

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH**

Review Petition No. 11 of 2023  
In Petition No. 02 of 2023  
Date of Order: 09.04.2024

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for review of the Commission's Order dated 21.09.2023 in Petition No. 2 of 2023.

In the matter of: M/s Talwandi Sabo Power Limited, Village Banawala,  
Mansa- Talwandi Sabo Road, Distt. Mansa, Punjab.

- Review Petitioner

Versus

Punjab State Power Corporation Limited The Mall, Patiala,  
Punjab -147001

- Respondent

Commission: Sh. Viswajeet Khanna, Chairperson  
Sh. Paramjeet Singh, Member

TSPL: Sh. Utsav Mukherjee, Advocate (through VC)

PSPCL: Ms. Poorva Saigal, Advocate (through VC)  
Ms. Harmohan Kaur, CE&ARR/TR

**ORDER**

1. The present Review Petition has been filed by M/s Talwandi Sabo Power Limited (TSPL) to seek a review of Para 9.7 of the Commission's Order dated 21.09.2023 in Petition No. 2 of 2023, with regard to the interpretation of "1% of Letter of Credit in aggregate for a Contract Year"

stipulated in Article 13.2(b) of the PPA. The submissions of TSPL are summarised as under:

- 1.1. In Petition No. 02 of 2023 filed by TSPL, the Commission *vide* its Order dated 21.09.2023, whilst holding that the Pellet Policy and the CAQM Direction mandating to co-fire biomass with Coal in the power plants is a Change in Law as per Article 13 of the PPA, has also interpreted the term “1% of Letter of Credit in aggregate for a Contract Year” stipulated in Article 13.2(b) in paragraph 9.7 of the Order by holding that the fortnightly letter of credit provided by PSPCL to TSPL is required to be aggregated for the full contract year. A bare perusal of the said paragraph reflects that the Commission has selectively relied upon the Hon’ble APTEL judgment dated 27.04.2021 in Appeal No. 172 of 2017 titled *Coastal Gujarat Power Ltd. v. Central Electricity Regulatory Commission & Ors. (Coastal Gujarat Judgment)* without considering the same in its entirety. In view of the above and considering that the Commission’s finding in paragraph 9.7 of the Order dated 21.09.2023 (review whereof is being sought) was entirely based on the Coastal Gujarat Judgment, the same is liable to be reviewed by the Commission.
- 1.2. That the Commission, whilst referring to the Coastal Gujarat Judgment, only took note of the observation limited to “*such compensation to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year*”, however, it erred in omitting to consider that in the same paragraph the Hon’ble APTEL has observed that “*it is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC).*” The

relevant excerpt of the Coastal Gujarat Judgment is reproduced here in below:

*“24. The contract (PPA) expressly provides for restitution for CIL, by Article 13.2(b), for the Construction Period, as also for Operation Period, it being contingent for “Operation Period” on (i) determination of compensation for any increase/decrease in revenues/cost to the seller by CERC and (ii) such compensation to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year. **It is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC).**”*

(Emphasis Supplied)

1.3. Further, it is pertinent to refer to the CERC Order dated 17.03.2017 in Petition No. 157/MP/2015 titled as *Coastal Gujarat Power Limited v. Gujarat Urja Vikas Nigam Ltd. and Ors.*, which was under consideration before the Hon’ble APTEL in the Coastal Gujarat Judgment. The petitioner(s) before the CERC had taken a similar interpretation to quantify the threshold of LC amount, as undertaken by TSPL, which was not disputed by the respondents therein (including PSPCL which was Respondent No. 6 in the said case). The relevant excerpt of the order dated 17.03.2017 is reproduced below:

*“54. The petitioner has submitted that the minimum value of “Change in Law” should be more than 1% of the Letter of Credit amount in a particular year. As per Article 11.4.1.1, the letter of credit amount for first year would be equal to 1.1 times of the estimated average monthly billing based on normative availability. During subsequent years the letter of credit amount will be equal to*

*1.1 times of the average of the monthly tariff payments of the previous contract year plus the estimated monthly billing during the current year from any additional units expected to ACHIEVE be put on COD during that year on normative availability. **The petitioner has submitted that amount of Letter of Credit upon commissioning of all five units of the plant was Rs. 606.2538 crore and 1% of aggregated letter of credit is about Rs. 6.0625 crore. Since, the aggregate amount claimed for “Change in Law” is about Rs. 25,96,00,000 crore, it is more than the threshold amount prescribed under Article 13.2 (b) of the PPA and the petitioner is entitled to be compensated for the same. The Petitioner has further submitted that it may be permitted to claim from the procurers, compensation that would be equivalent to the financial impact of the “Change in Law” on the cost and revenue of the petitioner.***

(Emphasis Supplied)

In this context the Hon'ble APTEL, vide the Coastal Gujarat Judgment, held that the threshold being 1% of the Letter of Credit amount is not in dispute. As such, it is clear that the finding of the Commission in paragraph 9.7 of the Order dated 21.09.2023 is erroneous and that such error is apparent from a bare perusal of the Order dated 21.09.2023 and the Coastal Gujarat Judgment read with the CERC's Order dated 17.03.2017. In view of the above the findings/observations of the Commission in paragraph 9.7 of the Order dated 21.09.2023 are liable to be reviewed. In this regard, reliance is placed on Hon'ble Supreme Court of India's judgment in ***State of West Bengal v. Kamal Sen Gupta, (2008) 8 SCC 612.***

1.4. In addition to the above, the Hon'ble APTEL in its judgment dated 18.10.2022 in Appeal No. 263 of 2018 titled *Rattan India Power Limited v. Maharashtra Electricity Regulatory Commission (MERC) & Anr.*, while dealing with an appeal against MERC Order dated 05.04.2018 in Petition No. 84 of 2016, wherein the modality of calculation as adopted by MERC was not in question, took cognizance of the modality of calculation of threshold for allowing Change in Law compensation (based on similar Change in Law provision as in the present case) without any objection/observations to the contrary. The relevant extract of Hon'ble APTEL's judgment dated 18.10.2022 is as follows:

"13. On the date of applicability, the Commission has observed and held as under:

**"20.1. In its Petition and during these proceedings, RPL has presented its computations of the impacts of some of the Change in Law events considering both the PPAs. For each of the PPAs, it needs be ensured that, in aggregate (i.e., for all the approved Change in Law events taken together), the financial impact of the events approved as Change in Law in this and earlier Orders exceeds 1% of the LC amount in the relevant Contract Year, as required under Article 10.3.2 of the PPAs."**

(Emphasis Supplied)

1.5. In addition to the above, it is submitted that PSPCL's conduct towards TSPL has been prejudicial since the very beginning. Such prejudicial and arbitrary conduct by a public sector undertaking is

deplorable and ought to be taken strict cognizance of by the Commission. In this regard, it is reiterated that PSPCL was arrayed as Respondent No. 6 in Petition No. 157/MP/2015 filed by Coastal Gujarat Power Limited before the CERC, wherein PSPCL did not dispute the contention that the threshold limit for claiming compensation due to occurrence of Change in Law as per Article 13.2(b) of the power purchase agreement is 1% of the letter of credit amount (as claimed by TSPL). Similarly, even in the case of Petition No. 16/MP/2016 filed by **Sasan Power Ltd.**, wherein PSPCL was arrayed as Respondent No. 12, the petitioner had taken a similar interpretation to quantify the threshold, as undertaken by TSPL in the said Petition, which was again not disputed by PSPCL. However, when it came to TSPL, PSPCL disputed the very same interpretation of the very same provision of the PPA. Considering that the stand taken by TSPL, is similar to the stand taken by other generators, and has been upheld by various sectoral regulators and APTEL, the Commission may consider that the threshold limit for admissibility of change in law compensation, in the present case, ought to be Rs. 1.86 Crore i.e., 1% of value of LC maintained by PSPCL.

- 1.6. Further, it is submitted that PSPCL has furnished a Letter of Credit for an amount equivalent to 50% of the average of monthly billing against the requirement of 1.1 times of average of the Monthly Tariff Payments of the previous Contract Year. *Thus, PSPCL cannot be allowed to take advantage of its own wrong by furnishing fortnightly Letter of Credit and then multiply the Letter of Credit amount by 24.*

It is reiterated here that Letter of Credit is for the entire Contract Year and not for a particular month and once, there is a default on the part of PSPCL, the same can only be encashed for one time. Thus, the entire premise of PSPCL's aggregation (upheld by this Hon'ble Commission) is misplaced.

1.7. It is also pertinent to highlight that PSPCL is continuously subjecting TSPL to a brazenly unequal treatment compared to other industry players as also evident from the following:

- a) In case of recognition of the requirement to install new pollution control systems/equipment such as Flue Gas Desulphurization (**FGD**) as a Change in Law, PSPCL has challenged the Hon'ble APTEL's judgment dated 28.08.2020 allowing TSPL's claim for Change in Law, in Appeal No. 21 of 2019 before the Hon'ble Supreme Court. Whereas, it has not challenged the CERC Orders dated 17.09.2018 in Petition No. 77/MP/2016 titled '*Coastal Gujarat Private Limited v. Gujarat Urja Vikas Nigam Ltd.*' and 08.10.2018 in Petition No. 133/MP/2016 titled '*Sasan Power Limited v. MP Power Respondent Management Company Limited & Ors.*', wherein PSPCL was arrayed as Respondent No. 6 and 12, respectively.
- b) In respect of its liability to make payment of washing charges and yield loss to TSPL, despite there being an unequivocal and clear judgment by the Hon'ble Supreme Court in favour of TSPL, PSPCL repeatedly made endeavors to somehow evade its liability. Even after being held guilty of contempt twice by the Hon'ble Supreme Court, PSPCL attempted to evade its liability by

filing Petition No. 50 of 2021 before this Commission, seeking refund of the dues already paid by PSPCL to TSPL in terms of the Hon'ble Supreme Court's order dated 09.03.2021. Although, this Commission held Petition No. 50 of 2021 to be maintainable, the Hon'ble Supreme Court by way of its judgment dated 09.10.2023 in Civil Appeal No. 2426 of 2023, whilst dismissing this Commission's Order dated 07.04.2022 in Petition No. 50 of 2021, took strict cognizance of the conduct of PSPCL and consequently imposed a cost of Rs. 65,00,000/- i.e., Rs. 40,00,000/- and Rs. 25,00,000/- for Nabha Power Limited and TSPL respectively.

c) PSPCL's discriminatory action has fostered an environment of hostility and economic injustice towards TSPL. Therefore, this Commission should take resolute action to right this egregious wrong starting from reviewing the Order dated 21.09.2023 and allowing the reliefs sought by TSPL in the present review petition.

1.8. More importantly, it is high time that there should be an introspection (and a very serious one) undertaken by this Commission specifically in view of the fact that the sole distribution company of the State of Punjab (i.e. PSPCL) has achieved the milestone of being the distribution company which has been imposed with the highest cost in the history of litigation before the Hon'ble Supreme Court in the last approximately 73 years of its existence. One must ask as to 'HOW' and 'WHY' PSPCL behaved/conducted itself in a manner that compelled/constrained the Hon'ble Supreme Court to impose such unprecedented costs. It is submitted that a true introspection would inevitably yield to the

factum that the manner of adjudication of different lis between PSPCL and private developer(s) has also gone a long way in PSPCL developing this arrogance that the process of law can be abused and twisted in unimaginable ways by manipulating this Commission. The same was done by PSPCL for around seven (7) times before the Hon'ble Supreme Court. It is high time that the clock on such conduct is reset and in order for this to happen, this Commission may have to reconsider its approach towards PSPCL's arbitrary conduct which is also flagrant in the present case.

1.9. It is, therefore, prayed that the Commission may:

- "i) Admit the Review Petition;*
- ii) Review the Order dated 21.09.2023 in Petition No. 02 of 2023 to extent that the threshold limit for admissibility of change in law compensation, in terms of the Article 13.2(b) of the Power Purchase Agreement dated 01.09.2008 should be Rs. 1.86 Crore i.e., 1% of value of Letter of Credit maintained by the Respondent; and*
- iii) Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

2. The Review Petition was taken up for hearing on admission on 24.01.2024, wherein the request of TSPL for admission of same was objected to by the counsel appearing for respondent PSPCL. Accordingly, PSPCL was directed to file its reply on admission of the petition within 2 weeks with a copy to the Review Petitioner. Further, the Commission also observed and directed as under:

*“The Petitioner in the Review Petition has thought it necessary to offer a gratuitous advisory to the Commission in para 24 and 25. The Commission is constrained to note that the use of the words asking the Commission to undertake an “introspection (and a very serious one)” and alleging that “the manner of adjudication of different lis between PSPCL and private developer(s) has also gone a long way in PSPCL developing this arrogance that the process of law can be abused and twisted in unimaginable ways by manipulating this Hon’ble Commission”, amounts to casting aspersions on the fairness, integrity, objectivity and the conduct of this Commission.*

*The Review Petitioner is thus directed to clarify the import of the above allegations. The Petitioner shall file an affidavit in this regard before the next date of hearing.”*

In response to thereof, TSPL, Vide its Affidavit dated 12.03.2024, while submitting that it neither had any contemplation nor intent of either offering any advice of any nature or casting any aspersions on the fairness, integrity, objectivity and the conduct of the Commission, expressed its regret with the request to seek leave of the Commission to delete the offending paragraphs No. 24 and 25 in the Review Petition.

**3.** PSPCL submitted its reply to the review Petition on 12.03.2024, challenging its maintainability and stating as under:

3.1 That there is no error or sufficient cause for inviting review of the impugned Order in terms of Section 94(1)(f) of the Electricity Act, 2003 as read with regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. In fact, the Coastal Gujarat Judgment was cited by TSPL itself in its rejoinder dated 14.08.2023 filed in Petition No. 02 of 2023. The finding in the impugned Order is based on the interpretation of Article

13 of the PPA and not simpliciter on the Coastal Gujarat Judgment. Accordingly, the Coastal Gujarat Judgment cannot be said to be the sole foundation of the findings rendered by the Commission. Even otherwise, the said extract of the judgment does not support the case of the Review Petitioner as it does not discuss the methodology of calculation of the threshold limit.

3.2 The reliance placed by TSPL on the Judgment dated 18.10.2022 in Appeal No. 263 of 2018 i.e. Rattan India Power Limited v. MERC and another, is misplaced, as TSPL has itself admitted that the modality/methodology of calculation of threshold for allowing Change in Law compensation was not in question in the said Appeal. Further, as regards the Order passed by MERC in Petition No 84 of 2016, under Appeal No. 263 of 2018, the same has no binding validity in so far as this Commission is concerned. Also, the contentions of TSPL with regard to PSPCL being arrayed as a Respondent in Petition Nos. 157/MP/2015 and 16/MP/2017 and not disputing the 'threshold criteria' are erroneous and misplaced, inasmuch as the Orders passed in the respective Petitions rendered no finding on the modality/methodology of computing the threshold limit. In this regard, the relevant extracts from the said Orders read as under:

a). Order dated 17.02.2017 in Petition No. 16/MP/2016 – Sasan Power Limited v. M P Power Management Company Limited and Others:

*“37. The Commission has not computed the threshold value for eligibility of getting compensation due to Change in Law during Operation period. However, the petitioner shall be eligible to get*

*compensated if the impact due to Change in Law exceeds the threshold value as per Article 13.2(b) during the Operation period. Accordingly, the compensation amount allowed shall be shared by the Procurers based on the scheduled energy.”*

b). Order dated 17.03.2017 in Petition No. 157/MP/2015 – Coastal Gujarat Power Limited v. GUVNL and Others:

*“56. The Commission has not made computation of the threshold value based on the claims for Change in Law allowed in this order. The Petitioner shall calculate the threshold value as per Article 13.2 (b) of the PPA and if the impact due to Change in Law exceeds the threshold value, the Petitioner shall be entitled to raise the supplementary bills as per the PPA.”*

3.3 With respect to the contention sought to be made by TSPL that PSPCL cannot be allowed to take advantage of its own wrong by furnishing fortnightly LC and then multiply the LC amount by 24, PSPCL has not defaulted in providing the LC, nor has there been any instance of invocation/encashment of the LC by TSPL. In this regard, reliance may be placed on the Order dated 23.11.2023 passed by the Commission in Review Petition No. 08 of 2023 holding that “the actual amount of LC furnished by PSPCL is a separate issue, which has been accepted between the parties, and is not a subject matter of the present dispute”.

3.4 The issues raised herein stands already dealt in the Commission’s Order dated 23.11.2023 passed in Review Petition No. 08 of 2023 (NPL case). TSPL is making extraneous submissions with respect to matters that have no relevance to the matter. PSPCL’s conduct in

any other case, before any forum, has no bearing to the present matter. In fact, the making of such egregious remarks on the conduct of not only PSPCL but also the Commission, is indefensible.

4. The Review Petition was taken up for hearing on admission on 13.03.2024. The Commission, after noting that in reference to its observations made vide Order dated 30.01.2024 the Review Petitioner vide its affidavit dated 12.03.2024 has expressed its regrets and has sought the leave of the Commission to delete the offending paragraphs No. 24 and 25 in the Review Petition, accepted the apology and allowed the request to delete the said paras with directions that the affidavit be taken on the record. The Ld. Counsel for both the parties addressed arguments on the maintainability of the Review Petition and after hearing the parties, the Order was reserved with directions that the parties may file written submissions, if any, within one week, with a copy to the other party. PSPCL and TSPL have filed their written submissions on 20.03.2024 and 22.03.2024 respectively, reiterating their earlier submissions.

**5. Findings/observations and Decision of the Commission:**

The Commission has carefully gone through the submissions made in the review petition, reply/objections by PSPCL, arguments thereon and written submissions thereof by the parties. Through this Review Petition TSPL is seeking a limited review of the Commission's Order dated 21.09.2023 passed in Petition No. 2 of 2023 i.e. the interpretation of the term "1% of Letter of Credit in aggregate for a Contract Year stipulated in Article 13.2(b) of the PPA" given under Para 9.7 of the Order, citing that there is an error apparent on the face of the record. On the contrary,

PSPCL has raised an objection to the very admissibility/ maintainability of the same with the contention that there is no error apparent or any sufficient cause for filing a review of the impugned Order in terms of Section 94(1)(f) of the Electricity Act, 2003 as read with Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

The Commission observes that Section 94(1)(f) of the Electricity Act specifies that the Appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a civil court under the Code of Civil Procedure (CPC) in respect of reviewing its decisions, directions and orders. Also, in line with Order 47 Rule 1 CPC enumerating the grounds on which a review can be sought, Regulation 64(1) of PSERC (Conduct of Business) Regulations, 2005 provides as under:

**“64. Review of the decisions, directions and orders:-**

*(1) Any person aggrieved by a decision or order of the Commission, from which no appeal is preferred or allowed, 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 decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/ order of the Commission.”*

Further, the Hon’ble Supreme Court of India’s judgment in the **State of West Bengal v. Kamal Sen Gupta**, (2008) 8 SCC 612 (**Kamal Sen Gupta Case**), as relied upon by the review Petitioner, reads as under:

*“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.*

...

**25. In *Ajit Kumar Rath v. State of Orissa and Ors.* [1999 (9) SCC 596]:** this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:

*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.*

*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.*

....

28. *The principles which can be culled out from the above noted judgments are:*

- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.*
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.*
- (vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development*

*cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

*(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such 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/Tribunal earlier.”*

Further, the Commission also refers to the following Hon'ble Supreme Court Judgments on the issue of review jurisdiction:

**a) Parsion Devi & Ors vs Sumitri Devi & Ors. [1997 (8) SCC 715]:**

*“..... A review petition, it must be remembered has limited purpose and cannot be allowed to be ‘an appeal in disguise’.*

*..... There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction.....”*

**b) Lily Thomas vs Union of India. (2000) 6 SCC 224:**

*“56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. ....”*

Accordingly, the Commission proceeds to examine the Review Petitioner's case, as under:

a) TSPL's plea is that there is an error apparent on the face of record, as a bare perusal of paragraph (9.7) of the Order reflects that the Commission has selectively relied upon the Hon'ble APTEL judgment dated 27.04.2021 in Appeal No. 172 of 2017 titled *Coastal Gujarat Power Ltd. v. CERC & Ors. (Coastal Gujarat Judgment)*, for concluding that the fortnightly letter of credit (LC) maintained by PSPCL is required to be aggregated for the full contract year. It was submitted that the Commission only took note of the observation that "*such compensation to be payable where the impact of CIL is in excess of 1% LC in aggregate for a contract year*" and has thus erred in omitting to consider the observation by APTEL in the same paragraph that "*it is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC)*". Through elaborate argument and referring to the CERC's Order under appeal, TSPL has also tried to establish, that the Hon'ble APTEL's observation regarding "not in dispute" pertained to the similar interpretation of threshold by the Petitioner before them, as being professed by TSPL, which PSPCL, as respondent No. 6 before them, never contested either before them or in appeal. In view of the same and considering that the Commission's finding in paragraph 9.7 of the Order dated 21.09.2023 (review whereof is being sought) was entirely based on the Coastal Gujarat Judgment, the same is liable to be reviewed by the Commission.

On the contrary, PSPCL's contention is that the Impugned findings in the Commission's Order were based on the interpretation of Article 13 of the PPA and not simpliciter on the Coastal Gujarat

Judgment. Accordingly, the said Judgment cannot be said to be the foundation of the findings rendered by the Commission. Even otherwise, the observation that *“it is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC)”* does not support the case of the Review Petitioner, as the said judgment by Hon’ble APTEL has not discussed the methodology of calculation of the threshold limit.

The Commission observes that TSPL’s plea that the finding in Para 9.7 of the Order dated 21.09.2023 was entirely based on the Hon’ble APTEL judgment dated 27.04.2021 in Appeal No. 172 of 2017 titled Coastal Gujarat Power Ltd. v. CERC & Ors., is factually incorrect. As brought out in the Order dated 21.09.2023 itself, interpretation of the term, “1% of the Letter of Credit in aggregate specified in Article 13.2 of the PPA” was founded solely on the settled principle of interpretation that the words of a contract must be taken in their ordinary and natural sense. The relevant extract of the Commission’s Order is reproduced below:

***“9.7 Threshold amount for entitlement of Compensation:***

.....

*The Commission refers to the Article “13.2 of the PPA, which reads as under:*

***“13.2 Application and Principles for computing impact of Change in Law:***

.....

***b) Operation Period***

*As a result of Change in Law, the compensation for any increase/ decrease in revenues or cost to the Seller shall be determined and effective from such date, as decided by the Appropriate Commission whose decision shall be final and binding on both the Parties, subject to rights of appeal provided under applicable Law. Provided that the above mentioned compensation shall be payable only if and for increase/ decrease in revenues or cost to the Seller is in excess of an amount equivalent to 1% of the Letter of Credit in aggregate for a Contract Year.”*

***The Commission observes that the said provision is quite unambiguous and self-explanatory. The interpretation sought to be made by the Petitioner that the term ‘in aggregate for a contract year’ applies to the ‘increase/decrease in revenue or cost’ and not ‘LC’ is misplaced. It is a settled principle of interpretation that the words of a contract must be taken in their ordinary and natural sense unless such literal interpretation results in an absurdity. Hon’ble APTEL Judgment dated 27.04.2021, in Appeal No. 172 of 2017 titled Coastal Gujarat Power Ltd. v. CERC & Ors., as cited by the Petitioner also reiterates the provision of the PPA that, “such compensation is to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year. ....”***

***[Emphasis supplied]***

As is evident, the said Judgment by Hon’ble APTEL, cited by the Petitioner TSPL, did not form the foundation of the Commission’s Order. The reference to the same was made, only after the Commission’s observation on the impugned issue (emphasised

above), to indicate the Commission's view that it also reiterates the provision of the PPA that, *"such compensation is to be payable where the impact of CIL is in excess of 1% Letter of Credit (LC) in aggregate for a contract year"*.

As regards the review Petitioner's plea that the Commission has erred in omitting the Hon'ble APTEL's observation mentioning that *"It is not in dispute that in the case at hand the impact of the CIL events which are referred to has crossed the threshold limit (1% of LC)"* is concerned, the Commission observes and is of the view that the inclusion of the same would also not have contributed positively or supported the case of the Petitioner, as the said judgment by the Hon'ble APTEL has neither interpreted the methodology nor determined what the threshold value is nor does it form the foundation of the Commission's impugned interpretation/decision. The judgment of Hon'ble APTEL has merely observed the fact that there is no dispute that the threshold limit has been crossed.

- b)** As regards TSPL's reliance on the Hon'ble APTEL judgment dated 18.10.2022 in Appeal No. 263 of 2018 titled Rattan India Power Limited Vs. MERC, CERC's Orders in Coastal Gujarat Power Limited Vs. GUVNL & Others (157/MP/2015-Order dated 17.03.2017) and Sasan Power Limited Vs. M.P. Power Management Company Limited & Others (16/MP/2016-Order dated 17.02.2017) and its argument that PSPCL didn't raise any objection to the petitioners similar interpretation made there under to quantify the threshold, the Commission observes that the same cannot be considered as a ground for invoking the review jurisdiction in terms

of Section 94(1)(f) of the Electricity Act as read with Regulation 64 of the PSERC (Conduct of Business) Regulations and various Hon'ble Supreme Court Judgments referred to in sub-Para (a) above . However, a similar plea made by M/s NPL stands already dealt in the Commission's Order dated 23.11.2023 in RP No. 08 of 2023 in Petition No. 65 of 2022, as under:

*“6.1..... The Commission has perused the above Orders cited by the review Petitioner and is in agreement with PSPCL that the reliance placed on the same is misplaced. As per NPL's own admission, the modality of calculation of threshold for allowing Change in Law compensation was not in question in Appeal No. 263 of 2018 titled Rattan India Power Limited v. MERC before Hon'ble APTEL. As regard the issue of CERC's Orders, the citations quoted by NPL are part of the petitioner's submissions and not the observations/findings by the Central Commission. In fact, in these Orders, the Central Commission has not interpreted or determined what the threshold value is but simply referred to the relevant Article 13.2(b) of the PPA.”*

- c)** As regards the TSPL's plea that PSPCL has furnished an LC only for an amount equivalent to 50% of the average of monthly billing against the requirement of 1.1 times of average of the Monthly Tariff Payments of the previous Contract Year and thus it cannot be allowed to take advantage of its own wrong by multiplying the said LC amount by 24 times is concerned, the Commission observes that the same cannot be considered a ground for invoking the review in terms of Section 94(1)(f) of the Electricity Act as read with Regulation 64 of the PSERC (Conduct of Business) Regulations and various Hon'ble Supreme Court Judgments referred to in sub-

Para (a) above . However, a similar plea made by M/s NPL stands already dealt in the Commission's Order dated 23.11.2023 in RP No. 08 of 2023 in Petition No. 65 of 2022, as under:

*"6.3..... the Commission observes that the actual amount of LC furnished by PSPCL to NPL is a separate issue, which has been accepted between the parties, and is not a subject matter of the present dispute.*

*However, the Commission is in agreement with PSPCL's submission that, since the amount of LC will vary with different tenures depending upon whether it is maintained weekly, fortnightly or monthly, bimonthly, six monthly or yearly, therefore the face value of LC actually maintained cannot be a basis for assessing the 1% threshold. It has to be aggregated for the year as clearly mandated in clause 13.2(b) of the PPA to determine the threshold limit. The amount aggregated for the year irrespective of the term of LC will always remain the same.*

*....., this 'calculation' formula also holds good even if the reverse threshold is calculated. The change in costs will have to exceed 1% of the LC in aggregate for a contract year for passing/ claiming of any compensation/reduction in charges on account of any Change in Law by PSPCL to/from the Petitioner."*

**5.1** The other submissions made by TSPL, with regard to PSPCL challenging the Hon'ble APTEL's judgment dated 28.08.2020 in the FGD case through Appeal No. 21 of 2019 before the Hon'ble Supreme Court and not having challenged the CERC Orders in Petition No. 77/MP/2016 filed by the *Coastal Gujarat Private Limited* and Petition No. 133/MP/2016 filed by *Sasan Power Limited*, and in respect of its liability to make payment of washing

charges and yield loss to TSPL along with the request to take resolute action against PSPCL and allowing the reliefs sought by TSPL in the present review petition are all extraneous to the issue and have no relevance to the matter under consideration.

Thus, the Commission is of the considered view that the Review Petitioner has failed to establish case of any self-evident mistake/error apparent on the face of the record or any case of discovery of new and important matter/evidence which was not within its knowledge at the time when the impugned Order was passed by the Commission. In fact, the pleas made by the Review Petitioner are in the nature of an appeal in disguise, which is not a permissible ground for the exercise of review jurisdiction. Therefore, no case is made out for review of the original order.

**In light of the above analysis and observations, the instant Review Petition does not merit admission and is accordingly dismissed.**

**Sd/-**  
(Paramjeet Singh)  
Member

**Sd/-**  
(Viswajeet Khanna)  
Chairperson

Chandigarh

Dated: 09.04.2024