow for convenient reference:

"i. WHEN CAN REVIEW BE SOUGHT:

33 . As noted hereinabove, the Supreme Court, in S. MuraliSundaram vs JothibaiKannan: MANU/SC/0163/2023, (on which reliance was placed on behalf of CTUIL itself), relied on Perry Kansagra v. Smriti Madan Kansagra, MANU/SC/0220/2019 : (2019) 20 SCC 753, to hold that the

power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate; an application for review may be necessitated by way of invoking the doctrine *actus curiae neminem gravabit*.

34. The expression, 'for any other sufficient reason' in Order 47 Rule 1 of the Civil Procedure Code, has been given an expanded meaning and a decree or order passed under mis-apprehension of the true state of circumstances has been held to be sufficient ground to exercise the power of review. (*Lily Thomas v. Union of India*, MANU/SC/0327/2000 : (2000) 6 SCC 224). The words "sufficient reason", occurring in Rule 1 of Order 47 of the CPC, is wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine '*actus curiae neminem gravabit*'. (*Board of Control of Cricket India v. Netaji Cricket Club*: MANU/SC/0019/2005 : (2005) 4 SCC 741; *S.Mural Sundaram vs Jothibai Kannan*: MANU/SC/0163/2023; and *Perry Kansagra v. Smriti Madan Kansagra*, MANU/SC/0220/2019 : (2019) 20 SCC 753).

35. The Court may re-open its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. (*O.N. Mohindroo v. Distt. Judge, Delhi* [MANU/SC/0059/1970 : (1971) 3 SCC 5; *Northern India Caterers (India Ltd. v. Lt. Governor of Delhi* [MANU/SC/0445/1979 : (1980) 2 SCC 167; *Lily Thomas v. Union of India*, MANU/SC/0327/2000 : (2000) 6 SCC 224). Where, without any elaborate argument, one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. (*Thungabhadra Industries Ltd. v. The Govt. of Andhra Pradesh*, MANU/SC/0217/1963 : AIR 1964 SC 1372)

ii. FAILURE TO NOTICE A STATUTORY PROVISION:

36. If the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment (*Girdhari Lal Gupta v. D.H. Mehta*: MANU/SC/0487/1971 : (1971) 3 SCC 189; *Northern India Caterers (India) Ltd. v Lt. Governor of Delhi* [MANU/SC/0445/1979 : (1980) 2 SCC 167; *Lily Thomas v. Union of India*, MANU/SC/0327/2000 : (2000) 6 SCC 224). If the order is plainly and obviously inconsistent with a specific and clear provision of the statute, that must inevitably be treated as a mistake of law apparent from the record. (*M.K. Venkatachalam v. Bombay Dyeing and Mfg. Co. Ltd.*, MANU/SC/0082/1958 : (1958) 34 ITR 143).

37. Failure to bring to the notice of the Tribunal, the relevant regulations, which are statutory in character and have the force of law, would constitute a ground to review the earlier order.

iii. FAILURE TO NOTICE A BINDING PRECEDENT:

38. When there is a legal position clearly established by a well-known authority and, by some unfortunate oversight, the Judge has gone palpably wrong by the omission of those concerned to draw his attention to the authority, it may be a ground coming within the category of an error apparent on the face of the record. (*M. Murari Rao v. Balavanth Dixit*, MANU/TN/0409/1923 : AIR 1924 Mad98; *Natesa Naicker v. Sambanda Chettiar*, MANU/TN/0107/1941: AIR1941 Madras918; *SriKarutha Kritya Rameswaraswami Varu v. R. Ramalinga Raju*, MANU/AP/0086/1960 : AIR 1960Andh.Pra. 17; *Tinkari Sen v. Dulal Chandra Das*, MANU/WB/0122/1967 : AIR 1967 Cal 518 *Medical and Dental College, Bangalore v. M.P. Nagaraj*, AIR 1972 Mys. 44; *Collector v. Bharat Chandra Bhuyan*, MANU/OR/0566/2014). Where there is a decision of the Supreme Court holding the field and the High Court (or a statutory tribunal) takes a contrary view, it needs no elaborate argument to point to the error. The error is self-evident. (*Collector v. Bharat Chandra Bhuyan*, MANU/OR/0566/2014).

39. Where there is a decision of the Supreme Court bearing on a point and where a Court (or Tribunal) has taken a view on that point which is not consistent with the law laid down by the Supreme Court, it needs no elaborate argument to point to the error and there could reasonably be no two opinions entertained about such an error. Such an error would clearly be an error apparent on the face of the record. (*Selection Committee for Admission to the Medical and Dental College, Bangalore v. M.P. Nagaraj*, MANU/KA/0043/1972 : AIR 1972 Mys 44)

40. In *Amarjit Kaur v. Harbhajan Singh*, MANU/SC/1080/2002 : (2003) 10 SCC 228, the Supreme Court held that the order passed rejecting the review application summarily, despite the fact that a judgment of the Supreme Court relevant for the purpose had been brought to the notice of the Court, without even expressing any view on the matter, by itself, was sufficient to set aside the order made on the review petition.

41. In *Prism Johnson Ltd. v. M.P. ERC*, MANU/ET/0003/2023, this Tribunal observed that it had only applied the law declared by the Supreme Court, in *MSEDCL v. JSW STEEL*, to the facts of the case before it, and they were satisfied that failure of the Counsel to draw the attention of this Tribunal to the relevant part of the said judgment of the Supreme Court, would constitute an error apparent on the face of the record.

iv. FAILURE TO CONSIDER CONTENTIONS:

42 . In *Rajender Singh v.Lt. Governor, Andaman & Nicobar Islands*, MANU/SC/2482/2005 : (2005) 13 SCC 289, the Supreme Court held that the impugned judgment did not deal with and decide many important issues as could be seen from the grounds of review; the High Court was not justified in ignoring the material on record which, on proper consideration, may justify the claim of the appellant; the impugned judgment is a clear case of an error apparent on the face of the record and non- consideration of relevant documents; the power of review extends to correct all errors to prevent miscarriage of justice; Courts should not hesitate to review their own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases; the grievance of the appellant was that, though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction; and the High Court's order in the review petition was not correct, and necessitated interference.

43. As held by the Supreme Court, in *Rajendra Singh Vs. Lt. Governor, Andaman and Nicobar*: MANU/SC/2482/2005 : (2005) 13 SCC 289, failure to consider and adjudicate the contentions raised by the petitioner is also a ground to review the order.

44. While interference in review proceedings is permissible only on limited grounds, it must be borne in mind that, among the grounds on which the earlier order can be reviewed, include (a) failure to notice a previous binding precedent of either the Supreme Court or the High Courts or of this Tribunal, (b) failure to notice the applicable law, such as the provisions of the Electricity Act or the rules or the governing statutory regulations, and (c) failure of the Tribunal to consider the contentions raised in the appeal. It is within these limited parameters are we required to examine whether or not the order under review necessitates interference. [...]"

It is therefore submitted that the Review Petition raises grounds which are within the four corners of Order XLVII Rule 1 of the CPC and is maintainable. It is further submitted that apart from contesting the maintainability of the Review Petition, the Respondent has not specifically disputed the averments in the Petition with any material particulars. Hence, the same are liable to be deemed as admitted.

- 5.8 The Petitioner submitted that it is wrong and denied that the Review Petition is an attempt to reopen concluded findings. It is specifically submitted that the error apparent on the face of record lies in the omission to undertake a prudence check of controllable cost components despite the clear mandate of the Hon'ble APTEL's judgment dated 28.08.2024. The

contention that there is no error apparent is untenable.

- 5.9 The Petitioner submitted that the Respondent has set out law including '*Parsion Devi v. Sumitri Devi and Kamlesh Verma v. Mayawati*', are a matter of record to the extent of citation. However, the application of those judgments to the facts of the present case is specifically denied. The present case discloses a clear error apparent on the face of record, and the reliance on the said precedents is misplaced.
- 5.10 The Petitioner submitted that the conclusion drawn by the Respondent that the Review Petition is "nothing but an appeal in disguise" is misconceived and untenable. It is reiterated that the Review Petition discloses a patent error apparent on the face of the record – namely, the non-application of prudence check to controllable cost components despite the clear directive of the Hon'ble APTEL. Such an omission cannot be brushed aside as an "appeal" but constitutes a legitimate ground for review.
- 5.11 The Petitioner submitted that it is wrong and denied that no new or important matter has been raised. The Review Petition specifically points to the omission to examine cost components in accordance with the Revised Cost Estimate and the legal principles applicable thereto. These issues were overlooked in the impugned Order and fall within the permissible grounds of review.
- 5.12 The Petitioner submitted that the narrow interpretation sought to be placed on the expression "sufficient reason" is misconceived. The phrase has been judicially interpreted to include situations where the Court has failed to consider a binding precedent or a mandatory direction of a superior forum. In the present case, non-compliance with the directions of the Hon'ble APTEL constitutes a sufficient reason for review, besides amounting to an error apparent on the face of record. The reliance on *Chhajju Ram v. Neki* and *Moran Mar Basselios* is misplaced, as subsequent decisions interpreting the scope of Order 47 Rule 1 recognise that failure to notice binding directions or overlooking mandatory legal requirements constitutes ground for review.
- 5.13 The Petitioner submitted that the Review Petition does not seek to re-argue the case on merits but specifically points out that a prudence check, which was mandated by the Hon'ble APTEL, was not undertaken. This omission is not a matter of subjective reasoning

but a patent error apparent on the face of record. The contention that the grounds fall outside Order XLVII Rule 1 CPC is denied.

5.14 The Petitioner submitted that it is wrong and denied that UPCL has raised “fresh arguments” in the Review Petition. The issues raised are a continuation of the grounds already agitated before the Commission, particularly regarding disallowance of additional hard and soft costs and the need for prudence check. In any event, the scope of review expressly permits correction of an error apparent on record, which is what the Review Petition demonstrates. The reliance placed on *Ajit Kumar Rath v. State of Orissa* is misconceived. The Review Petition does not seek a re-hearing or mere correction of an erroneous view but points out the non-consideration of mandatory directions of the Hon’ble APTEL. Such non-consideration amounts to a patent error on record, falling squarely within Order XLVII CPC.

5.15 The Petitioner submitted that the Commission, while directing the Respondent to file a reply to the Review Petition, had not stated that the Respondent could initially file a limited reply on the point of maintainability and thereafter file any further reply or information. To the extent that the Respondent, in the captioned Reply, has failed to factually rebut the averments made in the Review Petition, the same are liable to be treated as admitted notwithstanding the evasive and blanket denials of the Respondent. However, the maintainability objections raised therein are unfounded, misconceived, and contrary to law, for the reasons already stated in the preceding rejoinders.

5.16 The Petitioner submitted that it is denied that Petitioner is seeking to re-argue and/or re-agitate any issues already considered and/or decided by the Hon’ble APTEL. It is denied that the Review Petition as framed by the Petitioner is not maintainable under Sec. 94(1)(f) of the Electricity Act, 2003 and Order XLVII Rule 1 CPC. It is denied that the Review Petition does not point out any apparent error on the face of the record. It is denied that the present Review Petition is an “appeal in disguise”.

5.17 The Petitioner submitted that it is wrong to conclude that the Petition is seeking re-appreciation of evidence/documents which were already on record. It is wrong and denied that the submissions of the Petitioner are beyond the scope of Review under the CPC and/

or the Act, 2003. It is wrong and denied that the Petitioner had prior occasions to canvass the objections raised in the Petition before any forum. It is wrong and denied that the raising of these objections at this stage is impermissible and/or unsustainable. It is wrong and denied that UPCL could have, or ought to have, raised such contentions at the stage of hearing for implementation of the Hon'ble APTEL's Judgment, while the Commission was conducting a prudence check while passing the impugned Order. It is wrong and denied that the submissions raised are barred by the issue of estoppel. It is wrong and denied that the arguments raised in the Petition are "new arguments" and/or that the same are "manufactured" and/or that the same are merely "termed" errors apparent or sufficient reasons for review. It is wrong and denied that the Petitioner is merely attempting to escape from making the payments towards the recomputed tariff or also delaying the issue gaining finality. It is wrong and denied that the Review Petition seeks to reopen or re-argue the entire case. The Review Petition is confined to pointing out specific errors apparent on the face of record in the impugned Order, especially the failure to conduct a prudence check as directed by the Hon'ble APTEL.

- 5.18 The Petitioner denied that the Commission while passing the impugned Order, had undertaken a thorough prudence check for allowing the cost escalation of Rs. 71.51 Crore (as cost overrun). The Respondent's attempt to portray the Petition as barred in law is misconceived. The submissions made in the Review Petition are well within the statutory framework of Section 94(1)(f) of the Electricity Act, 2003 read with Order XLVII CPC.
- 5.19 The Petitioner submitted that it is wrong and denied that a perusal of the observations and findings made by the Commission reveals that the impugned Order has been passed after a thorough analysis of the provisions stipulated in the Contracts executed between GBHPPL and the contractor, and/or the contentions then raised by the Review Petitioner. It is wrong and denied that it was taken into account by the Commission that the delay in execution of works was for reasons not attributable to either of the parties, and as such, it was agreed that compensation for escalation in prices was payable to the contractor. It is wrong and denied that the averments made by the Review Petitioner as regards prudence check of cost escalation is already addressed in the impugned Order, and/or that the same are meritless or liable to be outrightly rejected by the Commission. It is wrong and denied

that no new arguments can be raised by the Review Petitioner in the present review petition.

- 5.20 The Petitioner submitted that it is wrong and denied that UPCL has raised a new argument by way of the Review Petition. Without prejudice, it is wrong and denied that the raising of a new argument by way of a Review Petition is “completely barred” or outside the scope of review. It is wrong and denied that the issue of cost escalation and change in scope of work in Work Contracts was adequately explained by way of Affidavit dated 28.06.2016 during the original proceedings. It is wrong and denied that contents of the Affidavit clear the controversy in regard to the scope of works in the Works Contracts dated 26.12.2005 (amended on 15.12.2006 and 08.01.2010) and Contract dated 10.07.2009. It is wrong and denied that the entire aspect of change in Contract dated 26.12.2005 qua Hydro Mechanical Works was brought to the attention of the Commission during the original proceedings. It is wrong and denied that the Commission was provided with the entire scope of facts. It is denied that the Commission, after due prudence check and deliberation, has decided to allow the claim.
- 5.21 The Petitioner reiterated that there was collusion between the GBHPPL (under the name it was then known) and Lanco Infratech. It is denied that the transaction between the said parties was made on arms-length basis as per the Companies Act. The averments regarding the alleged amount incurred by Lanco Infratech towards escalation are denied.
- 5.22 The Petitioner reiterated that GBHPPL failed to produce any documents to showcase that there was an actual increase in the costs due to delay in commissioning. It is submitted that the Petition discloses substantial grounds for review, including non-consideration of material issues regarding capital cost escalation and the Commission’s omission to conduct complete prudence check.
- 5.23 The Petitioner denied the submission of the Respondent on the Section 55 of Indian Contract Act, 1872 is barred or otherwise incapable of being considered by the Commission in the frame of the Review Petition. It is wrong and denied that the reliance of UPCL on the Contract Act is erroneous. It is denied that the implication of Sec. 55 of the Indian Contract Act would be that the contract would have been voidable at the instance of GBHPPL, on the contrary, the consequence would be that GBHPPL would have been legally entitled to

insist on the contract being performed at the original price quoted by Lanco Infratech. The Petition raises issues that go to the root of the impugned Order and cannot be brushed aside without consideration on merits.

- 5.24 The Petitioner has denied that the Commission had already done the prudence check towards 'Establishment charges', 'Design, Eng, Cons & supervision', 'Admn. & Other Charges' and Preliminary expenses'. It is wrong and denied that as a consequence of the Hon'ble APTEL Judgment dated 28.08.2024, all soft costs claimed by the Respondent to be dependent on time ought to be allowed until the actual COD of the project. It is wrong and denied that merely because the time overrun was allowed by the Hon'ble APTEL, it follows that the entire claim of Rs. 50.62 Crore on account of soft costs dependent on time were allowed. On the contrary, the same were to be allowed to the Respondent only after prudence check. It is wrong and denied that UPCL's act of not challenging the Order dated 30.11.2016 precludes the submissions made in the Review Petition.
- 5.25 The contents of para 37 of the Reply are denied. It is wrong and denied that the costs, which the Review Petition is seeking disallowance of, are necessary consequences of condoning delay of the Respondent by the Hon'ble APTEL. It is reiterated that the grounds urged in the Review Petition are well within the limited scope of review jurisdiction. The Respondent's attempt to characterise the Review Petition as a disguised appeal is incorrect and contrary to settled law.
- 5.26 The Petitioner submitted that it is wrong and denied that UPCL's act of not challenging the Order dated 30.11.2016 precludes the submissions made in the Review Petition. It is specifically reiterated that the Review Petition raises issues which do not require elaborate reasoning but disclose errors apparent on the face of record. The plea of the Respondent that the Petition ought to be rejected in limine is misconceived.
- 5.27 The Petitioner reiterated that the Review Petition has provided grounds for substantiating the contentions made. The averments made therein are irrelevant and misconceived. It is submitted that the IDC, Establishment Charges, and Other Bank Charges must necessarily follow suit in the event that the submissions regarding hard cost are accepted by The Commission. The submissions in the Review Petition are reiterated.

5.28 The Petitioner requested the Commission as follows:

1. Review and set aside the impugned Order dated 13.05.2025 passed by The Commission to the extent it allows escalation in capital cost of ₹71.51 Crore and additional soft costs of ₹9.11 Crore without carrying out a prudence check;
2. Disallow the additional costs claimed by the Respondent in terms of the grounds urged in the Review Petition;
3. Pass such further or other orders as The Commission may deem fit and proper in the facts and circumstances of the case.

6. Post hearing Respondent's Submission

- 6.1 The Respondent in terms of the hearing held on 06.08.2025 and in compliance to the directions issued by the Commission vide its letter dated 25.08.2025 submitted its reply on 02.09.2025 which has been discussed in the subsequent paragraphs of this review Order.
- 6.2 The Respondent submitted that the Review Petition is devoid of any grounds of review and in effect, is an ill-fated attempt to re-open concluded findings of the Commission which are based on well-founded reasons after examination of material on record, and as such there is no apparent error on the face of record, warranting interference under Review Jurisdiction. The Respondent reiterated legal provisions w.r.t. maintainability of the review petition which is as follows:
 - (i) Section 94 of the EA, 2003 provides for the review jurisdiction of the Commission (*being the Appropriate Commission*). As per Section 94(1)(f) of Act, for reviewing its decisions, the Commission acts as a civil court and resultantly, the provisions of the Civil Procedure Code, 1908 become applicable.
 - (ii) From a reading of Order 47 Rule 1 of the CPC, following becomes clear:
 - (a) The scope of review is extremely limited;
 - (b) A review can be filed only upon discovery of new or important matter or evidence, which could not be produced during the time of passage of an order, despite due diligence;

- (c) A review can also be filed if there is a mistake or error apparent on the face of record; and
 - (d) A review can also be filed for any other sufficient reason, which are analogous to the provisions contemplated under Order 47 Rule 1.
- (iii) Interpretation of Order 47 Rule 1 has been made by the Supreme Court in the following judgments:
- (a) *Parsion Devi & Ors. v. Sumitri Devi & Ors.* reported in [(1997) 8 SCC 715]- Para 9
 - (b) *Kamlesh Verma v. Mayawati* reported in [(2013) 8 SCC 320]- Paras 7-9, 15
 - (c) *Thungabhadra Industries Limited v. Government of Andhra Pradesh represented by Deputy Commissioner of Commercial Taxes, Anantapur*, reported in [AIR 1964 SC 1372] – Page 6
- (iv) The principles espoused by the Hon’ble Supreme Court in the aforesaid judgements, are summarized as follows:
- (a) a review cannot at all be an “*appeal in disguise*”;
 - (b) the issue raised in the review should not be “reheard and corrected”;
 - (c) if a “process of reasoning” is required to point out an error, the same cannot be termed as an “error apparent” on the face of the record justifying exercise of review jurisdiction;
 - (d) a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for a patent error. This means that even for an erroneous decision, a review cannot be filed, and that the only remedy available to an aggrieved party is to file an appeal; and
 - (e) That, where ‘without any elaborate arguments’ one could point out the error and demonstrate that a substantial point of law stares one in the face, only in such cases the review is maintainable.
- (v) With regard to the ground of “sufficient reason” under Order 47 Rule 1, reliance is placed on the following judgments:

- (a) Judgment of the Privy Council in *Chhajju Ram v. Neki* reported in [AIR 1922 PC 112];
- (b) SC Judgment in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasii* reported in [AIR 1954 SC 256] – Para 32.

The above judgments demonstrate that the term “sufficient reason” encapsulated under O47 R1 does not have a wide amplitude. Further, the term “sufficient reason” must mean a reason sufficient on grounds, at least analogous to those specified in the Rule. In other words, the sufficient reason has to be in relation to the other two reasons for review jurisdiction viz., discovery of new or important document and mistake or error apparent in the order.

- (vi) The Respondent also submitted that UPCL has raised certain fresh arguments in the Review Petition. It is a settled position of law that review cannot be claimed for seeking re-hearing of the original proceedings on the basis of fresh arguments. Reliance is placed on the following judgments of the various courts:
 - a. *Ajit Kumar Rath v. State of Orissa* reported in (1999) 9 SCC 596 – Para 30;
 - b. *Haridas Das v. Usha Rani Banik* reported in [(2006) 4 SCC 78] – Para 13;
 - c. *Nehali Panjiyara & Ors. v. Shyama Devi & Ors.* reported in (2002) 10 SCC 578 – para 2 & 3
 - d. Order passed by Hon’ble Bombay High Court in *National Textile Corp. v. JP Fernandes* reported in 2019 SCC OnLine 416 – Para 5;
 - e. Order passed by CERC in *NHPC Ltd. v. PSEB & Ors.* reported in 2012 SCC OnLine CERC 254 – para 19
- (vii) The Respondent also submitted that in the hearing held on 06.08.2025, UPCL placed reliance on a judgment dated 18.11.2024 passed by the Hon’ble APTEL in Review Petition No. 3 of 2024 in Appeal No. 383 of 2022 titled “*Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. v. CERC & Ors.*”, wherein, while deciding the scope of review petition, the Hon’ble APTEL observed as under:

“44. While interference in review proceedings is permissible only on limited grounds, it must

be borne in mind that, among the grounds on which the earlier order can be reviewed, include (a) failure to notice a previous binding precedent of either the Supreme Court or the High Courts or of this Tribunal, (b) failure to notice the applicable law, such as the provisions of the Electricity Act or the rules or the governing statutory regulations, and (c) failure of the Tribunal to consider the contentions raised in the appeal. It is within these limited parameters are we required to examine whether or not the order under review necessitates interference. Bearing the afore-said principles in mind, let us now examine whether the contentions raised in the review petition justify exercise of the power of review to interfere with the earlier order passed by this Tribunal in Appeal No. 383 of 2022 dated 02.02.2024."

The Respondent submitted that while placing reliance on the above observation, UPCL has inter-alia, contended that failure of the Commission to abide by the Hon'ble APTEL Judgment for conducting prudence check, is a sufficient reason for review by the Commission.

- (viii) With regard to the above, it is submitted by the Respondent that the reliance placed by UPCL on the abovementioned Judgment is of no consequence, since the facts and circumstances in which the above Judgment was passed, are completely different. Further, the Review Petitioner has failed to showcase as to how the Commission has failed to conduct a prudence check while following the Hon'ble APTEL Judgment and passing the remand Order.

As such, even in case the benefit of the above observation is granted to UPCL, there exists no circumstance in which review jurisdiction may be exercised by the Commission on the grounds raised by UPCL.

- 6.3 With regard to the submission of UPCL that Contract dated 26.12.2005 does not have any provision for price variation and determination of compensation was done base on mutual understanding and minutes of meeting held between parties, the Respondent submitted that by way of the above-stated allegation, UPCL seeks to re-argue and re-agitate the very same issues already considered and decided by the Commission and also decided by the Hon'ble APTEL in its Judgment dated 28.08.2024 in Appeal No. 100 of 2017 & Batch, which has been upheld by the Hon'ble Supreme Court of India, and as such, the same cannot be done in any manner.

6.4 The Respondent submitted that the Commission while passing the impugned Order, had undertaken a thorough prudence check for allowing the cost escalation of Rs. 71.51 Crore (as cost overrun). In this regard, it is imperative to point out that the above issue in part was also raised by UPCL at the time of passing of the impugned Order, and the same was duly recognized by the Commission while passing the said Order. The relevant extracts of the impugned Order in this regard are set out below:

“UPCL submitted that the disallowance of Rs. 71.51 Crore to the appellant on account of hard cost, i.e. civil and hydro-mechanical works is basically a compensation amount that has been determined solely on the basis of the Minutes of Meeting dated 11.12.2009 between the two parties, i.e. M/s GBHPPL (earlier Lanco Green Power Private Ltd.) and contractor (Lanco Infratech Ltd.). It was also submitted that this determination of compensation is not by virtue of any legal/arbitral award but is merely based on mutual understanding reached between the parties. Any compensation paid to the contractor for the delays attributable to M/s GBHPPL ought not to be passed on to the consumers of the State. The delay in commissioning of the project was a consequence of the deficiencies in planning and errors committed in the formulation of DPR.

...

3. Commission's view and decision

...

D. Price escalation disallowed on account of geological breakdown, increase in length of HRT and increase in quantum of steel reinforcement for Diversion dam,

3.17 With regard to time overrun on account of delay in commissioning due to geological surprises affecting the progress of work in most of the underground structures due to occasional stoppages and slow progress since most of the water conductor system and power house components were underground structures and also geological over breaks resulting in additional concrete back filling and concrete lining in the HRT/Desilting tank, additional work due to increase in length of HRT and increase of reinforcement for Diversion dam, the project lies in the western part of the Himalayan organic belt affected by several tectonic features, as such, the area around the project is highly tectonised giving rise to crushed rock mass, gauzy material, blocky crumbly and sheared rock. The Hon'ble ATPEL agreed with the submission of the generator that the delay on account of geological surprises is beyond the control of the generator. Further, the Hon'ble ATPEL has allowed the time overrun due to occurrence of events beyond

the control of M/s GBHPPL.

...

3.19 To examine the cost overrun of Rs. 71.51 Crore, the Commission directed the generator to submit the contracts pertaining to Rs. 71.51 Crore alongwith invoices and correspondences (internal and with contractors) regarding increase in length of HRT. In reply, the generator vide submission dated 06.03.2025 submitted the copy of the amended agreement dated 08.01.2010. However, copy of invoices and correspondence w.r.t. increase in HRT were not submitted. The Commission examined the amended agreement dated 08.01.2010 for contract of construction of civil works. The relevant extract of the amended agreement w.r.t. amounting to Rs. 71.51 Crore is as follows:

...

It is observed from the above clauses of the amended agreement dated 08.01.2010 that the amount of Rs. 71.51 Crore pertaining to price escalation has been decided in the minutes of meeting dated 11.12.2009. Accordingly, the Commission once again directed the Petitioner to submit the copy of the Minutes of Meeting held between parties on 11.12.2009 alongwith invoices pertaining to the agreed amount of Rs. 71.51 Crore.

The generator vide its reply dated 30.04.2025 submitted that it has already submitted the copy of the amended contract dated 08.01.2010 which explicitly states the scope of work which includes (i) Head Race Tunnel, (ii) Surge Shaft, (iii) Pressure Shaft, (iv) Draft Tube Tunnels, (v) Draft Tube Tunnels, (v) Draft Tube Gate Gallery, (vi) Access Tunnel to Draft Tube Gate Gallery, (vii) Access Tunnel to Draft Tube Gate Gallery from Power-House, (viii) Tail Race Tunnel and, (ix) Power House Tunnel. Further, the civil work contract for the said works was originally signed on 26.12.20205 which was to be completed in 2008, hence, price commensurate with year 2005 price levels were quoted by the contractor. However, due to several events beyond the control of the generator, such works could only commence at a much later date for which amendment contract dated 08.01.2010 was executed resulting in significant increase in prices.

Further with regard to Minutes of Meeting and internal correspondence and correspondences with the contractor, the generator submitted that the requisite information is not readily available with it. However, the approved project cost and the audited accounts of the generator for FY 2012-13 reflects that the generator has actually incurred the increased costs as claimed.

In the matter, the Commission is relying upon the final completion cost of the project as per the audited accounts for FY 2012-13. Besides in line with the view of the Hon'ble APTEL with respect to delays and geological surprised experienced by the project as being uncontrollable in

nature the Commission accepts to allow the expenditure incurred on this head."

A perusal of the observations and findings made by the Commission reveals that the impugned Order has been passed after a thorough analysis of the provisions stipulated in the Contracts executed between GBHPPL and the contractor, and the contentions then raised by the Review Petitioner. It was taken into account by the Commission that the delay in execution of works was for reasons not attributable to either of the parties, and as such, it was agreed that compensation for escalation in prices was payable to the contractor.

- 6.5 Against the submission of UPCL that in amended contract dated 08.01.2010 the contracted value Rs. 71.51 Crore was fixed against compensation as price escalation, overheads & other charges due to delay not attributable to the contractor however the amount against an item "LOT-2 (x) Hydro-mechanical work" amounting to Rs. 12.55 Crore was removed from the contracted value of Rs. 71.59 Crore even after removal of the same work from the contractor's scope of work, the Respondent submitted that UPCL has raised a new argument by way of Review Petition, which is completely barred considering the limited scope of review.

The Respondent submitted that the cost escalation and change in scope of work in Work Contracts had been placed before the Commission by way of Affidavit dated 28.06.2016 during the original proceedings. The said affidavit was again provided to the Commission during the remand proceedings vide affidavit dated 06.03.2025. The submissions therein clear any purported controversy in regard to the scope of works in the Works Contracts dated 26.12.2005 (amended on 15.12.2006 and 08.01.2010) and Contract dated 10.07.2009. Notably, the entire aspect of change in Contract dated 26.12.2005 qua Hydro Mechanical Works has been categorically brought to the attention of the Commission during the original proceedings itself. Therefore, the Commission was provided with the entire scope of facts and, after due prudence check and deliberation, it has decided to allow the claim in view of the specific submissions made by the Respondent. Thus, UPCL's attempt to guise the above allowance as a "calculation mistake" is nothing but an attempt to reopen an issue which had been given finality by the Commission.

- 6.6 With regard to the submission of UPCL on deletion of "LOT-2 (x) Hydro- mechanical

works” was deleted from the scope of the Contractor’s works and not demonstrating before the Commission that the item so deleted was executed through a different sub-contractor, and if so, at what cost, the Respondent submitted that the above allegation placed forth by UPCL is completely unsubstantiated and based on a fallacious reading of the submissions already placed by GBHPPL before the Commission during the proceedings qua original tariff determination in 2016 and again during the re-determination of tariff basis the Hon’ble APTEL Judgment.

The Respondent submitted that the facts as regards amendments of contracts relating to transfer of H&M works was placed before the Commission by way of affidavit dated 28.06.2016. However, through the Order dated 30.11.2016, the Commission declined to allow cost escalations incurred beyond SCOD. As such, the abovementioned escalation of Rs. 12.55 Crore was denied to GBHPPL. Thereafter, through the Hon’ble APTEL Judgment, entire time overrun of GBHPPL was allowed and corresponding cost overrun was to be allowed by the Commission, subject to prudence check. Further, the Hon’ble APTEL Judgment has also been upheld by the Hon’ble Supreme Court. Accordingly, since the above costs were actually incurred and duly reflected in the audited accounts of GBHPPL, the same were allowed by the Commission in the impugned Order.

Thus, considering that UPCL failed to take note of the above amendments in the contract where the addition of Rs. 12.55 Crore was clearly reflected, during four rounds of proceedings, it is imperative that the above allegation be outrightly rejected by the Commission, particularly when the same does not constitute any calculation error or error apparent on the face of record.

- 6.7 With regard to the submission of UPCL that the Respondent GBHPPL being the employer at the relevant time, a subsidiary of the contractor, GBHPPL simply obliged its parent company to dispute or negotiate down the Contractor’s demand for further payment was done based on the collusive intention of the GBHPPL and the Contractor to foist the additional costs on electricity consumers, the Respondent submitted that allegation made by the Review Petitioner is completely unsubstantiated, baseless and was never raised in the original proceedings, thereby being barred.

It is settled position that review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out basis the factual arguments already made in the original proceedings. Also, review proceedings cannot be equated with the original hearing of the case, and re-appreciation of evidence on record is also not allowable. The Respondent also submitted that despite being related parties (parent and subsidiary), the transaction between the said parties was made on arms' length basis, as per the Companies Act.

The Respondent also submitted that out of the cost escalation of Rs. 71.51 Crore in civil works, expenditure of Rs. 15.42 Crore was incurred towards geological outbreak and balance Rs. 56.09 Crore was due to price escalation and additional work due to increase in length of HRT and increase in quantum of steel reinforcement for diversion dam. The Civil Contract dated 26.12.2005 executed by GBHPPL was amended on 03.10.2006; 15.12.2006; and 08.01.2010, wherein amount of Rs. 71.51 Crore was added towards compensation pertaining to price escalation, as also the other expenditure mentioned above. Further, through the Hon'ble APTEL Judgment dated 28.08.2024, the Hon'ble APTEL had allowed the entire time overrun as claimed by GBHPPL. It thus follows that since entire time overrun had been allowed by the Hon'ble APTEL (as also affirmed by the Hon'ble Supreme Court), price escalation and other expenditure as mentioned above totaling to Rs. 71.51 Crore, the same had to be consequentially allowed by the Commission. The Respondent also submitted the breakup of Rs. 71.51 Crore provided in amended contract dated 08.01.2010 which is as follows:

- Completion of HRT Face-7 (1800 m) excavation – Rs. 22.43 Crore
- Completion of Dam Concreting up to EL. 1628 – Rs. 11.22 Crore
- Completion of excavation for balance component – Rs. 11.22 Crore
- Completion of HRT lining – Rs. 11.22 Crore
- Concrete placement in geological over breaks in HRT – Rs. 15.42 Crore.”

The Petitioner submitted that the Commission had already allowed cost escalation of certain civil works but merely restricted the same upto the 'scheduled completion date'.

After passing of the Hon'ble APTEL Judgment (which was affirmed by the Hon'ble Supreme Court), it necessarily followed that the aforesaid expenses towards cost escalation on account of such time overrun also be allowed.

- 6.8 With regard to the Petitioner's comment that M/s GBHPPL had failed to produce any documents to showcase that there was an actual increase in the costs due to delay in commissioning of the Project., the Respondent submitted that this issue was also raised during the suo-motu proceedings initiated by the Commission for implementation of APTEL Judgment. It was submitted by GBHPPL that requisite correspondences with the contractor were not available. However, it was submitted that the approved project cost and the audited accounts of GBHPPL for FY 2012-13 reflects that the generator has actually incurred the increased costs as claimed. Further, it is also submitted that while conducting prudence check, statutory auditor certified that the expenses of Rs. 71.51 Crore were actually incurred, in tandem with the contractual amendments, the same did not require any further scrutiny.

The above makes it clear that there was no error apparent on the face of record insofar as the prudence check to be conducted by the Commission is concerned. The raising of above issues amounts to re-arguing the entire case on merits, which is impermissible in a review proceeding.

- 6.9 With regard to the comment of UPCL on the provisions under Section 55 of the Indian Contract Act, 1872 that the Contractor would be entitled to "compensation" for doing works beyond 30.04.2008 (work completion date under the 2005 Contract), if and only if, prior to commencing works after 30.04.2008, the Contractor warned GBHPPL that while the Contractor would complete the works, it would demand costs due for any loss incurred due to prolongation, the Respondent submitted that the same contention was not raised by the Petitioner in the original proceedings neither in original proceedings nor remanded proceedings. Further, the delay in execution of works stipulated in the contract was for reasons not attributable to either the contractor or GBHPPL;

The Respondent also submitted that the ramifications of the delay were discussed between GBHPPL and the contractor during the meeting held between the parties on

11.12.2009 where it was agreed that compensation towards price escalation, overheads and other charges incurred due to delay in works on account of reasons not attributable to the Contractor would be payable.

Further, per Section 55 of the Indian Contract Act, 1872, the contract would have been voidable at the instance of GBHPPL. However, considering that a large amount of sum had already been spent and the delay was not attributable to the contractor or GBHPPL (which has also been recognised by the Hon'ble APTEL), it was deemed fit that revision in costs may be incurred for execution of the generation project.

6.10 With regard to UPCL's contention of non-submission of reasons for cost overrun in case of controllable components like design charges, establishment charges etc., the Respondent submitted that the design charges, establishment charges etc. were part of the soft costs dependent on time factor. Through the Order dated 30.11.2016, the Commission had restricted such expenditure upto Scheduled COD on pro rata basis. The Commission in the above order had already done the prudence check towards such expenses, and only thereafter it had restricted such costs incurred till the Scheduled COD. Since the Hon'ble APTEL through its Judgment dated 28.08.2024, was pleased to allow the entire time-overrun in implementation of the Project by GBHPPL appeal by UPCL against the same before the Hon'ble Supreme Court was also dismissed, giving finality to the judgement of the Hon'ble APTEL, all soft costs dependent on time ought to be allowed until the actual COD of the Project. It followed that the entire claim of Rs. 50.62 Crore on account of soft cost dependent on time (incurred up to actual COD) was allowed by the Commission in the impugned Order.

6.11 With regard to the contention of UPCL regarding failure of m/s GBHPPL to exercise due diligence while preparing the initial DPR for the project, leading to escalation of Project Costs, the Respondent submitted that it is clear that the Commission had conducted prudence check of the DPR prepared by M/s GBHPPL during the proceedings of the original Petition for determination of Tariff for FY 2015-16 and MYT for FY 2016-17 to FY 2018-19. The costs incurred by GBHPPL were restricted upto the SCOD. As such, there did not arise any instance for re-conducting the prudence check into the DPR preparation.

These averments amount to challenging the Order dated 30.11.2016 passed by the Commission, wherein, it had conducted prudence check into the costs incurred by GBHPPL. However, while allowing such costs, the Commission had restricted the expenditure upto the SCOD on pro rata basis. As such, in case UPCL was aggrieved from the findings of the Order dated 30.11.2016, it ought to have challenged the same before the Hon'ble APTEL. Such contentions cannot be allowed to be agitated in the present Review Petition, particularly when the scope of "review" is extremely limited.

7. Commission's Analysis and Findings

7.1 Powers of the Commission and Grounds for Review

7.1.1 Limitation - A Threshold Issue

Limitation (delay), being a threshold issue in the instant matter, is being taken up first, prior to an examination of the substantive grounds raised in support of the review petition.

As per the mandate of Regulation 54 of the *UERC (Conduct of Business) Regulations, 2014*, a review petition is required to be filed within 60 days from the date of issuance of the order sought to be reviewed.

The impugned Tariff Order was issued on 13.05.2025 and hence, the limitation period for filing a review petition expired on 12.07.2025. The present review Petition has been filed before the Commission on 11.07.2025 i.e. within the period specified under the above mentioned Regulation.

7.1.2 Statutory Power of Review

Before considering the merits of the Petition, it is necessary to delineate the scope of the Commission's power of review.

Section **94(1)(f)** of the Electricity Act, 2003 empowers the Commission to undertake review of its decisions in the same manner as a Civil Court deals with the power of review under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908.

Order 47 of the Code of Civil Procedure, 1908, specifies the following three grounds for the purpose of considering review:

- (i) **Discovery of new and important matter or evidence** which, despite due diligence, was not within the knowledge of the applicant or could not be produced at the time of the order.
- (ii) **Mistake or error apparent on the face of the record.**
- (iii) **Any other sufficient reason** interpreted to mean reasons analogous to (i) and (ii).

The import of these grounds can be better understood through authoritative judicial exposition by higher courts in India. The Commission shall proceed to examine these grounds in light of the judicial pronouncements by the higher courts in detail in the succeeding part of this order.

7.1.3 Discovery of New Evidence

For review on the ground of discovery of new evidence, the applicant must conclusively establish:

1. The evidence was genuinely not within knowledge despite due diligence.
2. The evidence is of such materiality that its absence would cause miscarriage of justice.
3. The evidence, if considered, could potentially alter the judgment.

In this regard, it is relevant to refer to the Judgment of the Hon'ble Supreme Court in the case of *State of West Bengal and Others v. Kamal Sengupta and Another*, [(2008) 8 SCC 612] wherein it was held that:

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier."

Therefore, from the above it is evident that it is incumbent upon the party seeking review to establish/ demonstrate that the additional matter or evidence was not within its

knowledge earlier and, despite the exercise of due diligence, could not have been produced at the time when the order was passed. Failure to meet these strict tests disentitles a party from seeking review.

We shall now proceed further to examine the scope of the second ground; '*error apparent on the face of the record*'.

7.1.4 Error Apparent and Miscarriage of Justice

In *Col. Avatar Singh Sekhon v. Union of India* [(1980) Supp SCC 562], the Court emphasised that review cannot be undertaken unless the error is manifest on the face of the order and such error undermines its soundness or results in miscarriage of justice.

In *Parsion Devi v. Sumitra Devi* [(1997) 8 SCC 715], wherein it was further observed that a review is not an appeal in disguise, relevant para of the said order is reproduced hereunder:

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

The principle was further affirmed by the Hon'ble Supreme Court in *Lily Thomas v. Union of India* [(2000) 6 SCC 224], wherein referring to *Parsion Devi v. Sumitra Devi* (Supra) the Court clarified that the error contemplated must be "self-evident" and not one that requires a process of reasoning, the Hon'ble Supreme Court had observed that,

"...Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence.....

.....

Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In T.C. Basappa v. T. Nagappa this Court held that such error is an error which is a patent error and not a mere wrong decision..."

Similarly in the matter of *Jain Studios Ltd. v. Shin Satellite Public Co. Ltd.* (2006) 5 SCC 501, the Hon'ble Supreme Court has held that:

"...So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior Court to correct all errors committed by a subordinate Court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases. ..."

In the case of *State of West Bengal and Others v. Kamal Sengupta* (2008 (8) SCC 612) and *Another*, (Supra) the Hon'ble Supreme Court had held that:

"15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

Let us now deliberate upon the third ground of review.

7.1.5 Any Other Sufficient Reason

The phrase "any other sufficient reason" under Order XLVII CPC has been judicially

interpreted to mean reasons analogous to discovery of new evidence or error apparent. It cannot be expanded to include every conceivable reason. (*Lily Thomas, supra*).

In *Ajit Kumar Rath vs. State of Orissa and Others* [1999 (9) SCC 596], the Hon'ble Supreme Court has held that:

"...A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

As evident from the above, a review against any Order/Judgment lies only to correct a patent error apparent on the face of the record; it cannot be treated as an appeal or a rehearing, and 'any other sufficient reason' must be analogous to the specified grounds.

It is relevant to refer to the judgement of the Hon'ble Supreme Court. In *Kamlesh Verma v. Mayawati & Ors.* [(2013) 8 SCC 320], the Hon'ble Court referring to various judgments culled out the grounds when the review will be maintainable and when it will be not. Relevant para of the said judgment is 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" has been interpreted in Chajju Ram vs. Neki¹⁷, and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius

& Ors.18 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. 25 ,.

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 re-heard and corrected but lies only for patent error.*
- (vi) The mere possibility of two views on the subject cannot be a ground for review.*
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- (viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- (ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.*

Moreover, error referred to by Petitioner for seeking review is far from being the 'error' that invokes reviewing jurisdiction. Therefore, the Review Petition cannot be entertained and is rejected as non-maintainable. In view of the same there is no error apparent on the face of record and hence issue do not qualify for review."

7.1.6 Further, the Hon'ble Supreme Court recently vide judgement dated 08.09.2025 in the matter of *Malleeswari Vs K. Suguna and another* (2025 INSC 1080, SLP (C) No. 12787 of 2025) while dealing with the scope and power of review referred to the various judgements such as (i) *Meera Bhanja v. Nirmala Kumari Choudhary*, (1995) 1 SCC 170 wherein it was held that 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 of CPC., (ii) *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389 wherein it was held that review is not to be confused with appellate powers,

which may enable an appellate court to correct all manner of errors committed by the subordinate court., (iii) *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it was held that in exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise., (iv) *Lily Thomas v. Union of India*, (2000) 6 SCC 224 wherein it was held that the power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power. (v) *Inderchand Jain v. Motilal*, (2009) 14 SCC 663 wherein it was held that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered and (vi) *Shivdev Singh v. State of Punjab*, AIR (1963) SC 1909 wherein it was held that it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.

The Hon'ble Supreme Court in the said judgement has provided distinction between power of review and appellate power and restated the power and scope of review jurisdiction, summing up ground of review. The relevant Para 17 of the said judgement is reproduced hereinbelow:

"17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record.⁸ Such an error is a patent error and not a mere wrong decision.⁹ An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. (Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR (1960) SC 137.)

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on

grounds at least analogous to those specified in the other two categories. (Chhajju Ram v. Neki, 1922 SCC OnLine PC 11 and approved in Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius, AIR (1954) SC 526.)

7.1.7 In light of the above settled legal position, the Commission proceeds to examine whether the grounds raised by the Petitioner fall within the ambit of review.

7.2 Issues for Review raised in the Petition

7.2.1 Allowance of additional cost to the extent of Rs. 71.51 Crore.

Petitioner's Submissions

- a. The Petitioner in the Review Petition submitted the Commission failed to carry out prudence check regarding the quantum of escalated capital cost. The Respondent and the contractor executed Amendment no. 1 dated 15.12.2006 including "LOT-2 (x) Hydro-mechanical works" amounting to Rs. 12.54 Crore. The Petitioner submitted that as per the amended contract 2010, "LOT-2 (x) Hydro-mechanical works" amounting to Rs. 12.54 Crore has been removed, therefore, the amount of Rs. 12.54 Crore should be removed from Rs. 71.51 Crore. The omission to adjust for this deletion before allowing Rs. 71.51 Crore as escalated cost is an error apparent on the face of the record.
- b. The Petitioner submitted that neither the amended contract dated 08.01.2010 nor any other document on the record of the Commission, had the Respondent provided a breakup of Rs. 71.51 Crore paid to the Contractor. The Petitioner submitted that the Respondent submitted that quantification of the claim for escalation costs at Rs. 71.51 Crore were not justified by the Respondent by producing any invoices, correspondences, or any other documents suggesting that the said quantum was arrived at based on some bona fide negotiation. It is merely based on the amount mutually agreed upon as per the amended agreement dated 08.01.2010.
- c. The Petitioner has also submitted that Respondent itself admitted before the Commission in response to queries raised in the year 2016 that the Detailed Project Report (DPR) for the project suffered from estimation errors and failure to include several key items. The increased capital cost incurred for such missed-out items is

thus attributable to the Respondent's own lack of due diligence. To the extent the impugned Order allows such costs to be passed through to the consumers, it is liable to be reviewed.

Commission's Analysis and Ruling

- d. As detailed in the Suo-moto Order dated 13.05.2025, it is evident that the Commission has already given a reasoned view and conclusion in the matter and it was held based on second amended contract dated 08.01.2010 and the financial accounts for FY 2012-13 that M/s GBHPPL has incurred an amount of Rs. 71.51 Crore.

Further, with regard to the submission of the Petitioner that the Respondent had not provided breakup of Rs. 71.51 Crore paid to the contractors. In this regard, it is pertinent to mention that the Respondent has provided the amended Contract dated 08.01.2010 which provides the detailed breakup of Rs. 71.51 Crore. Further, the Commission had examined the amended agreement dated 08.01.2010 of construction of civil works. The relevant extract of the impugned order where the amended agreement w.r.t. amounting to Rs. 71.51 Crore was dealt is given hereunder:

"3.19 To examine the cost overrun of Rs. 71.51 Crore, the Commission directed the generator to submit the contracts pertaining to Rs. 71.51 Crore alongwith invoices and correspondences (internal and with contractors) regarding increase in length of HRT. In reply, the generator vide submission dated 06.03.2025 submitted the copy of the amended agreement dated 08.01.2010. However, copy of invoices and correspondence w.r.t. increase in HRT were not submitted. The Commission examined the amended agreement dated 08.01.2010 for contract of construction of civil works. The relevant extract of the amended agreement w.r.t. amounting to Rs. 71.51 Crore is as follows:

"2.2 The parties hereby agree for acceptance of additional claim and payment of Rs. 71,51,00,000/ (Rupees Seventy one Crore fifty lacs only), as agreed between parties in the minutes of meeting dated 11.12.2009 which shall be paid as a compensation towards price escalation, overheads & other charges incurred due to delay in work on account of reasons not attributable to the contractor and the same shall be accepted and released in the following manner: Acceptance of Claim and Payment:

- i) Completion of HRT Face-7 (1800 m) excavation = Rs. 22.43 Crore*

- ii) Completion of Dam Concreting upto EL. 1628 = Rs. 11.22 Crore
- iii) Completion of excavation for balance component = Rs. 11.22 Crore
- iv) Further an amount of Rs. 15.42 Crore towards concrete placement in over breaks in HRT shall be progressively accepted and paid to LITL @ Rs. 24613/meter length of 6265 meter of HRT. This shall be released alongwith the payment for the tunnel lining for the actual length executed every month."

It is observed from the above clauses of the amended agreement dated 08.01.2010 that the amount of Rs. 71.51 Crore pertaining to price escalation has been decided in the minutes of meeting dated 11.12.2009. Accordingly, the Commission once again directed the Petitioner to submit the copy of the Minutes of Meeting held between the parties on 11.12.2009 alongwith invoices pertaining to the agreed amount of Rs. 71.51 Crore.

The generator vide its reply dated 30.04.2025 submitted that it has already submitted the copy of the amended contract dated 08.01.2010 which explicitly states the scope of work which includes (i) Head Race Tunnel, (ii) Surge Shaft, (iii) Pressure Shaft, (iv) Draft Tube Tunnels, (v) Draft Tube Tunnels, (v) Draft Tube Gate Gallery, (vi) Access Tunnel to Draft Tube Gate Gallery, (vii) Access Tunnel to Draft Tube Gate Gallery from Power-House, (viii) Tail Race Tunnel and, (ix) Power House Tunnel. Further, the civil work contract for the said works was originally signed on 26.12.2005 which was to be completed in 2008, hence, price commensurate with year 2005 price levels were quoted by the contractor. However, due to several events beyond the control of the generator, such works could only commence at a much later date for which amendment contract dated 08.01.2010 was executed resulting in significant increase in prices.

Further with regard to Minutes of Meeting and internal correspondence and correspondences with the contractor, the generator submitted that the requisite information is not readily available with it. However, the approved project cost and the audited accounts of the generator for FY 2012-13 reflects that the generator has actually incurred the increased costs as claimed."

It is specifically clear that the amount for completion of HRT Face-7 (1800 m) excavation was Rs. 22.43 Crore, completion cost for Dam Concreting up to EL. 1628 amounted to Rs. 11.22 Crore, completion of excavation for balance component was Rs. 11.22 Crore and completion work of HRT lining amounted to Rs. 11.22 Crore. Further, Concrete placement in geological over breaks in HRT was of Rs. 15.42 Crore

Further, as far as removal of “LOT-2 (x) Hydro-mechanical works” amounting to Rs. 12.54 Crore is concerned, it is pertinent to mention that UPCL has raised a new argument by way of Review Petition, which is completely barred considering the limit scope of review. It is worth mentioning that during the initial proceedings of tariff determination for M/s GBHPPL’s project in year 2016 as well as during the current proceedings, the Respondent had categorically brought to the attention of the Commission about the agreement dated 10.07.2009 and the amendment contract dated 08.01.2010 through which compensation towards price escalation, overheads, & other charges amounting to Rs. 71.51 Crore incurred by M/s Lanco Infratech due to delay in work on account of reasons not attributable to the contractor towards the scope of works in the original contract dated 26.12.2005. Whereas, the LOT-2 (x) Hydro-mechanical works” amounting to Rs. 12.54 Crore are actually the H&M works which were included in the scope of work of M/s Lanco Infra vide Amendment-1 in 2005. Therefore, the contention of the Petitioner that Rs. 12.54 Crore corresponding to “Lot-2 (x) Hydro-mechanical works” should be deducted from Rs. 71.51 Crore is not tenable. Further, it is to be recognised that no hydro projects can be completed without hydro-mechanical works and it is incorrect for the Petitioner to contend that since the same has been deleted from the Contract the same should not be allowed.

Moreover, the Petitioner has submitted that there was collusion between the M/s GBHPPL (M/s Lanco Green under the name it was then known) and M/s Lanco Infratech. It is also denied by UPCL that the transactions between the said parties were made on arms-length basis as per the Companies Act, the generator should have claimed liquidated damages, should have taken action in accordance with the provisions of Section 55 of the Indian Contract Act, 1872. The Petitioner also submitted that missing of some items in DPR lead to increase in capital cost attributable to the generator. In the matter, the Commission observes and reiterates that the Commission had considered actual expenditure for necessary works required for the plant irrespective of the fact whether such works part of the DPR or missed out while preparing it as the project cannot function properly with such works. Moreover, the Petitioner had not raised such contentions in the original

proceedings. Besides the Petitioner was well aware of the relationship between Lanco Green and Lanco Infra well before signing of the PPA, it should have commented on the same during the original proceedings or during the proceedings before the Hon'ble APTEL. It is well settled through judicial precedents that the scope of review jurisdiction is extremely limited. The Petitioner, however, is seeking to introduce new grounds in the guise of review, notwithstanding the absence of any discovery of new or material evidence.

- e. Infact in one of the contentions, the Petitioner has submitted that the reasonableness of the decisions of the Respondent cannot be assessed without the benefit of PERT chart or other data regarding the way the activities for execution of the hydroelectric plant were planned, sequenced, and managed by the Respondent. No such chart or data is available with the generator. In this regard, the Petitioner conveniently chose to ignore the Hon'ble APTEL's findings in its Judgment dated 28.08.2024 has held as under:

"121. From the above, it is seen that the State Commission without examining the facts placed before it, as reiterated before us and without carrying out a prudence check, has rejected the time overrun only citing that the GBHPPL has not maintained the "PERT Chart" and the construction of the tie line is a distinct activity from that of the generation project.

122. As mentioned above, there is no need to refer to the PERT Chart to examine and decide on such delays, which are certainly beyond the control of the GBHPPL."

Further, the Petitioner also conveniently chose to ignore the fact that the Hon'ble APTEL vide its Judgment dated 28.08.2024 had allowed the entire time over-run to the generator and the Contract in question here related to the compensation towards price escalation, overheads & other charges incurred due to delay in work on account of reasons not attributable to the contractor due to time overruns, hence, the Commission had to allow the said expenditure as it formed part of the audited accounts also signifying the same was incurred. It is not always necessary to seek invoices to establish whether the expenditure has been incurred or not. The same can be established from the audited statement of accounts as well. In case of the Petitioner and other similar placed electricity utility the Commission

relies more on the audited statement of accounts and not on invoices. Infact the Hon'ble APTEL in its Judgment dated 30.05.2025 in Appeal No. 259 of 2017 & IA No. 718 of 2024 in the matter of M/s Gama Infraprop Pvt. Ltd. Vs. UERC & Ors. has held as under:

"187. Furthermore, the Appellant's submission that a portion of the disallowance was due to a lack of itemized documentation needs to be considered in the context of practical realities. Not all minor expenditure under this head will be supported by invoices exceeding material thresholds, and such expenditure may still be valid and prudently incurred. The auditor-certified figures provide sufficient assurance of their authenticity..."

199. Importantly, the expenditures were capitalised and subjected to a statutory audit, which lends credibility to the Appellant's claim. The auditors' certification, coupled with the absence of any indication of overstatement or duplication, ought to have been given due consideration by the Commission."

- f. Accordingly, as discussed above, there is no error apparent on the face of record and there is no new evidence which can be considered and, hence, this issue does not qualify for review. Therefore, the request of the Petitioner to review the amount of Rs. 71.51 Crore allowed to the Respondent on account of price escalation, increase in HRT length, geological overbreak is liable to be rejected.

7.2.2 Allowance of additional soft costs under the heading "Design, Engineering, Construction, and Supervision Charges" to the extent of Rs. 9.11 Crore (over and above the sum of Rs. 4.51 Crore allowed by the Commission under the Order dated 30.11.2016).

Petitioner's Submissions

- a. The Petitioner submitted that the *Design Charges* fall within the category of controllable cost components of the project and are, therefore, not subject to external price shocks or statutory levies. The steep escalation from Rs. 4.51 Crore (revised cost approved by GoHP as Rs. 5.24 Crore) to Rs. 13.62 Crore within a short period indicates inefficiency or imprudence in cost control on the part of the Respondent. The Commission, however, allowed the entire escalated amount as a pass-through without assessing whether such escalation could have been avoided through better project management. The failure to apply a prudence check on a

controllable cost component constitutes a reviewable error. Furthermore, the Respondent has not furnished any work orders, invoices, internal approvals, or estimation basis to substantiate its claim that an additional Rs. 9.11 Crore under *Design Charges* was actually incurred or reasonably necessary. The absence of supporting documentation or even a cost breakdown undermines the credibility of the claim and renders the allowance of such costs arbitrary.

- b. The Petitioner further submitted that the impugned order warrants review since it fails to consider that a portion of the escalation in *Design Charges* arose due to the Respondent's own admitted lapses in the preparation of the DPR. The missed-out components and estimation errors acknowledged by the Respondent in its submissions before the Commission necessitated revisions, re-work, and additional design efforts, which would not have been required but for the Respondent's lack of diligence. Such costs, if at all incurred, are attributable to the Respondent's inefficiency and cannot justifiably be passed on to consumers.
- c. The Petitioner also submitted that under the head *Design, Engineering, Construction and Supervision Charges*, the Respondent incurred expenditure exceeding the revised estimate by more than Rs. 9 Crore within just 21 months of the revised estimate. The Commission, however, allowed the entire amount as pass-through without any prudence check or scrutiny. This constitutes an error apparent on the face of the record, thereby warranting review.

Commission's Analysis and Ruling

- d. The Commission analysed the submissions made by the Petitioner and observed that the Petitioner has broadly claimed review towards allowance of *Design, Engineering, Construction and Supervision Charges* stating that the same was within the control of the generator and should have been restricted.
- e. The Commission in the initial proceedings, had segregated soft costs into two categories i.e. (i) Dependent of time, and (ii) Independent of time. Further, based on the time time-overrun, the soft costs had been disallowed after prudence check. However, the Hon'ble APTEL through its judgement dated 28.08.2024 had directed

the Commission to determine the soft cost as claimed by the GBHPPL after considering time overrun as not attributable to the generator and the contractor. The Commission in the Impugned Order dated 13.05.2025 had already deliberated in detail on the above aspects.

- f. The Petitioner has also questioned the authenticity and accuracy of the DPR at many places in its Petition. In this regard, it is relevant to refer to the Hon'ble APTEL Judgment dated 30.05.2023 passed in IA No. 168 of 2023 and Appeal No. 172 of 2023 in the matter of M/s Baitarani Power Project Pvt. Ltd. Vs. OERC & Ors., wherein Hon'ble Tribunal has held as under:

"It cannot be disputed that the DPR is prepared at the stage of planning of a project and the parameters considered therein cannot be taken as final and binding on either of parties, the State Commission should consider the realistic parameters to the extent these are available, since the State Commission has decided to determine a project specific tariff under section 62 of the Electricity Act, 2003 in the case of the Appellant, therefore, cannot go on the basis of the DPR alone."

The Commission in the past has also observed specially in case of hydro projects that actual completed costs of the projects has been in variance with the DPR costs due to time overruns and geological surprises. So the practice of restricting the final cost to the DPR cost would be detrimental to the interests of the utility and there may be chances that the utilities in such cases would be preparing the DPR with higher cost estimates which would not be a healthy practice.

- g. Besides, the Petitioner during the review proceedings has not brought anything before the Commission which could be considered as discovery of new and important matter or evidence or mistake or error apparent on the face of record. The submission of the Petitioner merely aims at reconsideration of already concluded matter which is not permitted through a review. The matter was already examined by the Commission in the initial proceedings and only after detailed analysis, taking such expenses as a controllable factor dependent of time, cost was disallowed due to time overrun. However, based on the directions of the Hon'ble APTEL in judgement dated 28.08.2024, time overrun was not attributable to the generator, therefore, soft

cost disallowed on account of time overrun was allowed to the generator.

- h. Accordingly, there is no error apparent on the face of record and there is no new evidence which can be considered and, hence, this issue does not qualify for review.

7.2.3 Reduction of Capital cost by IDC, 'Other Bank Charges' and 'Establishment Charges' in proportion of Rs. 71.51 Crore towards compensation and Rs. 9.11 Crore towards 'Design Engineering, Construction, and Supervision Charges.

Petitioner's Submissions

- a. The Petitioner submitted that, in the event the Commission disallows the additional hard cost of Rs. 71.51 Crore and/or the additional soft cost of Rs. 9.11 Crore claimed by the Respondent, the consequential sums allowed to the Respondent under the impugned Order would also warrant a fresh prudence check. The Petitioner accordingly prays that such amounts may be disallowed, subject to prudence evaluation, as under:
- Interest During Construction (IDC), if any, incurred by the Respondent in the event that debt financing was availed in respect of the additional hard cost of Rs. 71.51 Crore or the additional soft cost of Rs. 9.11 Crore;
 - An additional sum of Rs. 1.80 Crore towards *Other Bank Charges* allowed to the Respondent under the impugned Order, to the extent such charges were incurred for financing the aforesaid additional costs;
 - An additional sum of Rs. 11.22 Crore towards *Establishment Charges* allowed to the Respondent under the impugned Order, insofar as the same were incurred in connection with the aforesaid additional costs.

Commission's Analysis and Ruling

- b. In response to the Petitioner's contention, it is submitted that the said plea is devoid of merit. As mention in above paragraphs of this review Order, the Commission, after due consideration, has already rejected the request of the Petitioner to review and reject completely or partly the additional capital cost of Rs. 71.51 Crore and the additional soft cost of Rs. 9.11 Crore as part of the approved capital cost of the project.

Once these amounts stand duly admitted within the capital cost framework, the consequential allowances such as Interest During Construction (IDC), Bank Charges, and Establishment Charges flowing therefrom, also cannot be re-opened or disallowed.

- c. It is a settled regulatory principle that once capital expenditure is prudently recognized, the related incidental and consequential costs—being integral to financing and implementation of the project—are to be correspondingly allowed. The Petitioner's attempt to segregate IDC, Bank Charges, and Establishment Charges from the already admitted capital expenditure is untenable, since these costs are intrinsically linked to the financing and execution of the approved project cost.
- d. Accordingly, the Commission finds no justification to revisit or disallow these consequential heads of expenditure, as doing so would be inconsistent with the acceptance of the underlying capital costs.

7.3 The Commission has duly considered all the submissions of the parties and the documents available on record, and deliberated upon the various issues raised in the Review Petition. As discussed earlier, these very issues have already been considered by the Commission and have been dealt with in detail, with reasons and justification, in the Tariff Order dated 13.05.2025. A reasoned view of the Commission cannot be regarded as an 'error apparent' so as to constitute a valid ground for review. It is well settled that review cannot be undertaken unless the error is manifest and self-evident; an error which requires to be fished out or established by a process of reasoning cannot be termed as an error apparent. Review is not an appeal in disguise, nor does it afford an opportunity for a rehearing of old and overruled arguments. The review sought by the Petitioner, in essence, reflects dissatisfaction or disagreement with the view taken by the Commission in the impugned order. It also appears to be attempt on the part of the Petitioner to cause the Commission to rewrite the Judgment of Hon'ble APTEL. Infact the Petitioner should also realise that almost all the claims of the generators were already decided by the Hon'ble APTEL and the matter was remanded to the Commission to determine the final capital cost and consequential tariff on the same. Mere reference of prudence check in some issue must not have been read in isolation by the Petitioner but should have been construed harmoniously. Moreover, mere

dissatisfaction or a different perception of the correctness of the reasoning cannot justify a review, which has a very narrow and well-defined scope under Section 114 read with Order XLVII of the CPC and as consistently interpreted in judicial pronouncements.

7.4 The Commission, in view of the above, finds the Review Petition filed by UPCL against the Commission's Order dated 13.05.2025, as not maintainable, and rejects the same. Accordingly, Petition No. 53 of 2025 stands disposed off.

7.5 Ordered Accordingly.

(Anurag Sharma)
Member (Law)

(M.L. Prasad)
Chairman