

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO. 4, CHUNOKOLI, SHAILASHREE VIHAR,
BHUBANESWAR-751021**

**Present: Shri U. N. Behera, Chairperson
 Shri G. Mohapatra, Member**

Case No. 55/2021

GRIDCO	Petitioner
Vrs.		
Secretary, OERC & Others	Respondents

In the matter of: **Application under Section 94 (1) (g) read with Section 86 (1) (k) of the Electricity Act, 2003 and Reg. 70 of the OERC (Conduct of Business) Regulations 2004 and all other enabling provisions of the Act for issuance of suitable directions for (a) Settlement of outstanding due from CESU, WESCO, NESCO, SOUTHCO and (b) Establishment of Default Escrow Arrangement.**

For Petitioner: Shri Srikant Kumar Sahoo CFO GRIDCO and Ms. Susmita Mohanty, DGM GRIDCO

For Respondents: Shri V Wagle Head (RA) TPCODL, Shri K.C. Nanda GM (Finance) TPWODL, Shri Binod Nayak, Asst GM, TPSODL, Ms. Malancha Ghose, RA and Shri Pratap Mohanty, Sr. GM (Regulatory & Legal) TPNODL and Ms. Sonali Patnaik, ALO I/c., DoE, GoO.

ORDER

Date of Hearing: 30.11.2021

Date of Order: 04.01.2022

1. This petition has been filed by the GRIDCO Ltd with a reference to the Commission's vesting orders in case of the vesting of the new operating companies viz. TPCODL, TPWODL, TPSODL and TPNODL. The Commission in the order dated 26.05.2020 in Case No.11 of 2020 vested the utility of CESU in TPCODL, in the order dated 28.12.2020 in Case No.82 of 2020 vested the utility of WESCO in TPWODL, in the order dated 28.12.2020 in Case No.83 of 2020 vested the utility of SOUTHCO in TPSODL and in the order dated 25.03.2021 in Case No.09 of 2021 vested the utility of NESCO in TPNODL.
2. GRIDCO in this petition has made several prayers such as to amortize the dues remaining in the residual utilities (CESU, WESCO, SOUTHCO & NESCO) in the form of regulatory surcharge over the period of five years, make the depreciation available to GRIDCO to the recover its outstanding receivables after serving of Additional

Serviceable Liabilities (ASL), establish proper payment security mechanism to ensure payment of current BSP dues along with arrear dues and to give directions to TPCODL to transfer the amounts collected from consumers against the amount billed during April-2020 and May 2020. The submissions of GRIDCO are discussed hereunder.

Receivable of GRIDCO from DISCOM utilities:

3. GRIDCO stated that as per terms of the RFP, upon completion of sale, the utility of CESU, WESCO, NESCO and SOUTHCO shall vest in an Operating Company in which TPCL shall hold 51% of ordinary share capital and the Government of Odisha (GoO) designated entity (GRIDCO) shall hold balance share of 49%.
4. GRIDCO stated that the bid prices of the utilities quoted by the successful bidders for CESU, WESCO, NESCO and SOUTHCO were Rs 350, 500, 375 and 250 Cr. respectively for 100% equity in new Operating companies. For transferring 51% stake in utilities to TPCL, GRIDCO shall convert its receivable of Rs 1,049.80 crore to equity in Operating Companies and to receive Rs. 752.25 Cr. from the OERC after deduction of transaction cost.
5. GRIDCO stated that the DISCOM wise receivable converted to equity and amount receivable by GRIDCO towards sale of 51% share of DISCOMs is presented below:

Table 1
Receipts from Stake sale

					(Rs Cr.)
Particulars	TPCODL	TPWODL	TPNODL	TPSODL	Total
Paid-Up Share Capital	300.00	300.00	250.00	200.00	1050.00
Initial Share paid by GRIDCO	.05	.05	.05	.05	.20
Receivable converted into Equity	299.95	299.95	249.95	199.95	1049.80
Quoted for 100%	350.00	500.00	375.00	250.00	1475
Receivable of GRIDCO for sale of 51% share	178.50	255.00	191.25	127.50	752.25*

- *Note - *GRIDCO will receive the net amount after deduction of transaction cost by OERC from Rs 752.25 Cr.*

6. GRIDCO stated that TPCODL in compliance of Para 45 of the Vesting Order dated 26.05.2020, is supposed to collect the uncollected amount billed during the month of April & May'20 and pay to GRIDCO towards the BSP dues of March & April'20.

7. GRIDCO in its further submission dated 09.12.2021 has stated that TPCODL in compliance to the Commission's order dated 30.09.2021 regarding segregation of the balance sheet of CESU as on 31.05.2021, has paid to GRIDCO the balance dues of Rs 225.16 crore.
8. GRIDCO stated that during the course of business relationship with erstwhile DISCOMs, substantial business dues are owed by DISCOMs to GRIDCO. Total dues receivable as on 1st June'2021 (excl. CAPEX Loan) from DISCOMs after taking the above into consideration stands at **Rs. 8,383** crore as detailed below;

Table 2
Dues receivable from DISCOM utilities as on 1st June'2021

(Rs in Crore)					
Particulars (Rs Cr)	CESU	WESCO	SOUTHCO	NESCO	Total
BSP dues *	1174.34	647.61	787.30	724.29	3333.54
Arrear paid by successor DISCOM	30.00	-	41.20	-	71.20
Less Convert to Equity	299.95	299.95	199.95	249.95	1049.80
Net BSP Receivable	844.39	347.66	546.15	474.34	2212.54
Securitize Dues	693.50	180.55	167.60	121.31	1162.96
NTPC Power Bond	-	-	146.45	48.91	195.36
Tr. Scheme dues	118.85	12.10	29.91	6.74	167.60
Cash Support	174.00	-	-	-	174.00
Total excl. DPS	1830.74	540.31	890.11	651.30	3912.46
DPS securitized	526.41	58.72	28.52	87.70	701.35
DPS on BSP **	819.49	1417.23	647.31	884.99	3769.02
Total incl. DPS:	3176.64	2016.26	1565.94	1623.99	8382.83

* Includes last month BSP paid by the successor DISCOM.

** DPS on BSP dues for the period from 01st April'2005 to day preceding the Vesting of Utility.

(Above receivable excludes the back to back CAPEX Loan receivable from DISCOM Utilities)

9. GRIDCO stated that with the privatization of CESU, WESCO, NESCO and SOUTHCO, above receivables are lying with the residual companies with no revenue stream to pay off the liabilities due to GRIDCO. This will negatively impact on the financial health of GRIDCO as GRIDCO has availed working capital loan from various Commercial Banks to fund these receivables and without any payment on these outstanding receivables, it would be difficult for GRIDCO to service Interest and repayment liability of these loans from current Bulk Supply Price approved by OERC.
10. GRIDCO stated that GRIDCO is a "State Designated Entity" for execution of Power Purchase Agreements with the Developers and has statutory obligations to act as a bulk

supplier to supply power to DISCOMs and to meet the electricity demand of the State. Thus, the GRIDCO was not able to regulate the power in public interest in spite of the inefficiency of Discoms. But the Petitioner had to pay the generators to avoid curtailment of power from Power generators and thus raised loan to pay the generators and to pay interest on loan thereof.

Arrear Recovery

11. GRIDCO stated that as a part of the transaction, the bidders were required to provide a commitment to recover the past arrears from the live as well permanently disconnected consumers in the first 5 (five) years of operations. The incentive mechanism for sharing of past arrears collection was also provided in the RFP. TPCL committed total arrear recovery to the tune of Rs. 1,000 crore over a five years period for four DISCOMs. The year wise commitment submitted by TPCL over the period of five years are as follows:

Table 3
Arrear Commitment

(Rs Crore)							
Particulars	2021	2022	2023	2024	2025	2026	Total
TPCODL	20	80	40	40	20	-	200
TPWODL	-	30	120	60	60	30	300
TPNODL	-	80	80	80	80	80	400
TPSODL	-	10	30	30	20	10	100
Total	20	200	270	210	180	120	1000

12. GRIDCO stated that as per the vesting orders, recovery of past arrears by TPCODL, TPWODL, TPSODL and TPNODL after deducting incentives shall be first used to settle towards Additional Serviceable Liabilities and remaining arrear recovered (if any) shall be passed on to GRIDCO towards arrear dues.
13. GRIDCO stated that Section 21 (a) of the Electricity Act provides that; *“the utility shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the utility”*

The Commission, however, noted in the vesting orders that certain current assets & liabilities indicated in the opening balance sheet provided in the RFP, must be passed onto DISCOMs since the utilities are being transferred as a going concern and that DISCOM utilities will not have any revenue to fund these liabilities. For payment of additional serviceable liability, OERC has decided to use the following arrear revenues collections as per priority detailed below;

- Excess recovery net of payments to be made under priority stipulated under ‘Collection of Revenue during the year of vesting order’.
 - Recovery of past arrears after deducting incentives
 - Annual Depreciation on assets as on Effective Date allowed in ARR
14. GRIDCO stated that the arrear recovery as committed by TPCL will be available to GRIDCO after utilizing towards servicing additional liabilities. GRIDCO submitted that it may not get any revenue from the arrear collection if additional serviceable liability would be more than the committed amount.

Collection of revenue against bills raised for FY 2020-21 (upto vesting of utility):

15. GRIDCO stated that the Vesting Orders of TPWODL and TPSODL stipulate that the collections against the bills from Apr-2020 to Dec-2020 shall not be considered as Past Arrears. Commission stipulated the priorities of utilization of this amount in meeting the payment of employee cost, terminal liabilities, BSP, Transmission charges, SLDC charges, payment to suppliers, contractors, vendors, DF etc. The Commission further directed that any balance amount shall be considered towards meeting approved Aggregate Revenue Requirement in true-up order(s).
16. GRIDCO submitted that based on the above directions of the Hon’ble Commission, GRIDCO expects to realize arrear dues to the extent of Rs 98.88 crore from TPSODL towards SOUTHCO Utility’s dues in 12 instalments starting from 31st Jan’21 to 31st Dec’21.
17. GRIDCO stated that till 31st May’2021 GRIDCO has received Rs. 41.20crore in five installments from TPSODL. After meeting the above expenses, any surplus collected amount will be available for settlement of additional serviceable liability.
18. GRIDCO stated that WESCO Utility has already paid the BSP dues for the period from Mar’20 to Dec’20, GRIDCO is not expecting any amount from the amount to be collected from the consumers towards the arrear for the period from April’2020 to December’2020. So, all amounts collected/ to be collected by TPWODL for the aforesaid period will be available for settlement of Additional Serviceable Liability.
19. GRIDCO stated that in respect of CESU, OERC vide Para 45(a) of its Vesting Order dt. 26.05.2020 in Case No 11/2020 has given directions to TPCODL to collect the uncollected amount from the bills of April & May’20. Para 45(b) of the Vesting Order

of Commission stipulates the priority of payment and Para 45(c) stipulates the liability of TPCODL to collect the bill of April, May & June'20.

20. GRIDCO in its further submission dated 09.12.2021 has stated that TPCODL in compliance to the Commission's order dated 30.09.2021 regarding segregation of the balance sheet of CESU as on 31.05.2021, has paid to GRIDCO the balance dues of Rs 225.16 crore.

Depreciation:

21. GRIDCO stated that as stated in the RFP, all existing assets (being transferred to TPCODL, TPWODL, TPSODL and TPNODL on the Effective Date) would continue to earn depreciation as per the existing depreciation rates duly approved by the Hon'ble Commission. Utilization of the depreciation shall be made in the following order:
- Funding of additional Serviceable Liabilities
 - Capital Investment
 - Working Capital computed as per Tariff Regulations
22. GRIDCO further stated that the RFP provides that no depreciation shall be allowed on assets created out of Government grants/capital subsidy/capital contribution from consumers irrespective of transfer of the corresponding grant to the Operating Companies.

Table 4
Approved Depreciation for FY 2020-21
(Rs Crore)

Particulars	Depreciation approved
CESU/TPCODL	94.56
WESCO/TPWODL	61.4
SOUTHCO/TPSODL	29.03
NESCO/TPNODL	63.58
Total	248.57

23. GRIDCO stated that the Commission has not considered the settlement of outstanding dues of GRIDCO out of the depreciation to be approved in the ARR for the future periods of operating companies. The depreciation is a non-cash expenses, should have been available to GRIDCO towards arrear dues and settlement of additional serviceable liability.
24. GRIDCO submitted that the Commission may include GRIDCO in the above ranking for utilization of Depreciation next to 'funding additional serviceable liability after

servicing ASL, depreciation should be passed onto GRIDCO to recover its outstanding receivables.

Regulatory Surcharge:

25. GRIDCO stated that even after recovering depreciation and balance dues for F.Y 2020-21, it will be left with pending receivables of **Rs 7,000** Crore (approx.) as detailed below:

Table 5
Receivables of GRIDCO

	<i>(Rs Crore)</i>
Balance receivable as on 31.05.2021	8,382.83
Less Balance seven instalments expected to be received from TPSODL	(-) 57.68
Lee: Balance dues expected to be received from TPCODL towards March & April'20 BSP.	(-) 79.83
Lee: Expected depreciation to be passed on to GRIDCO over next five years	(-) 1242.85
Expected Pending Receivable:	7002.47

26. GRIDCO therefore, submitted that the Commission may allow to amortize remaining dues in form of regulatory surcharge over next 5 years.

Payment security mechanism:

27. GRIDCO stated that in the earlier arrangement with DISCOMs, the BST bill was secured by equivalent L/C of one month BSP Bill and charge on receivable in case of default by DISCOM in payment. As the DISCOMs have defaulted with large BSP dues; as per default charge arrangements the revenues were escrowed to GRIDCO. The DISCOMs were free to use their revenues once outstanding dues are cleared and they continue to pay BSP dues regularly without any default. GRIDCO has a second charge on the revenue of DISCOMs whereas the first charge being in favor of OPTCL for transmission charges.
28. GRIDCO stated that as per the vesting orders of OERC, the escrow mechanism shall be discontinued and the operating companies shall provide LC equivalent to two months BSP dues. If GRIDCO is unable to recover dues from LC then it can approach Commission to encash performance guarantee as per the vesting orders. But performance guarantee is not sufficient to meet even one month BSP bill of DISCOM.

Also, from 5th year, performance guarantee shall be reduced to half of the original amount and by 15th year performance guarantee shall be refunded in full to TPCL.

Table 6
BSP bill v/s Performance Guarantee given by TPCL
(Rs in Crore)

TPCODL	212	150
TPWODL	248	150
TPSODL	66	100
TPNODL	156	150

29. GRIDCO stated that once LC which is about 2 month's BSP is exhausted; encashment of PBG (equivalent to 1 month's BSP) is subject to legal recourses which may not be possible immediately after invocation of LC. The payment security is hardly for 3 months (2 month's LC and 1 month PBG) and thereafter the legal recourse of revocation of license as envisaged will take its own time. During this period, GRIDCO needs to have charge on receivables of the DISCOMs. Hence, a charge is required to be created over the receivables of the DISCOMs in favour of GRIDCO towards payment of BSP Bills.
30. GRIDCO further stated that in view of the above the Commission may establish a default Escrow Mechanism against the dues payable by the DISCOMs from the effective date which can be used as an additional security for realization of GRIDCO's dues in case of failure of DISCOMs in paying current BSP dues in the event of non-renewal/non-maintenance of adequate LC.
31. The respondent TPCODL in its submission stated the following regarding various issues raised by the GRIDCO in its petition.
 - i) Amortization of GRIDCO dues through a regulatory surcharge – TPCODL stated that as per section 21 of the Electricity Act 2003, RFP and vesting orders no past liabilities can be passed to the new DISCOMs. Accordingly, as per the vesting orders no long term liabilities has been transferred to TPCODL and the same cannot now be recovered through mechanism of DISCOM's ARR. TPCODL further stated that the Commission has dealt this issue in its order dated 18.05.2021 in case No.49 of 2020 relating to same issues raised by the OPTCL. The quoted relevant abstract of the said order is reproduced below:

“65.The Commission with regard to this issue observes that Section 21(a) of the Electricity Act does not envisage passing on the past liabilities to the successor

entity, however, the assets and liabilities of current nature need to be handled by the new operating company as a going concern. Further, the Commission has already “ring fenced” TPCL by providing a mechanism under which additional assets have been transferred for 16 servicing the liabilities and in the event of any shortfall in meeting the liabilities, TPCODL has been allowed to avail of appropriate funding instruments, the cost of which shall be allowed in the ARR. The Commission emphasizes that as the utility is being transferred as a going concern, in the interest of consumers and suppliers it is imperative that these liabilities be serviced by TPCODL.

66. The Liabilities of the OPTCL as claimed in the petition are of old periods of the years 2007, 2011 and 2012 which includes DPS, UI Charges, etc. These outstanding should have been settled between OPTCL and CESU as and when these became due during the previous years. The spirit of the Act as enshrined in the section 21 does not envisage passing of old liabilities and the commission accordingly has not passed on such old liabilities to the successor entity. The RFP document also did not envisage passing of such old liabilities and the principles of the segregation of the Balance sheet was based on such premise. The intending bidders accordingly submitted their bid basing on such provisions in the RFP. Moreover the petitioner OPTCL also participated in the suo moto proceedings before the passing of the vesting order by the commission in case no 11/2020 and such issues were not raised by the petitioner in such proceedings.”

- ii) TPCODL stated that the amount of Rs.7002 crores proposed by GRIDCO for recovery through ARR will have a substantial impact on tariff to the order of Rs.0.82/kwh each year for the next five years.
- iii) Regarding payment security mechanism towards the power purchase made by TPCODL, this has been specified in the RFP documents, vesting order and also in bulk supply agreement signed between TPCODL and GRIDCO. The need for having any escrow (including default escrow) or any other security mechanism has not been allowed by the Commission. Continuation of any escrow arrangement not envisaged in RFP, LOI, SHA, SAA or BSA and binding the successor entity after the vesting is unjustified. The contention of GRIDCO for continuance of escrow to secure its past receivable is not in conformity with Section 21(a) of the Act since the successor DISCOM cannot be forced to discharge the liabilities of predecessor DISCOM. TPCODL has already provided a revolving, irrevocable LC and the bank will pay request of GRIDCO without demur. Also the LC will be reinstated by TPCODL within seven days of its invocation. This has been done as per the stipulations in the Bulk Supply Agreement (BSA). Based on the payment security mechanism as per BSA

finalized and executed with GRIDCO, TPCODL has secured non fund based limits aggregating to Rs.550 crore for issuance of LC in favour of GRIDCO, OPTCL, SLDC. LC has been established in favour of GRIDCO, OPTCL, SLDC as per the conditions approved by GRIDCO and OPTCL. The bank has agreed to the issuance of LC and extension of working capital and long term loans based on the provision of first charge on receivables and other security as approved by the Commission. Therefore, in such a situation it would not be possible to offer any additional security to GRIDCO by way of charge on receivables as sought by GRIDCO. Further as per the MoP direction in its order dt.28.6.2019, it is specified that NLDC & RLDC shall not discharge power to the DISCOM without confirmation on availability of addequate payment mechanism but restricted to only by way of LC. As such, there is no reference to providing escrow arrangements as additional security as sought by GRIDCO.

Reply by the Respondent TPSODL

32. TPSODL has stated that from the submission of petitioner it is clear that this is purely an appeal against the vesting order. The concern of GRIDCO has already been addressed by the Commission in the vesting order vide Case No.83 of 2020. Para 89 of the vesting order stipulates that the terms of the vesting order shall be final and binding on the parties. The parties shall not be allowed for further submission with regards to the matters within the vesting order. Therefore, the present submission is barred by above clauses in the vesting order.
33. As regards the past securitized dues, transfer scheme dues, DPS, etc., no such reconsideration has been made and as such the company is mandated by the terms of vesting order and any liabilities arising from the past i.e. prior to the date of vesting shall be dealt as per para 56(e). The issues of arrear recovery, treatment of additional serviceable liabilities and depreciation will be dealt as per the provisions of the vesting order. As regards the GRIDCO's submission for imposing regulatory surcharge towards amortization of GRIDCO's past dues, this seems to be double recovery and without any regulatory provision. As regards the payment security mechanism TPSODL has already opened LC in favour of GRIDCO in terms of the vesting order and the vesting order has stipulated that within seven days of submission of LC escrow arrangement would be discontinued. The petition of GRIDCO for escrow arrangement is like amendment of vesting order which is not acceptable.

34. The respondents TPWODL and TPNODL have stated that it is committed to recovery of past arrears from live as well as permanently disconnected consumers in first five years of operation. The vesting order is very clear about the settlement of dues of GRIDCO as well as meeting additional serviceable liabilities. The GRIDCO's apprehension of excessive ASL and filing petition in this regard is not at all justified. TPWODL and TPNODL have already opened LC in favour of GRIDCO and as per the terms of vesting order within seven days of opening of LC escrow arrangement has to be discontinued. As regards the regulatory surcharge for the past dues, past liabilities that have not been passed on to DISCOM's surcharge mechanism cannot be utilized for passing on these liabilities to the DISCOM and its consumers.
35. In the additional submission dated 10.12.2021, petitioner GRIDCO has stated the following:-
- (i) GRIDCO has stated that it has received net revenue of Rs.732.25 crore from the sale proceeds of four DISCOMs (out of Rs.752.25 crore Rs.20 crore has been kept by OERC towards settlement of transaction costs incurred by it).
 - (ii) TPCODL in compliance with the Commission's order dt.30.09.2021 has paid GRIDCO the balance BSP dues of Rs.225.16 crore against amount billed during months of April and May, 2020.
 - (iii) The Commission in its order dt.30.9.2021 directed TPCODL to pay Rs.177.75 crore of arrear collected in two monthly installments which TPCODL has already paid.
 - (iv) TPSODL was directed to pay balance BSP dues of SOUTHCO utility for the period April to December, 2020 amounting to Rs.98.88 crore in twelve monthly installments. GRIDCO has already received Rs.90.64 crore in 11 monthly installments by November, 2021 and the final installment will be paid by TPSODL by end of December, 2021.
 - (v) The Commission in its order dt.23.11.2021 directed TPWODL to pay the arrear of Rs.125.31 crore in two equal installments to GRIDCO after deducting the incentive as per the vesting order. TPWODL in compliance has already paid Rs.56.03 crore as first installment to GRIDCO by November, 2021 and the second installment is due by end of December, 2021.

- (vi) The Commission in its order dt.25.11.2021 directed TPNODL to pay the arrear of Rs.36.91 crore collected upto 31.08.2021 in two equal installments to GRIDCO after deducting the incentive as per the vesting order. TPNODL, in compliance, has already paid Rs.16.48 crore as first installment to GRIDCO by November, 2021 and the second installment is due by end of December, 2021.
- (vii) The Commission in its order dt.26.11.2021 directed TPSODL to pay the arrear of Rs.54.97 crore collected upto 30.09.2021 in two equal installments to GRIDCO after deducting the incentive as per the vesting order. TPSODL, in compliance, has already paid Rs.27.49 crore as first installment to GRIDCO by November, 2021 and the second installment is due by end of December, 2021.
- (viii) GRIDCO has further reiterated the same submissions on the issues relating to amortization of past dues through imposition of regulatory surcharge, arrear recovery, depreciation and payment security mechanism.

Commission's Order

36. The Commission heard the Petitioner and the Respondents in the matter, and went through all the materials on record. The petitioner GRIDCO in this petition has mainly raised the issues of receivable of GRIDCO from DISCOM Utilities through imposition of regulatory surcharge, arrear recovery, utilization of depreciation to recover its outstanding receivables and modification of payment security mechanism. The petitioner has sought modification of the respective vesting orders issued by the Commission towards vesting of the four new operating companies. Before taking up the issues raised in the petition, the Commission observes that the bid process for selection of the successful bidder TPCL, was undertaken in a transparent and diligent manner. Wide consultations were undertaken with all the stakeholders such as GRIDCO, Government of Odisha and TPCL in order to arrive at a consensus on all the issues keeping the interest of the consumers paramount. Thereafter the RFP Documents namely Share Acquisition Agreement (SAA), Shareholders Agreement (SHA), Bulk Supply Agreement (BSA) and Bulk Power Transmission and SLDC Agreement (BPTA) were shared with the executing parties namely TPCL, GRIDCO and OPTCL. The parties were accorded the opportunity to seek clarifications and then the Commission in the order dated 26.05.2020 in Case No.11 of 2020 vested the utility of CESU in TPCODL, in the order dated 28.12.2020 in Case No.82 of 2020 vested the utility of WESCO in TPWODL, in the order dated 28.12.2020 in Case No.83 of 2020

vested the utility of SOUTHCO in TPSODL and in the order dated 25.03.2021 in Case No.09 of 2021 vested the utility of NESCO in TPNODL.

37. The GRIDCO was a necessary party in this proceeding and submitted its views and opinions in the matter. The Commission considered all such submissions before issuing the vesting order. In view of this, the Commission, in the first place itself, does not find sufficient grounds for reviewing the terms of vesting. Nonetheless, now we will take up the issues raised by the petitioner in the petition.
38. The petitioner GRIDCO has submitted that the Commission should make provision to recover the following outstanding.
 - a. Total dues receivable from erstwhile DISCOMs to the tune of Rs.7950 crore including BSP dues, securitised dues, NTPC power bond, transfer scheme dues, cash support to DISCOM, CAPEX, DPS on securitised dues and on BSP. After expected depreciation of Rs.1243 crore is passed onto GRIDCO over next five years the balance receivables will be Rs.6707 crore. GRIDCO submitted to amortise these dues in the form of regulatory surcharge over next five years.
 - b. Arrear recovery – TPCL has committed total arrear recovery to the tune of Rs. 1000 crore over a period of five years for four DISCOMs. GRIDCO has an apprehension that it may not get any revenue from the arrear collection if additional serviceable liabilities would be more than the committed amount.
 - c. Depreciation – GRIDCO submitted that depreciation is a non cash expense and should be made available to GRIDCO towards arrear dues. After servicing of ASL depreciation should be passed onto GRIDCO to recover its outstanding receivables.
 - d. Payment Security Mechanism – GRIDCO has stated that though all the four new operating companies have submitted LC as per the provisions of the respective vesting orders however in case of any default the process may take a long time to settle. The Commission may therefore, establish a default charge mechanism on the receivables of DISCOMs to recover the dues of GRIDCO in case of failure of DISCOM in making current BSP dues in the event of non removal/non maintenance of requisite LC.
39. From the prayer of the GRIDCO it is observed that they are seeking recovery of the old dues from the new successor companies by the way of imposition of Regulatory Surcharge and utilisation of Depreciation. The Commission with regard to this issue

observes that Section 21(a) of the Electricity Act does not envisage passing on the past liabilities to the successor entity, however, the assets and liabilities of current nature need to be handled by the new operating company as a going concern. Further, the Commission has already “ring fenced” TPCL by providing a mechanism under which additional assets have been transferred for servicing the liabilities and in the event of any shortfall in meeting the liabilities, all the four operating companies have been allowed to avail of appropriate funding instruments, the cost of which shall be allowed in the ARR. The Commission emphasizes that as the utilities are being transferred as a going concern, in the interest of consumers and suppliers it is imperative that these liabilities be serviced by new operating companies.

40. The Liabilities of the GRIDCO as claimed in the petition are of old periods which includes BSP dues, securitised dues, NTPC power bond, transfer scheme dues, cash support to DISCOM, CAPEX, DPS on securitised dues and on BSP etc. These outstanding amounts should have been settled between GRIDCO and erstwhile DISCOMs as and when these became due during the previous years. The spirit of the Act as enshrined in the section 21 does not envisage passing of old liabilities and the commission accordingly has not passed on such old liabilities to the successor entity. The RFP document also did not envisage passing of such old liabilities and the principles of the segregation of the Balance sheet was based on such premise. The intending bidders accordingly submitted their bid basing on such provisions in the RFP. Moreover the petitioner GRIDCO also participated in the suo moto proceedings before the passing of the vesting order by the Commission in all these cases and such issues were not raised by the petitioner in those proceedings. Moreover GRIDCO is the entity holding 49% share on behalf of the Government of Odisha in all these four new operating companies. GRIDCO's submissions now seem to be after thought seeking review of the four vesting orders. Moreover, GRIDCO is a signatory to all the agreements with the TPCL relating to Shareholder's Agreement, Share Acquisition Agreements, Transmission Agreements and Bulk Supply Agreements. The commission therefore observes that the current petition of GRIDCO will tantamount to reopening of the Agreements and vesting orders.
41. The Commission in the respective vesting orders have provided adequate mechanism towards Payment security towards Bulk Supply payments, Transmission charges and SLDC charges. The present experience after the vesting of the four distribution utilities

has revealed that there has been no default by any of the four distribution utilities with respect to these payments and also arrears as per the orders of the Commission. This means that Payment security mechanism as envisaged in the RFP and vesting orders are adequate and comprehensive which requires no change.

42. As regards the imposition of regulatory surcharge and utilisation of Depreciation for recovery of past dues of GRIDCO the Commission observes that this is contrary to the spirit of the section 21 of the Electricity Act 2003 and RFP documents. Moreover the Commission has defined how the depreciation relating to the prior period assets allowed in ARR will be used in a certain way. Utilization of the depreciation shall be made in the following order:

- Funding of additional Serviceable Liabilities
- Capital Investment
- Working Capital computed as per Tariff Regulations

The commission is therefore not inclined to allow utilisation of depreciation in any manner other than what is envisaged in the respective vesting orders.

43. In this context the Commission would like to observe that in the process of sale of DISCOMs where GRIDCO acquired 49% shareholding in the four operating companies have received substantial amounts and further financial commitment to receive further amounts over the years. These payments otherwise would not have been available to them. The following table summarises the same.

Sl. No.	Particulars	TPCODL	TPWODL	TPNODL	TPSODL	Total
a.	Equity Quoted	350	500	375	250	1475
b.	Receivable of GRIDCO out of Equity Quoted for sale of 51% share	178.5	255	191.25	127.5	752.25
c.	Acquisition of 49% share by GRIDCO on non cash basis out of Equity Quoted					722.75
d.	Arrear commitment over five Years period in four DISCOMs	200	300	400	100	1000
e.	Total financial commitment assured (a+c)					2475

44. The above table reveals that the GRIDCO is the major beneficiary of the sale process by receiving financial gain to tune of Rs. 2475 crore in shape of cash and share acquisition. Further the Commission has directed that all the arrear collections prior to

the vesting will be remitted to GRIDCO as and when collected. The GRIDCO is also assured of Bulk Supply payment by way of LC and performance Guarantee.

45. In view of such observations the Commission concludes that there is no error apparent on face of the record which is required to be reviewed. The Electricity Act, 2003 at Section 94 (1) (f) confers power on the Commission to review its order which is similar to Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure on the following grounds: (a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant and could not be produced by him at the time when the decree or order was passed. (b) Some mistake or error apparent on the face of record, (c) For any other sufficient reason. The scope and ambit of review has been delineated by Hon'ble Supreme Court in the following judgments. In *Sow. Chandra Kanta and Anr. v. Sheik Habib* AIR 1975 SC 1500 the Hon'ble Apex Court dismissed a review application observing as under: "..... Once an order has been passed a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious subject and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility." Similar view has been reiterated by the Hon'ble Supreme Court in *Sajjan Singh and Ors. V. The State of Rajasthan and Ors.*, and many other cases. In *Subhash vrs. State of Maharashtra and Anr.* AIR 2002 SC 2537, the Hon'ble Apex Court emphasized that the Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review. In Civil Appeal No. 5217 of 2010 the Hon'ble Supreme Court vide their recent judgement dated 01.02.2019 between *Asharfi Devi THR. LRs Vrs. State of UP and Others* reiterating the settled position of Law on review held that every error whether factual or legal cannot be made subject matter of review under Order 47 Rule 1 of the Code of Civil Procedure, though it can be made subject matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said

reason is analogous to the conditions mentioned in Order 47 Rule 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged innings for making submissions, nor does review lie merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. Even the judgment given subsequent to the decision in a case can be no ground for entertaining the review. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. If a Counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review for the reason that he was the master of his case and might not have considered it proper to press the same or could have thought that arguing that point would not serve any purpose. If a case has been decided after full consideration of arguments made by a Counsel, he cannot be permitted even under the garb of doing justice or substantial justice, to engage the court again to decide the controversy already decided. If a party is aggrieved of a judgment, it must approach the Higher Court but entertaining a review to re-consider the case would amount to exceeding its jurisdiction, conferred under the limited jurisdiction for the purpose of review. Justice connotes different meaning to different persons in different context, therefore, Courts cannot be persuaded to entertain review application to do justice unless it lies only on the grounds mentioned in the statutory provisions.

46. In view of aforesaid statutory provisions and position of law settled by Hon'ble Apex Court, we observe that the GRIDCO has sought review of the vesting order mainly on the grounds which are contrary to the spirit of the Act. The petitioner seeks to claim its old unsettled dues basing on its own surmises which cannot be allowed to be accepted as grounds for review. In the light of the above, we are of the considered view that there is no merit in the Review Petition and the same is accordingly dismissed as devoid of merit.

Sd/-

(G. Mohapatra)
Member

Sd/-

(U. N. Behera)
Chairperson