

Before

UTTARAKHAND ELECTRICITY REGULATORY COMMISSION

In the matter of:

Review Petition filed under Regulation 54 of UERC (Conduct of Business) Regulations, 2014 for review of the order dated 28th October, 2016 passed by the Commission in the matter of Adjudication of dispute under Section 86(1)(f) between Uttar Bharat Hydro Power (P) Ltd. and Uttarakhand Power Corporation Ltd. in respect of 10.5 MW Sarju-III Small Hydro Power Project.

In the matter of:

Uttarakhand Power Corporation Ltd.

... Petitioner

AND

In the matter of:

M/s Uttar Bharat Hydro Power (P) Ltd.

... Respondent

CORAM

Shri Subhash Kumar Chairman

Date of Hearing: December 22, 2016

Date of Order: December 23, 2016

The Order relates to the Petition dated 09.12.2016 filed by Uttarakhand Power Corporation Ltd., a distribution licensee (hereinafter referred to as "the Petitioner " or "UPCL") and M/s Uttar Bharat Hydro Power (P) Ltd. (hereinafter referred to as "the Respondent"), a generating company for review of the impugned Order with regard to 10.5 MW Small Hydro Power Project of the Respondent under Section 86(1)(f) of the Electricity Act, 2003 (hereinafter referred to as "the Act") for "Deemed Generation Claim" by the Respondent on account of loss of generation due to non-availability of evacuation line and voltage problem. The Petitioner vide the above Petition has prayed as follows:

- a. Take the review petition on record;
- b. Review the order dated 28.10.2016 passed by the Commission and the petition and application of the respondent be dismissed.
- c. Pass such other order(s) that may be deemed fit and proper in the facts and circumstances of the case.

1. Background

1.1 Uttarakhand Power Corporation Limited (hereinafter referred to as “the Petitioner”) is the sole distribution licensee in the state of Uttarakhand, having its registered office at Dehradun. M/s Uttar Bharat Hydro Power (P) Ltd. (hereinafter referred to as “the Respondent”) is a Company incorporated under the Companies Act, 1956 and it is a generating company within the meaning of Section 2(28) of the Act. The Respondent has set up two small hydro power projects, i.e. 10.5 MW Sarju-III (project commissioned on 11.07.2014) and 12.6 MW Sarju-II (project completed on 01.08.2015) and also intends to establish 7.5 MW Sarju-I Small Hydro Power Project. The Petition filed by the Petitioner is with regard to the review of the Order dated 28.10.2016 issued by the Commission on the claim of deemed generation which is being consistently rejected by the Petitioner with regard to 10.5 MW Small Hydro Power Project of the Respondent. That the review petition is being filed under clause 54(1) & 59 of the UERC (Conduct of Business Regulations), 2014 read with clause 94(1)(f) and 94(2) of The Electricity Act, 2003.

1.2 Earlier the Respondent had filed a petition before the Commission seeking relief in the matter of dispute with UPCL that the deemed generation charges were not paid by UPCL. The Commission after due analysis of submissions made by M/s UBHP & UPCL vide its Order dated 08.06.2016 held that the Petition for deemed generation is admissible. The Commission vide its Order also directed that:

“a) Both the Petitioner and the Respondent to jointly sit together for monthly reconciliation of the deemed generation claimed by the Petitioner and settle the amount so arrived at within two months time in accordance with the provisions of the Regulations.

b) UPCL to submit fortnightly progress report of the same before the Commission jointly signed by both the parties failing which the Respondent will render himself liable for action under Section 142 of the Electricity Act, 2003.

c) UPCL to review the requirement of capacitor banks at its substations and submit a status report on the capacitor banks within 1 month of the Order.

d) The Petitioner granted leave to agitate the issues remaining disputed after two months.”

1.3 Thereafter, another Application was filed by the Respondent on 27.09.2016 for resolving the same dispute as UPCL was not accepting the claims made by the Respondent and the issues remained unresolved. The Commission heard both the parties on 18.10.2016. The parties submitted that they could not reach to any conclusions even after the Commission granted sufficient time to resolve the matter amicably. The Commission had after hearing both the

parties held that the dispute between a Generator & licensees can be adjudicated in accordance with Section 86(1)(f) of the Electricity Act, 2003 by the Commission and the aforesaid provision of the Act also empowers the Commission to direct that the dispute may be adjudicated upon by an arbitrator to be appointed by it.

- 1.4 Considering that in-depth study of records would be needed to address the rival contentions of the parties as also the complicated questions of facts and documents that would have to be gone into, the Commission appointed an arbitrator to adjudicate the disputes raised between the parties. Further, the Commission was of the view that the prayers made by the Respondent in the Petition dated 27.09.2016 are also prayers that an arbitrator is competent to grant in law.
- 1.5 In exercise of powers conferred to it under Section 158 of the Electricity Act, 2003 and dictum of Hon'ble Supreme Court in a catena of Judgments as well as in terms of Regulations 20 & 21 of UERC (Conduct of Business) Regulations, 2014, the Commission nominated Shri Subhash Chander Negi, Ex-Chairman, HPERC, as the sole arbitrator to decide the dispute amongst the parties on the issues raised by the Petitioner in respect of Deemed Generation charges for the period from December 2014 to till date as claimed by Respondent.
- 1.6 The Commission also held that the Petition filed before this Commission would be treated as the statement of claim before the arbitrator. And also that the Petitioner would be at liberty to apply to the Arbitrator, in accordance with law, to file any further and/or amended pleadings documents etc. that may be permitted by the arbitrator in accordance with law. The parties were also permitted to complete their pleadings, filing of documents, leading of evidence etc. in terms of the directions that may be passed by the arbitrator from time to time in accordance with law. The Arbitration proceedings would be governed by the procedure for the arbitration in accordance with the Arbitration and Conciliation Act, 1996.
- 1.7 The Petitioner has filed the review Petition dated 09.12.2016 against the impugned Order of the Commission referring the Dispute to arbitration. A copy of the Petition was provided to the Respondent for reply. A hearing was also held on 22.12.2016 in the matter and the Commission reserved its judgment.

2. Petitioner's Submissions

- 2.1 The Petitioner submitted that the Respondent had filed a Petition dated 16.03.2016 and an application dated 27.09.2016 for adjudication of dispute between Uttar Bharat Hydro Power (P) Ltd, a generating company and Uttarakhand Power Corporation Ltd., a distribution licensee with regard to 10.5 MW Small Hydro Power Project of the respondent under Section 86(1)(f) of

the Electricity Act, 2003 for “Deemed Generation Claim” regarding 10.5 MW Sarju-III SHP on account of loss of generation due to non-availability of evacuation line and voltage problem.

2.2 The Petitioner further submitted that in the earlier petition filed before the Commission by the Respondent, the Commission vide its Order dated 08.06.2016 directed as under :

“a) Both the Petitioner and the Respondent to jointly sit together for monthly reconciliation of the deemed generation claimed by the Petitioner and settle the amount so arrived at within two months time in accordance with the provisions of the Regulations.

b) UPCL to submit fortnightly progress report of the same before the Commission jointly signed by both the parties failing which the Respondent will render himself liable for action under Section 142 of the Electricity Act, 2003.

c) UPCL to review the requirement of capacitor banks at its substations and submit a status report on the capacitor banks within 1 month of the Order.

d) The Petitioner granted leave to agitate the issues remaining disputed after two months.”

2.3 The Petitioner submitted that in pursuance of the same the reconciliation as directed by the Commission was held however from the record it appears that the said reconciliation was for the name sake as the Respondent did not carry out the reconciliation in its true spirit and rather considered it as a creation of a ground for making up a dispute in the garb of the Order of the Commission, when actually there did not exist any dispute as per the Regulation.

2.4 Further, the Petitioner submitted that the Respondent wrongly projected the facts before the Commission but since the matter was posted for the admissibility of the petition the reply filed by the Petitioner was limited to that extent only.

2.5 The Petitioner submitted that the Power Purchase Agreement between the parties was executed on 13.10.2011 and a supplementary agreement dated 24.2.2016 was executed wherein it was provided that all other terms and conditions of the PPA dated 13.10.2011 shall remain unaltered and shall apply mutatis mutandis. Further, the PPA dated 13.10.2011 provides for the procedure for settling certain disputes as per clause 5.8 and 22 of the said agreement. It has been submitted that upon reading the said clauses it transpires that the parties have not agreed to settle their disputes by way of arbitration hence there is no arbitration clause in the agreement between the parties.

2.6 The Petitioner is aggrieved by the said order and there is error apparent on record which needs to be corrected moreover there are reasonable and justifiable ground for reviewing the order. It was stated that because there is no arbitration agreement between the parties moreover the

nature of alleged dispute (not admitting that there is any dispute) cannot be decided by way of arbitration as the same requires adjudication and decision upon facts and law which the arbitrator can not decide. Moreover the quantum of deemed generation is to be decided as per the provisions of the Regulation and in the peculiar circumstances stated in the petition of the Respondent the Regulation are deficient and does not provide any deemed generation for such matter which is apparent from the fact that no calculation mechanism/procedure has been provided in the Regulations hence also it is not possible to calculate the deemed generation as claimed by the respondent.

2.7 The Petitioner further referring to the Commission's Order dated 28.10.2016 stated that the Commission in its impugned order itself has in para 4.4 held that:

"Considering that in-depth study of records would be needed to address the rival contentions of the parties as also the complicated questions of facts and documents that would have to be gone into, the Commission is of the view that it would be appropriate that an arbitrator is appointed to adjudicate the disputes raised between the parties".

The Petitioner submitted that the complicated questions of facts even otherwise are not referred to be decided by the arbitrator.

2.8 Further, the Petitioner submitted that the matter was fixed for admission and in the impugned order the Commission has expressed its view upon the merits of the case whereby the defence of the petitioner is likely to be prejudiced which would be against the principle of natural justice.

2.9 The Petitioner also submitted that neither of the parties has requested the Commission to refer the matter for arbitration or for appointing the arbitrator.

2.10 Further, the Petitioner submitted that the Respondent failed to prove before the Commission that there was any dispute hence the petition was liable to be dismissed moreover the reliefs as claimed by the Respondent in their petition/application were also not maintainable.

2.11 The Petitioner has referred to the Commission's impugned Order dated 28.10.2016, Para 4.1 in which the Commission has held that:

"UPCL has rejected all claims of deemed generation and has also held the deemed generation claim as not maintainable. UPCL could not submit proper reply including analysis of nature of outages, period of outages and their causes consistent with requirement of Regulations with regard to deemed generation and simply stated force majeure, voltage fluctuation and no timely reconciliation by the Petitioner as grounds for disallowing deemed generation"

The Petitioner submitted that the UPCL had no opportunity to make submission regarding the facts upon which the Commission has given its view, the matter was fixed only for admissibility and views upon merits can come only upon final adjudication and not at the time of admission when the petitioner has to only present facts and law so as to make him entitled for getting the petition admitted. It is submitted that UPCL had disclosed to the Respondent and also brought the said facts before the Commission showing the nature of outages, period of outages and their causes from the MRI of the Meter and the Log Sheets. It is also submitted that Regulation do not provide for any specific requirement regarding such matters.

2.12 Further, the Petitioner stated that the arbitrator had issued a letter dated 07.12.2016 whereby meeting in the matter was held on 13.12.2016, that the limitation for filing the review petition has not yet expired and it is in the interest of justice that arbitration proceeding during the pendency of the present petition needs to be stayed otherwise whole purpose of filing the present petition would be frustrated and the review petition would become infructuous.

3. Submissions of the Respondent

3.1 The Respondent did not submit any reply and was not present in the hearing held on 22.10.2016.

4. Commission's Views & Decisions

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

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

Application for review of judgment:

(1) Any person considering himself aggrieved:-

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

- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order. The circumstances when review lies are:
 - (a) cases in which appeal lies but not preferred,
 - (b) cases in which no appeal lies,
 - (c) decisions on reference from Court of Small Causes; and

The grounds for review are:-

- (i). discovery of new and important matter or evidence, or
- (ii). mistake or error apparent on the face of the record, or
- (iii). any other sufficient reason.

4.2 Several judgments have been cited on this aspect. They reiterate the same principles. Suffice it to quote the principles laid down by the Supreme Court in **Kamlesh Verma Vs. Mayawati & Ors.** The relevant extracts are being reproduced hereunder:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable: (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him; (ii) Mistake or error apparent on the face of the record; (iii) Any other sufficient reason.

*The words “any other sufficient reason” have been interpreted in **Chhajju Ram v. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors. (1955) 1 SCR 520**, to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors.***

20.2. When the review will not be maintainable:

- i. A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- ii. Minor mistakes of inconsequential import.*

- iii. *Review proceedings cannot be equated with the original hearing of the case.*
- iv. *Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*
- v. *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- vi. *The mere possibility of two views on the subject cannot be a ground for review.*
- vii. *The error apparent on the face of the record should not be an error which has to be fished out and searched.*
- viii. *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
- ix. *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

4.3 In light of these principles, we shall refer to the Review Petitioner's contentions. It is clear from the nature of issues raised by the Review Petitioner at this stage in the review petition and also in its submissions before the Commission during the course of the hearing that the Review Petitioner wants to reopen the entire matter and wants the Commission to re-consider each and every issue. This Commission has given detailed reasons in its Orders 08.06.2016 and dated 28.10.2016 for taking its views on the adjudication in accordance with the provisions of the Act/Regulations after considering the contentions of both the parties. Reconsideration of the entire matter cannot be undertaken by the Commission in as much as it is only material error or errors manifest on the face of the record or patent error which can be considered in a review petition. The Review Petitioner is trying to equate the review proceedings with the original hearing of the Petition. Concluded decision on initiation of adjudication proceedings cannot be reopened in this manner. Even if it is assumed for the sake of argument that the judgment of this Commission is erroneous, as held by the Supreme Court in case of **Kamlesh Verma** a review is by no means an appeal in disguise whereby erroneous decision is reheard and corrected. Review lies only for correcting patent error or discovery of new and important matter or evidence which could not be produced by the parties at the time of the earlier proceedings or mistake or error apparent on the face of the record. We do not see any of the above referred grounds in Petitioner's submissions seeking review of the Order.

4.4 With regard to adjudication under Section 86(1)(f) of the Electricity Act, 2003, it is clarified that the matter is no longer *res integra* as it is squarely covered by the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. Section 86(1)(f) is being reproduced hereunder:

“Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -

...

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;”

Further, the relevant provisions for dispute resolution of the UERC (Conduct of Business) Regulations, 2014 are being reproduced hereunder:

“20. Dispute Settlement

(1) In case of any dispute that arises between the licensees and the generating companies, the Commission may adjudicate upon the dispute or refer the same for arbitration in accordance with the Central Act.

(2) If the Commission decides to adjudicate the dispute itself, it may initiate the proceedings in the manner specified in the Regulations.

(3) If the Commission directs to determine the matter by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons, as the Commission may nominate in that behalf.

Provided that, if any party to the arbitration has a reasonable objection on grounds of possible bias or similar such reasons and if the Commission considers the objection to be valid and justified, the Commission shall make a fresh nomination.

Provided that, in all other respects including procedure, except nomination of arbitrators, the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.”

Further, the relevant extracts from the Supreme Court Judgment in the case of **T.N. Generation & Distribution. Corporation. Ltd. Vs. PPN power Gen. Co. Pvt. Ltd.** and in the case of **Gujarat UrjaVikash Nigam Ltd Vs. Essar Power Ltd. on 13th March, 2008** are reproduced hereunder:

“27. In our opinion in Section 86(1)(f) of the Electricity Act, 2003 the word `and' between the words `generating companies' and the words `refer any dispute' means `or', otherwise it will lead to an anomalous situation because obviously the State Commission cannot both decide a dispute itself and also refer it to some Arbitrator. Hence the word `and' in Section 86(1)(f) means `or'.

28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies,

and only Section 86(1)(f) shall apply in such a situation.

58. In the present case we have already noted that there an implied conflict between Section 86(1)(f) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(f) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the Court can refer such disputes to an arbitrator appointed by it. Hence on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 we are of the opinion that whenever there is a dispute between a licensee and the generating companies only the State Commission or Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996. This is also evident from Section 158 of the Electricity Act, 2003. However, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail.)”

- 4.5 With regard to the issue of jurisdiction and scope of Section 86(1)(f) of the Act, Regulation 20 of the UERC (Conduct of Business Regulations), 2014 read with Section 158 of the Electricity Act, 2003 and provisions of the Arbitration and Conciliation Act, 1996 and relying on the judgment of the Hon’ble Supreme Court in the case of **Gujarat UrjaVikas Nigam Ltd. Vs. Essar Power Ltd.**, the Commission is of the view that it has the discretion to decide as to whether the dispute is deem fit for adjudication and further be adjudicated by itself or to refer the dispute for arbitration. The submission of the Petitioner that the Commission can adjudicate only if there exist an arbitration agreement between the parties and they agree to settle their dispute by way of arbitration and request the Commission to appoint the arbitrator is absolutely inconsistent with the provisions of the Electricity Act, 2003 and UERC (Conduct of Business) Regulations, 2014. Such statements made by the Petitioner are perverse to say the least when Hon’ble Supreme Court in number of its judgments has dealt and clarified the powers conferred on the State Commissions under section 86(1)(f) of the Act. The Petitioner cannot dictate that the State Commission ought to have adjudicated the dispute itself or referred the dispute to an arbitrator. Also, the State Commission can adjudicate or refer all the disputes including the dispute on money claims between the Licensees and the Generating Companies. Before coming to conclusion, the Commission has relied on number of cases decided by APTEL and the Supreme Court including the Order in **Neyveli Ignite Corporation Vs. Tamil Nadu**

Electricity Board in Appeal No. 49 of 2010 dated 10th September, 2010. Therefore, under Section 86(1)(f) of the Act gives discretion to the State Commission to either adjudicate the disputes itself or to refer the for arbitration.

- 4.6 The Commission reiterates its view that the dispute between a Generator & Licensee can be adjudicated in accordance with Section 86(1) (f) of the Electricity Act, 2003 by the Commission and the aforesaid provision of the Act also empowers the Commission to direct that the dispute may be adjudicated upon by an arbitrator to be appointed by it and there is no error apparent as being pointed out by the Petitioner in the aforesaid view. Further, in the event of any condition inconsistent with the Act/Regulations, the provisions of Act/Regulations shall prevail superseding any agreement between the parties. Also, even if there is no clause of Arbitral proceedings in the Agreement signed between two parties, it does not mean that the powers and functions of the Commission specified under the Act and the Regulations thereunder shall not be applicable. Therefore, the Petitioners contention that because the PPA does not specify for a procedure to resolve disputes by arbitration, the Commission cannot refer the dispute to Arbitration under Section 86(1) (f) of the Central Act is denied.
- 4.7 Further, the Commission referred the case to arbitration in light of the facts that the dispute need in depth study of records. The relevant extract from the Commission's impugned Order dated 28.10.2016 at Para 4.4 is reproduced hereunder:

"Considering that in-depth study of records would be needed to address the rival contentions of the parties as also the complicated questions of facts and documents that would have to be gone into, the Commission is of the view that it would be appropriate that an arbitrator is appointed to adjudicate the disputes raised between the parties."

From the above, it is apparent that the Commission has nowhere accepted the claims made by the generator. The Commission in its Order dated 28.10.2016 as well as Order dated 08.06.2016 has only held that claim is permissible under the Regulations of deemed generation in case of Sarju-III SHP. However, the nature and amount of claim raised by M/s Uttar Bharat Hydro Power Pvt. Ltd. in case of Sarju-III SHP have to be examined by the Arbitrator in accordance with the RE Regulations, 2013. The Arbitrator during the arbitration proceedings while arriving at the deemed generation claim, if any, will not be affected by any findings given by the Commission in any Order and will take its own independent decision in accordance with the Regulations based on the submissions and pleadings made by both the parties. The Commission so far has not decided the issue on merits but has only held that deemed generation is eligible to the generator in accordance with the Regulations. Therefore,

the Petitioner's submission that the Earlier Order is binding and may effect in a prejudiced judgment is denied while clarifying that the Arbitration proceedings for the present dispute shall be done from the scratch and not be dependent on the Commission's Order but the submissions made by both the parties to the Arbitrator nominated.

4.8 Also, the Commission in its impugned Order clearly stated that the parties are free to make any submissions in the arbitration proceedings. The relevant extracts from the impugned Order are reproduced hereunder:

"The Petition filed before this Commission would be treated as the statement of claim before the arbitrator. The Petitioner would be at liberty to apply to the Arbitrator, in accordance with law, to file any further and/or amended pleadings documents etc. that may be permitted by the arbitrator in accordance with law.

The parties would be permitted to complete their pleadings, filing of documents, leading of evidence etc. in terms of the directions that may be passed by the arbitrator from time to time in accordance with law."

4.9 Therefore, in light of the provisions in the Statutes, the facts of the case, the submissions of the Petitioner and precedents set by the Hon'ble Supreme Court and the Hon'ble ATE, it is clear that the grounds stated by the Petitioner for review do not satisfy the grounds for review under the Code of Civil Procedure as there is no error apparent on the face of record or any new facts which could not be presented at the time of admission hearing. Further, it is also clarified that the Commission has powers to adjudicate or refer the dispute to arbitration under the functions of the Commission under Section 86(1)(f) of the Electricity Act, 2003. Therefore, the review of the Order is rejected and the dispute shall be resolved by Arbitration as was decided by the Commission in its Order dated 28th October, 2016.

4.10 Therefore, the Commission does not take the Petition on record and rejects the Review Petition as dismissed.

4.11 Ordered accordingly.

(Subhash Kumar)
Chairman