

**ORISSA ELECTRICITY REGULATORY COMMISSION  
BIDYUT NIYAMAK BHAWAN  
UNIT-VIII, BHUBANESWAR - 751 012**

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**Present : Shri D.C. Sahoo, Chairman  
Shri B.C. Jena, Member**

**Case No. 54/2002**

Managing Director, SOUTHCO, Berhampur. .... **Petitioner**  
- Vrs. -  
1. Grid Corporation of Orissa Ltd., Janpath, Bhubaneswar.  
2. Govt. of Orissa, Deptt. of Energy.  
3. C.M.D., BSES Ltd., Mumbai .... **Respondents**

**Case No. 55/2002**

Managing Director, WESCO, Burla .... **Petitioner**  
- Vrs. -  
1. Grid Corporation of Orissa Ltd., Janpath, Bhubaneswar.  
2. Govt. of Orissa, Deptt. of Energy.  
3. C.M.D., BSES Ltd., Mumbai .... **Respondents**

**Case No. 56/2002**

Managing Director, NESCO, Balsaore .... **Petitioner**  
- Vrs. -  
1. Grid Corporation of Orissa Ltd., Janpath, Bhubaneswar.  
2. Govt. of Orissa, Deptt. of Energy.  
3. C.M.D., BSES Ltd., Mumbai .... **Respondents**

For the petitioners : Shri S.C. Lal, Advocate  
For the respondent No.1 : Shri N.C. Panigrahi, Sr. Advocate  
(in all the cases)  
For the respondent No.2 : Jt. Secretary, Energy Deptt.  
(in all the cases)  
For the respondent No.3 : Shri J.J. Bhatt, Sr. Advocate &  
(in all the cases) Shri S.C. Lal, Advocate

**Date of argument : 16.08.2003**

**Date of order : 04.09.2003**

**BRIEF RECITAL OF FACTS AND PROCEEDINGS HELD**  
**IN CASE NOS.54, 55 AND 56 OF 2002**

1. The three Distribution Companies namely, SOUTHCO, NESCO and WESCO which are the distribution and retail supply licensees of the Commission filed petitions individually on 23.12.02 for relaxation of ESCROW arrangement of receivables agreed to with Grid Corporation of Orissa Limited (GRIDCO). These petitions were filed under Section 11(i)(b) of the Orissa Electricity Reform Act, 1995 (OER Act) read with Regulation 129 of Orissa Electricity Regulatory Commission (Conduct of Business) Regulations, 1996. These petitions were registered as Case No.54/2002 for SOUTHCO, Case No.55/2002 for NESCO and Case No.56/2002 for WESCO. The three cases being analogous in nature were heard combinedly. All the three companies, SOUTHCO, NESCO and WESCO are managed and controlled by BSES Limited, the Investor to whom the majority and controlling shares (51%) were transferred under the privatization of the electricity distribution in the State.

2. The petitioners have prayed for issue of necessary directions to the respondent GRIDCO, for relaxing the Escrow arrangement agreed to the extent of payment of salaries to the staff and meeting urgent Operating and Maintenance (O&M) expenses. GRIDCO is a transmission and bulk supply licensee under the transmission and bulk supply license granted by the Commission under the provisions of the OER Act. It purchases bulk power from various generators and provides bulk supply of power to the Distribution Companies. This transaction is carried through a bulk supply agreements which, inter alia, provides the method of billing for the bulk supply power to the petitioners and the mechanism for payment thereof. The petitioners are required to make payment to the GRIDCO for supply of electricity as per the provisions of bulk supply agreement. Besides this, each of the petitioners has also executed a loan agreement with the GRIDCO for payment of loan installments on the terms and conditions contained therein.

3. GRIDCO has submitted that the petitioners have defaulted in making full payment of the BST bill raised by the GRIDCO as a result of which latter has failed to clear its energy dues to the generators. The failure of petitioners in clearing the dues of GRIDCO in time has led to accumulation of huge arrears. According to the bulk supply agreement and Escrow agreement, unless the entire dues of GRIDCO are liquidated, through the Escrow mechanism no money will be available for meeting any other expenses. The petitioners also failed to arrange working capital which is a sine qua non of any commercial organisation. In the meanwhile, Govt. of Orissa has securitised Rs.1156 crs. of arrear outstanding dues payable by GRIDCO to National Thermal Power Corporation Limited (NTPC) through issue of bonds with a coupon rate of 8.5% as per the Ahluwalia Committee recommendations accepted by Government of India (GOI). Accordingly, a tripartite agreement has been entered into between the Govt. of Orissa, Reserve Bank of India and GOI to service the bonds and also to ensure payment of future dues of NTPC. In the event of failure of payment, the amount will be deducted from the Planned Resources of the State govt. by Govt. of India through Reserve Bank of India. A back to back arrangement has also been made between the Govt. of Orissa and GRIDCO so that GRIDCO does not fail in paying its dues regularly to NTPC thereby creating liability for the State Govt. While assuming the liability on account of default of the payment by GRIDCO, Govt. of Orissa require corporate guarantee from Distribution Companies along with a back to back support by way of a counter guarantee from M/s. BSES Ltd. who are in overall management of the company to ensure that there is no failure in clearing the bulk supply dues of GRIDCO leading a chain reaction of default in payment. GRIDCO through its counsel contended that Escrow relaxation is possible only if Distribution Companies show satisfactory performance on the Action Plan submitted by them and only if BSES furnishes counter guarantee on the corporate guarantee already furnished by the Distribution Companies.

4. GRIDCO further stated that the Chairman & Managing Director of BSES Ltd. which is a majority stakeholder of the Distribution Companies had earlier in his letter dated 08.03.2002 addressed to the Principal Secretary, Department of Energy had committed for such a support. Therefore, M/s BSES honouring past commitments should

come forward with an undertaking to ensure performance of the Distribution Companies for payment of full BST bill of GRIDCO.

5. During the course of first hearing on 10.01.2003, the Commission desired the Distribution Companies to state the period of time the Escrow relaxation has been sought for since it cannot be relaxed indefinitely. They are also to state what action has been taken with regard to commitments furnished by CMD, BSES in para 4 of letter dated 08.3.2002. The Commission felt that since Distribution Companies have not been paying the power purchase cost to GRIDCO which is purchasing bulk power and catering to their need, GRIDCO should explore the possibility of unburdening the bulk supply trading activity enabling the Distribution Companies to purchase power directly from the generating company and settle the dues accordingly. The Commission desired that GRIDCO, the distribution companies and the State Govt. furnish their views to the Commission about such proposed arrangements through affidavits.

6. In course of the proceedings in the case the Commission felt that it was necessary in the interest of justice to hear BSES Limited about the performance of the petitioners. Accordingly, M/s BSES was added as respondent No.3 and a notice was served on the CMD, BSES to appear in person on the next date of hearing i.e. 21.01.2003.

7. On 27.02.2003 in reply to the points raised by the Commission the counsel of the petitioner intimated that M/s. BSES Ltd. would present a business plan for the three Distribution companies. He pleaded before the Commission on 11.3.03 for adjournment of the hearing to a date beyond 11.03.2003. At the request of BSES Ltd., the matter was adjourned. On 28.03.2003, the case was heard. The Business Plan submitted by M/s. BSES on behalf of the three Distribution Companies was not acceptable to the Commission, as it did not address the issues raised by the Commission. On behalf of the petitioners, it was submitted that a fresh Business Plan would be filed by them on or before 09.04.2003 positively. The case was posted for hearing on 22.04.2003. Mr. K. H. Mankad, Director (Finance) of M/s. BSES appeared on 22.04.2003 and presented salient features of the Business Plan. The Commission after hearing Mr. Mankad was of the

opinion that the Business Plan so presented by them did not address the specific issue raised by the Commission. On the other hand, the Business Plan intends to extract a lot of concessions/relief from various stakeholders like World Bank, NTPC, Govt. of Orissa and Govt. of India on which the Commission is not empowered to comment.

The specific issues which were raised by the Commission are as follows:-

- (a) For which period of time the Escrow relaxation has been sought for since the same cannot be relaxed indefinitely;
- (b) Agreeing with GRIDCO on the amount of outstanding dues for the period from 01.04.99 till 31.03.03 and its mode of servicing and ensuring full payment of BST from 01.04.2003 onwards;
- (c) Completion of 100% feeder metering and L.V. Side of Distribution transformer metering including 100% consumer metering;
- (d) Mobilisation/induction of professional skills in the 3 DISTCOs; and
- (e) To commit reduction of AT & C loss as set forth by Commission/Sovan Kanungo Committee.

8. Mr. K.H. Mankad, Director (Finance), BSES in the course of hearing on 22.4.03 agreed to the following points:-

- (i) To ensure and undertake 100% payment of Bulk Supply Tariff Bill to GRIDCO after meeting staff salary and other essential expenditure including O&M expenditure from 01.04.03 onwards.
- (ii) The arrear outstanding dues for the period from 01.04.99 i.e. the date when BSES took over the distribution functions in the 3 companies till 31.03.03 has to be worked out in consultation with GRIDCO and the final amount to be mutually arrived at. BSES is to give a plan of action to service the outstanding

amount as mutually agreed upon by both the parties. This exercise will be completed by the end of May, 2003.

- (iii) DISTRIBUTION COMPANIES (WESCO, NESCO & SOUTHCO) will complete 100% feeder metering by end of October, 2003 and 100% L.V. Side of Distribution transformer metering along with 100% consumer metering by 31.03.2004.
- (iv) DISTRIBUTION COMPANIES (WESCO, NESCO & SOUTHCO) will induct fifteen senior level managerial personnel by 31<sup>st</sup> July, 2003.
- (v) The DISTRIBUTION COMPANIES (WESCO, NESCO & SOUTHCO) will work out a plan for bringing down AT & C loss level as per targets set by the Commission and the Sovan Kanungo Committee for the next 5 years.

A Business Plan incorporating the above aspects is to be submitted by Mr. Mankad through affidavit by 24.04.03.

9. No affidavit covering the agreed points as mentioned in para 8 was filed by Mr. Mankad. On the other hand, on 25.4.2003, Sri N. C. Dash, M.D., NESCO and Co-ordinator of the three Distribution Companies managed by M/s. BSES filed an affidavit and confirmed to the following points. Similar affidavits have also been filed by the three Managing Directors of the three Distribution Companies under BSES management.

- (a) Distribution Companies (WESCO, NESCO and SOUTHCO) have agreed to (i) pay the monthly power purchase cost (BST bills) from April 2003 and to meet staff salary and other essential expenditure including O&M expenditures.

- (b) Distribution Companies will submit the Business Plan within a week after incorporating suggestion made by Hon'ble Commission and CMD, GRIDCO regarding improvement in AT&C loss level targets i.e. 25 percent in next five years.
- (c) Distribution Companies (WESCO, NESCO and SOUTHCO) would complete feeder metering by end of October 2003 and metering of Distribution transformers by end of March 2004 subject to World Bank and APDRP fund being made available in time.
- (d) Distribution Companies (WESCO, NESCO and SOUTHCO) will induct fifteen Senior Managerial Personnel i.e. 5 persons per Company, specialised in Finance, HRD, Commerce and IT by July, 2003. Besides, more middle level personnel in different disciplines will be inducted in phases.
- (e) Distribution Companies have already initiated dialogues with GRIDCO to securitise past accumulated dues. It shall be their best endeavour to complete the consultations by the end of May 2003 so that the securitisation/rephasing can take place not later than 30<sup>th</sup> September 2003.
- (f) The Escrow mechanism will not be triggered till 30<sup>th</sup> September 2003 as long as the three DISTCOMs pay full BST to GRIDCO and meet O&M and employees costs. The same would help three Distribution Companies to arrange essential working capital.
- (g) x x x x x x x x

10. The above mentioned affidavit of Mr. Dash was not backed by a similar undertaking from any of the Directors of BSES. Therefore, on 26.04.2003, the Secretary to the Commission vide his letter No.OERC/SECY/2003/783 addressed to the CMD, BSES, the pith and substance of which is reproduced below :-

*“This has reference to the hearing on 22<sup>nd</sup> April, 2003 and the subsequent application filed in Case No.56 of 2002 signed by Mr. N.C. Dash with supporting affidavit followed up similar affidavits filed by the three*

*Managing Directors of the Distribution Companies under BSES management.*

*During the hearing, the presentation was done by Mr. Mankad in his capacity as a Director and representing BSES limited, the controlling shareholder of the three Distribution Companies in the State of Orissa, namely WESCO, NESCO and SOUTHCO. BSES Limited is a party to the above proceedings in case Nos.54, 55 & 56 of 2002. The Commission proceeded on the basis that the presentation made on 22.04.2003 as well as the various representations to be made by BSES Limited was as the controlling and Principal Shareholder of the three Distribution Companies. These include the representation, which is now sought to be made on behalf of the three Distribution Companies.*

*BSES Limited should appreciate that the entire proceedings before the Commission including the consideration of Business Plan, etc. is on the basis of that BSES Limited will be responsible for duly implementing the same, It is absolutely imperative that BSES Limited confirms the representations, which are contained in the applications filed on behalf of the Distribution Companies for the Commission to take note and consider. Accordingly, a duly authorised director of BSES Limited should file the necessary application before the Commission in addition to the three Distribution Companies making the representations. The above will be consistent with the letter dated 8<sup>th</sup> March, 2002 written by the then CMD of BSES Limited*

*The support, assistance and assurances from BSES Limited are necessary in order to give credibility to the proposals made and also to ensure due implementation of such proposals without any default or failure on the part of the three Distribution Companies.*

*In the circumstances, BSES Limited should immediately consider the filing of application before the Commission supported by affidavit of a duly authorised Director of BSES Limited confirming BSES Limited's commitments to the proposals contained in the application filed by the three Distribution Companies and also assuring the due performance of all the commitments made in the said application. The above applications on behalf of BSES may be filed with copies to the Chairman-cum-Managing Director, GRIDCO and the Govt. of Orissa. The Commission will then consider the proposals made on their merits. Please take note that the Commission can not proceed on the proposals made in the absence of BSES's commitments to the same".*

11. On 02.5.2003, three Distribution Companies submitted a business plan without any endorsement from the parent company i.e. BSES. On 06.5.2003, the Secretary of the

Commission vide his letter No. OERC/Secy/2003/856 to MDs of the three Distribution Companies stated as under :-

*“I am directed to say that after a preliminary consideration of the petition dated 23.12.2002 to relax the escrow mechanism, the Petitioner company was advised by the Commission to clarify certain points to enable the Commission to take a view on the same. This matter was also the subject of informal discussions with the Petitioner when he sought the advice of the Commission on specific issues having a bearing on escrow relaxation. The Petitioner was advised to make a clear and categorical statement on the following matters:*

- (i) Duration for which the companies would require relaxation of escrow and the date from which the current dues on account of BST will be met in full*
- (ii) Agreeing with GRIDCO on the amount of outstanding dues to GRIDCO for the period from 1 April 1999 till 31 March 2003 and its mode of servicing.*
- (iii) Date for the completion of 100% feeder metering and L V side transformer metering*
- (iv) Deadline for the mobilisation of fresh Skills and Working Capital*
- (v) A commitment to reduce losses in accordance with the recommendation of the Sovan Kanungo Committee and the direction of OERC.*

*Since the request for escrow relaxation was at variance with certain written commitments given on 08 March 2002 by the CMD of BSES, the parent company which holds the majority shares in WESCO, NESCO and SOUTHCO, the Commission impleaded BSES also in the proceeding.*

*On 15 April, 2003, a combined Business Plan for all the three companies was submitted to the Commission did not prima facie address the issues posed by the Commission. Thereafter the case was adjourned on two occasions because the representative from BSES could not attend the proceedings. However, the Commission heard the Petitioner Company on 22 April 2003 when Mr. K.H. Mankad, Director on the Board of BSES, made submissions for an on behalf of the Petitioner. He agreed to the following points on behalf of the three companies.*

- (1) From 1 April 2003 onwards, staff salary and other essential items of expenditure including O&M expenses will be met and 100% of the BST will be paid.*
- (2) The payables to GRIDCO from 1 April 1999 to 31 March 2003 will be discussed and agreed with GRIDCO by 31 May 2003 along with the mode of servicing that amount.*

- (3) *100% metering of feeders will be completed by 31 October 2003 and 100% metering of L V side of transformers will be completed by 31 March 2004.*
- (4) *Fifteen senior management personnel will be inducted by 31 July 2003.*
- (5) *A plan will be worked out to reduce losses in accordance with the recommendations of the Sovan Kanungo committee and the directions of OERC.*
- (6) *There was, however, no commitment about how long the Escrow relaxation will be needed.*

*It was agreed that a simplified Business Plan confirming the points from (1) to (5) above and clarifying point (6) will be submitted by Mr. Mankad through an affidavit in two days' time.*

*On 25 April 2003, the MDs of the Petitioner Companies filed a fresh Business Plan for the company through an affidavit. This was followed by a more concise Business Plan which was filed by affidavit on 2 May 2003. Contrary to the earlier assurance of Sri Mankad, no Director of BSES signed the affidavits. An examination of the Business Plans of the Petitioner revealed the following.*

- (1) *There was no commitment for payment of BST Bill to GRIDCO in full from 1 April 2003.*
- (2) *There was no indication about how long the escrow relaxation is needed.*
- (3) *There was no indication on the date of completion of the process of feeder and transformer metering.*
- (4) *There was no mention of induction of any fresh professionals into the three companies.*
- (5) *There was nothing about quantifying or liquidating the dues payable to GRIDCO (other than mention of consultants to assist with the restructuring of the companies).*
- (6) *The proposal for loss reduction was not in conformity with the recommendations of the Sovan Kanungo committee or the directions of OERC.*
- (7) *The affidavits dealt with a number of other issues, but in the absence of any commitment on any of the points repeatedly stressed by the Commission, it will serve no purpose to deal with them at this stage. The Commission has also noted the failure of BSES, the parent company, to support the affidavit of the MDs of the companies.*

*Relaxation of the escrow has a direct impact on the cash flow of GRIDCO. In the context of the agreement which the state government has concluded with the Government and the Reserve Bank of India, any shortfall on the part of GRIDCO in paying the bills of NTPC would result in the State's Plan funds being docked by an equivalent amount. Hence escrow relaxation has implications far beyond the concerns of the Petitioner Company. As pointed out above, the Petitioner company has failed to utilise several chances given to them to present a*

*convincing reason for relaxation of the escrow. In conclusion, the Commission does not find valid ground for relaxation as at present.”*

12. On 04.6.2003, a joint affidavit was filed by Mr. K.H. Mankad as a Director of Distcos but not on behalf of BSES Ltd. along with the MDs of Distcos. The relevant portion of the affidavit is quoted below :-

- 3 (a) *From 1 April 2003 onwards, SOUTHCO/WESCO/NESCO would meet staff salary payments and other essential items of expenditure including O&M expenses and 100% of the Bulk Supply Tariff (BST) would be paid to Grid Corporation of Orissa Limited (GRIDCO) subject to the fulfillment of conditions mentioned in para 1.2 of the Assumptions underlying financial model forming part of the Business Plan submitted by the company on May 2, 2003.*
- (b) *SOUTHCO/WESCO/NESCO would make best efforts to complete by May 31,2003 in consultations with GRIDCO settlement of outstanding dues payable to GRIDCO from 1 April 1999 to 31 March 2003, at mutually agreed terms & conditions, so that the securitisation/ rephasing can take place by September 30, 2003.*
- (c) *SOUTHCO/WESCO/NESCO would complete 100% metering of feeders by 31 October 2003 and 100% metering of LV side of transformers by 31 March 2004 subject to World Bank and APDRP funds being made available to it in reasonable time to facilitate achieving targets;*
- (d) *SOUTHCO/WESCO/NESCO would each induct five (5) senior management personnel by 31 July 2003;*
- (e) *SOUTHCO/WESCO/NESCO would reduce AT&C losses by 25% from the level of 52% to 27% over a period of five years i.e. by the financial year 2007-08 subject to the fulfillment of conditions mentioned in para 1.2 of the assumptions underlying the financial model forming part of the business plan submitted by the company on May 2, 2003.*

4 x x x x x x x

5 x x x x x x x

13. GRIDCO filed a reply on 07.7.2003 to the above applications of the three Distribution Companies dated 04.6.2003. The extract of the order of the Commission on the hearing dated 08.7.2003 is reproduced below:-

- “2     *The reply filed by respondent No.1 – GRIDCO against the affidavits dt.04.06.2003 filed by the petitioners be taken on record.*
- 3     *Respondent No.1 – GRIDCO has filed petitions today to direct respondent No.3 – BSES Ltd. to provide necessary guarantee to ensure payment of current BST dues in full by the petitioners and to pledge their shares held in the petitioners’ companies. These petitions may be kept in respective case records.*
- 4     *On behalf of respondent No.3 – BSES Ltd., a petition has been filed with prayer to delete its name as a party respondent. Nobody has moved this petition at the time of hearing. BSES Ltd. appears to be a necessary party and its presence is necessary for an effectual adjudication of the prayer for Escrow relaxation made by the petitioners. As such, this petition being considered to be devoid of any merit stands rejected.*
- 5     *Heard the counsels of the petitioners and respondent No.1 – GRIDCO. These cases are being adjourned from time to time to enable the three Distribution Companies (petitioners) and BSES Ltd. as the majority and controlling share holder and the investor to finalise a business plan and scheme for the due payment of the amounts becoming due to GRIDCO. Though some business plans have been submitted and commitments made by the petitioners, there has been no clear representation from BSES Ltd. despite affording several opportunities. The commitment from BSES Ltd. is necessary for the effective implementation of any scheme proposed by the petitioners. GRIDCO has also filed an application stating that the PFC has asked for the guarantees of the promoters of the DISTCOs as a condition for giving the loan. It will, therefore, be appropriate to direct BSES Ltd. to file an affidavit mentioning therein their views and commitment to the Business Plan and proposal submitted by the petitioners before any further step is taken in the matter. The required affidavit be filed by BSES Ltd. within 15 days hence.”*

14. On 29.7.03, the case was heard and posted to 16.8.03.

15. On 16.8.2003, GRIDCO filed a reply to the affidavit of M/s BSES dt.25.07.2003. The relevant extracts are as follows:-

*“Para-1 BSES is a necessary party in the Case No.54,55 & 56 of 2002 filed by the Petitioners. BSES has been impleaded as a party by the Hon’ble Commission and directions have been issued to BSES by the Commission from time to time for various compliance with regard to Business Plan of Distribution Companies and the commitments of BSES to extend necessary support to enable the Distribution Companies to adhere to the Business Plan. The obligations of BSES towards the Distribution Companies are envisaged in the Share Acquisition Agreement and Shareholders Agreement. By order dt.8.7.03, Hon’ble OERC has already rejected the application of BSES for deletion of their name.*

*Para-2 The application filed by GRIDCO on 8<sup>th</sup> July 2003 is maintainable as the prayer made by GRIDCO is for a direction to BSES to guarantee the payment of bulk supply dues by the DISTCOs to GRIDCO and BSES have already confirmed that the Distribution Companies will pay the BST bills in full as per order dated 22.04.2003 of OERC.*

*Para-3 That BSES Ltd. who is required to arrange further financing, failed in its obligations to arrange further financing either by way of loan or by way of equity share capital to meet the finance requirement of the Distribution Companies. This resulted in default by Distribution Companies to pay the dues of the GRIDCO and GRIDCO in turn defaulted in its obligation to pay the dues of generators including NTPC. GRIDCO is availing loan from PFC as a transitional support to pay the dues of the generators including NTPC. This has arisen due to the failure of the Distcos to pay the dues of GRIDCO. BSES failed to arrange debt finance pursuant to the clause 8.1 of the Shareholders Agreement to meet the finance requirement of the Distribution Companies. GRIDCO subsequently approached BSES vide letter No.526 dated 19.10.2001 to bring in further equity share capital to the Distribution Companies to meet their long term working capital requirement. GRIDCO in the said letter also agreed to subscribe to the further equity share capital in the Distribution Companies to meet their long term working capital requirement. This was pursued by GRIDCO consistently with a view to make available working capital funds to the Distribution Companies, but BSES failed to respond to the letter of GRIDCO as stated above. Subsequent letter dated 24.10.2002 of GRIDCO addressed to BSES shows the efforts made by GRIDCO to impress upon BSES the need of further finance including the increase of equity share capital of Distribution Company. This was also not responded by BSES. The Distribution Companies to whom the copy of*

*the aforesaid letter were endorsed also failed to take any action in this regard. GRIDCO has again reiterated the necessity of raising further finance and has issued a letter to the Distribution Companies vide letter No.382 dated 22.07.2003 the Distribution Companies are also yet to take any steps in this regard. This is a clear breach of the shareholders Agreement on the part of BSES Ltd. and the Distribution Companies with regard to arranging further finance. BSES being the principal/majority shareholders of all the three Distribution Companies is under legal obligation to arrange working capital to meet the further finance requirement of all the three Distribution Companies. It is relevant to mention here that after the Distribution Companies and BSES failed to arrange working capital, a proposal was made before the Board of the Distribution Companies by the CMD, GRIDCO requesting BSES to provide unsecured loan to the companies. Mr. R. V. Shahi, Ex-CMD of BSES did not agree to this but had agreed to consider providing further finances to the Distribution Companies by way of further issue of share capital by the promoters. This was promptly communicated to CMD, BSES with due approval of the Board of GRIDCO. BSES has not responded to such a proposal in spite of repeated reminders though the Shareholders Agreement (Clause 8.2) specifically provides for such financing by the Shareholders.*

*BSES Ltd. has the obligation to procure the three Distribution Companies to enter into connected contracts (Bulk supply Agreement, Loan Agreement, Escrow Agreement) in the manner provided in schedule 4 to the Share Acquisition Agreement. These connected contracts provide for due payment of the monies becoming due by the Distribution Companies to GRIDCO. The Bulk Supply Agreement, Escrow Agreement and Loan Agreement specify the extent, quantum and manner of payment of such amounts becoming due from the Distribution Companies to GRIDCO. These stipulations will have to be considered in the background that BSES Limited was selected to participate in the bid on the basis of the financial criteria laid down in the RFQ, viz., that BSES Limited will have necessary financial strength to arrange for the funds and finances required by the Distribution Companies to duly carry out their obligations. Clauses 8.1 and 8.2 of the Shareholders Agreement envisage the manner of financing of the Distribution Companies. In terms of clause 8.1, BSES Limited was required to make all reasonable endeavour to obtain finances from the lenders on reasonable commercial terms if the Distribution Companies require financing. Clause 8.2 of the Shareholders Agreement also stipulates that to the extent such finances are not available from the lenders, further financing may be sought by issue of ordinary share capital of the company.*

- Para-4 The BSES having not specifically denied the averments of para 3 to 11 of the petition of GRIDCO, the effect of such admission will be argued at the time of hearing.*
- Para-5 As already stated in para 3 above BSES Limited has not made appropriate efforts to obtain finances from the lenders on reasonable commercial terms, and has not taken steps to consider raising equity base of the company by issue of fresh shares, BSES Limited is in breach of the stipulation contained in the Shareholders Agreement (clause 8) read in the context of objectives of the privatisation.*
- Para-6 BSES Limited was required to provide to the Distribution Companies the technical resources and capabilities as may be reasonably necessary to enable the business of the Distribution Companies to operate efficiently. This was an unconditional obligation agreed to by BSES Limited in clause 5.6 of the Shareholders Agreement. BSES Limited was the technical member and was qualified for the bidding based on its representation of technical criteria possessed by it to undertake the electricity distribution work. BSES Limited had also submitted technical proposals and the bid was evaluated based on the technical proposals. Improvement of the operational efficiency was one of the principal objectives of the privatisation as envisaged in clause 2 of the Shareholders Agreement. Such improvement in the operational efficiency, with proper technical resources and capabilities, would have reduced losses, improved the quality of service and reliability of the supply system, the availability of electricity at a competitive price and above all an increase in the revenue recovery and ability of the three Distribution Companies to meet all the financial obligations to Gridco.*
- Para-7 In paras 15 to 17 GRIDCO has mentioned about relevant orders passed by OERC which will be referred to at the time of hearing.*
- Para-8 That BSES has failed to discharge their obligations under clause 8.1 of the Shareholder Agreement as mentioned above. And BSES is called upon to justify as to how it has discharged its obligation not by words but by deeds.*
- Para-9 As per comments mentioned in para -3 above, no further reply is necessary.*
- Para-10 There is a failure on the part of Distribution Companies to improve its performance which is squarely attributable to BSES who have been in the management of all the three Distribution Companies since 1.4.1999.*

- Para-11 The Bonds of Rs.400.00 crores were issued by the Distribution Companies pursuant to the Minutes of Discussion dated 24.10.2000 held amongst BSES, GRIDCO and the Distribution Companies (Annexure-P series). Gridco agreed to accept the bonds of the Distribution Companies as it relied on the proposal initiated by CMD, BSES who participated in the discussion and was the signatory to the minutes of the discussion. The initiative taken by CMD, BSES in securitisation the outstanding dues of Distribution Companies to Gridco has been confirmed by the letter of CMD, BSES dated 15.2.2001(Page 70 of our Petition). It is further submitted that Gridco had accepted the bonds with the hope that the Distribution Companies under the management of BSES would be in a position to service the bonds and would meet their current obligations regarding payment of BST bill and loan installment to Gridco.*
- Pare-12 BSES is in breach of the terms of Share Acquisition Agreement and Shareholders Agreement and is responsible for the failure of the Distribution Companies to honour their commitments under the Bulk Supply Agreement and Loan Agreement.*
- Pare-13 The one-time settlement of the dues of the generators (NTPC) was necessitated due to default of Gridco in paying the dues of NTPC. Gridco default to NTPC is due to default on the part of Distribution Companies to pay the outstanding dues which aggregates to Rs.1198.97 Crores as on 30.6.2003.*
- Para-14 Reference to the objectives of privatisation as contained in the shareholders Agreement and how BSES has failed to extend necessary resources, support and capability to the Distribution Companies to operate efficiently to meet the objectives of the privatisation.*
- Para-15 The Kanungo Committee recommendations and the correctives suggested by OERC in their tariff order dated 10.04.2002 have been considered by the Government. State Government have accepted most of the recommendations/correctives which has been notified by the State Government in their Notification No.1068 dt.29.01.2003. The Kanungo Committee have also dealt with the functioning of the distribution Companies under Private Management. The Clause 5.17 and 5.18 of the Report of Independent Experts (Page.59 & 60) which is reproduced below records the defaults committed by BSES. " In the prevailing run down state of Gridco and Distcos, no durable rehabilitation is possible without interim financing of unavoidable losses. However, it needs to be emphasized that no amount of support from outside would succeed unless the utilities conduct themselves with greater sense of responsibility. Privatisation was seen as a means to improve the performance of the Distcos. The private sector partners*

*need to bear in mind their crucial role which can not be performed satisfactorily unless they face the task as a challenge and an opportunity and take the industry forward in true spirit of partnership for mutual benefit. The private promoters of the Distcos neither brought superior management skill nor did they arrange financial support even by way of working capital for the companies which are in dire need of capital, working capital in particular. Instead of using the good offices of BSES to secure working capital in terms of clause 8.1 of the shareholders Agreement for the three Distcos under their management, the Distcos have persistently defaulted in payment to Gridco towards purchase of power. The outstanding over dues of Gridco as on 30th September, 2001 against these three Distcos is Rs.680.72 Crore including bonds issued by them in lieu of cash payments. So far as the other distribution company CESCO is concerned, the situation is worse. AES, the private sector partner never fulfilled its commitment to bring working capital. They were allowed to pile up unpaid power purchase bills amounting to Rs.403 Crore by time they walked away on August, 2001. Now that AES have abandoned CESCO, GRIDCO seems to be left with hardly, any other option except exploring legal remedy. As far as BSES managed DISTCOs are concerned, the attitude of deliberate default in payment to Gridco must end. BSES should make all efforts to bring in working capital in terms of the Shareholders Agreement.*

*Para-16 PFC has put the conditions in its sanction letter to procure consent from the promoters to pledge their shares. Gridco has agreed to pledge its shares and therefore, BSES the other promoter should also agree to pledge their Shareholding.*

*Para-17 Annexure -R , S & U are matters of record which pertains to availing loan from PFC & it is unfair on the part of BSES to deny the said documents.*

*Para-18 The stipulations made by PFC for sanction of the Transitional Loan of Rs.1200.00 crores are squarely enforceable jointly and severally against the companies who are in the management of Distribution Companies and who has a lot of obligations under various Agreements. BSES, therefore, has a legal and Contractual commitment in making the distribution sector viable.”*

16. On 16.8.2003, the case was heard and the hearing was concluded. Respondent No.3 M/s. BSES was directed to file affidavit in support of their commitments to the business plan and proposals submitted by the petitioners. Such an affidavit was to be filed

by 20.8.2003 serving a copy on the respondent No.1, GRIDCO. An affidavit filed by one Mr. K. D. Kulkarni, a director of BSES was received on 21.8.2003.

### **Issues and Assumptions**

17. It is relevant to go through the issues raised in the revised Business Plan dated 25.4.2003 for a period of 10 years from the year 2003 to 2013 submitted by the BSES managed Distribution companies.

### **Assumptions by Distcos :**

#### **AT&C Loss :**

18. In Cases of SOUTHCO/WESCO/NESCO, AT&C loss is proposed to be reduced from 52% as on 2002-03 to 27% by 2007-08. Achievement of the above loss reduction target is dependent upon many correctives and support required from various administrative authorities and stakeholders connected with power sector reforms in Orissa, as depicted below :-

- (a) Relaxation of Escrow Mechanism till the financial restructuring of past dues of three Distcos is completed.
- (b) Merger of three BSES management companies, namely, SOUTHCO, NESCO & WESCO into one company.
- (c) Creation of an Asset Reconstruction Company.
- (d) Introduction of anti-theft law.
- (e) Adjustment of State govt. Undertakings/PSUs dues against BST bill.
- (f) Timely release of World Bank/APDRP Fund/any other fund payable to Distcos.
- (g) Electricity duties would be retained by three Distcos.
- (h) Reasonable and adequate tariff hike would be allowed by the regulator to meet Annual Revenue Requirement.
- (i) Cyclone relief fund to be released within 15 days.
- (j) Any expansion/modernisation particularly electrification of villages and Kutir Jyoti connection would need adjustment.

- (k) Administrative and general expenses will be increased by 6% every year based on past record.
- (l) Employees cost will be increased by 6% every year based on the past record and 20% in the year 2006-07 and 2011-12 on account of pay revision.
- (m) Repair and maintenance will be increased by 8% per year considering load growth and reliability improvement.
- (n) Consumer security deposit and consumer contribution would be increased by 3% every year based on the past record.
- (o) Future Tax liability would be a pass through in tariff.

**Reschedule/deferment and moratorium on repayment of loan**

Depreciation should be calculated on pre-92 norms. In case, there are huge repayment liabilities, it is assumed that BST will increase by 13% in FY 2004-05, 5% in FY2005-06, 3% in 2006-07, 2% in 2007-08.

A BST equalisation fund should be established in line with Oil pool account and 16% ROE be paid.

19. In response to the Business Plan and subsequently petition filed by the three distribution companies and the affidavit of Mr. K. H. Mankad as Director (Finance) of the distribution companies, GRIDCO's comments are as under:-

- i) *Though three Distcos have filed their affidavits on 4<sup>th</sup> June, 2003, it has been stated that they would make best efforts to complete settlement of outstanding dues payable to GRIDCO from 1<sup>st</sup> April, 1999 to 31<sup>st</sup> march, 2003 at mutually agreed terms and conditions by 31<sup>st</sup> May, 2003 so that securitisation of the agreed outstanding dues can take place by 30<sup>th</sup> September, 2003. It is however, submitted that three Distcos have in the meantime discussed with GRIDCO about reconciliation of outstanding dues and the same is in progress.*
- ii) *Three Distcos should make all efforts to avail World Bank and APDRP fund from the State Government in a reasonable time and State Government should extend necessary support so that these companies are*

*in a position to complete 100% metering of LV transformers by 31<sup>st</sup> March, 2004.*

- iii) The induction of Senior Manager personnel should be in important disciplines and at appropriate levels so as to ensure that the required skill is available to the Distribution Companies for better management and for achieving desired result.*
- iv) The commitment and reduction of AT&C loss from the level of 52% to 27% over a period of five years commencing from 2003-04 has again been made subject to conditions contained in para 1.2 of the Business Plan submitted by the company on 2<sup>nd</sup> May, 2003. Hon'ble Commission may take a view in this matter considering our submissions to such assumptions as contained in Annexure-1.*
- v) GRIDCO submits further that BSES Ltd., which is the principal and majority shareholder and in charge of management of the three distribution companies viz. SOUTHCO, NESCO and WESCO should ensure that they should adhere to the commitments made by them and in that respect BSES Ltd. is under an obligation to make written submission before the Hon'ble Commission by way of an affidavit. This is necessary because in the event of the distribution companies failure to fulfill the commitments given in their affidavits, the BSES Ltd. who is in the management of the companies shall fulfil the same.*

20. Further, GRIDCO's para wise comments as on 19.5.03 which are reproduced are as follows:-

- (1) Distribution Loss accepted in 2001-02 by the Committee of Independent Experts should be adhered to*
- (2) The petitioners have linked the loss reduction target to a number of conditions*
- (3) That the petitioners did not establish Escrow mechanism till September 2000. GRIDCO enforced Escrow due to default by the petitioners to pay the BST bill and loan installments of GRIDCO as per the provisions of Bulk supply loan agreements.*
- (4) The Escrow mechanism will continue to operate till such time the outstanding dues of GRIDCO are recovered in full or alternatively repayment programme in respect of entire outstanding dues is to be approved by GRIDCO and the petitioner should honour it.*
- (5) The proposal for merger of distribution companies in one company may not be considered due to following reasons.*
  - (a) the Petitioners have not arranged working capital/long term finance because of their inefficiency and bad performance. The main objective of the Petitioners should be to make them viable rather than covering up its inefficiency through merger.*

- (b) *The exact cost reduction to be achieved through merger has not been spelt out. As such, the same cannot be accepted on its face value.*
- (c) *The operational efficiency has not been achieved even for smaller Distcos. It is not understood as to how better efficiency would be achieved by merging these Companies.*
- (d) *Regarding benefits of scale of operation, the past performance of Petitioners do not raise any confidence in this regard.*
- (e) *Customers' satisfaction is not upto the expectation with the smaller size of the petitioners. It is not understood how the merged company will ensure higher customer satisfaction.*
- (6) *The proposal for creation of special purpose vehicle (Asset Reconstruction Company) for transfer of outstanding liabilities of WESCO, NESCO and SOUTHCO up to 31.03.2003 may not be accepted.*
- (7) *The views of GRIDCO regarding writing off of its liabilities, State Govt. and NTPC and transfer of balance liabilities as on 31.03.2003 to ARC at para 1.14 are as under:-*

**i. NTPC BOND**

*GRIDCO has no objection to the proposal of rescheduling the NTPC Bond including waiver of interest and reduction of interest rates provided the same are being accepted by NTPC. The Discoms are under legal obligation to service the bonds under the existing terms and conditions till the proposed terms are accepted by NTPC.*

**ii. GRIDCO LOAN**

*Treatment of GRIDCO loan under the Business Plan submitted by the distribution companies under BSES management is entirely unacceptable. The loan which has been transferred to the four distribution Companies was availed by erstwhile OSEB/GRIDCO for creation of distribution assets and therefore along with the transfer of distribution assets, the loan was required to be transferred to the distribution companies. In fact, the loan was availed from PFC/REC and because of unwillingness of PFC/REC for assignment of such loan to distribution companies, GRIDCO retain the obligates of servicing the loan to PFC/REC and at the same time GRIDCO had a back to back arrangement (Loan Agreement) with the Distribution Companies to recover the loan installments. Accordingly, repayment schedule was annexed to the loan agreement with a condition that, the repayment schedule shall be subject to adjustment after completion of the audit of accounts of GRIDCO and the same shall be repaid by the*

*Discoms to GRIDCO to enable GRIDCO to repay the loan of REC/PFC. In the mean time, audited accounts of GRIDCO upto 31.3.2001 are available and as such, the Petitioner Company has to service the loans outstanding upto 31.3.2003 as per existing term. Any waiver/concession of such loan has to be taken up with REC/PFC and if allowed, shall be passed on to the distribution companies.*

**iii. World Bank Loan**

*GRIDCO has no objection to the proposed reduction of interest rates and payment re-schedulement provided the same are accepted by the Govt. of India. Till such time, the Petitioners have to service the loan under the existing term.*

**iv. BST payable by GRIDCO**

*The proposal for waivers of 100% DPS is not acceptable because GRIDCO is liable to pay DPS to the generators in respect of the defaulted amount. However, any waiver of DPS allowed by the generators will be passed on to the Discoms. The proposal for adjustment of outstanding electricity dues of State govt. and all PSUs against BST dues is also not acceptable. The BST outstanding including DPS is to be paid by the Discoms to GRIDCO on a mutually agreed securitization scheme provided that the Discoms agree to pay to GRIDCO the current dues towards BST, Current Loan Installments and Installments under securitisation scheme through L.C. mechanism.*

- (8) *Introduction of anti Theft Law would help the Petitioners to improve their performance of billing and collection. However, State government may be requested for the needful.*
- (9) *The assumption of adjusting electricity dues from government undertakings/PSUs against the BST bill is not acceptable to GRIDCO. It is submitted that GRIDCO assumed full responsibility of entire outstanding dues against Government undertakings/PSUs up to 31<sup>st</sup> March, 1999 as spelt out under the 2<sup>nd</sup> Transfer Scheme of 1998 and the Petitioner Company was allowed to start with a clean slate so far as this class of consumers are concerned. The Petitioners were free to regulate power supply to this class of consumers in case of their default. Any accumulation of arrears from Government undertakings/PSUs is squarely on account of inefficient and poor management of the Petitioners and, therefore, can not be allowed to be set off against the BST dues. The Petitioners may take recourse to available remedies under the law to recover their outstanding dues against govt. undertakings/PSUs.*

- (10) *GRIDCO has no role to play in the release of funds from World Bank, APDRP etc. The Petitioners may take up the matter with the State Govt.*
- (11) *The retention of electricity dues by the distribution companies is to be decided by the State Govt. and GRIDCO has no comment to offer.*
- (12) *Regarding tariff, it is submitted that Hon'ble Commission may consider the proposal of the Licensees in their revenue requirement and tariff determination depending.*
- (13) *GRIDCO has no comments on the proposal of the Petitioners in the matters of rebate under Cyclone Relief Fund and release of funds in connection with Village Electrification, Kutir Jyoti, etc.*
- (14) *It is submitted that Hon'ble Commission may take a view on the proposals of the Petitioners for increase in employees cost, Administration, General Expenses, R&M, Consumers Security Deposits, Consumers contribution and future tax liability, etc., depending on merit of each case.*
- (15) *The terms and conditions proposed by the Petitioners for servicing of loan and past dues to the extent it pertains to GRIDCO (GRIDCO Loan and BST) are not acceptable. As mentioned earlier in clause 1.2(c), it is submitted that any waiver/concession of GRIDCO loan to Distribution Companies will be taken up with REC and PFC and, if allowed, the same shall be passed on to the Distribution Companies. Similarly, the outstanding towards BST including DPS are to be paid by the distribution Companies to GRIDCO on a mutually agreed securitisation scheme provided that the distribution companies agree to pay to GRIDCO the current dues towards BST, Loan Installments from April 2003 onwards in full and installments under securitisation scheme through LC mechanism. Any benefit allowed by the Generators/Financial Institutions would be passed on to all the Distribution Companies including the Petitioner Company. As such, charging of depreciation at pre-92 rates by the Petitioner Company subject to above is not acceptable.*
- (16) *Regarding the assumption made towards BST increase, it is submitted that the actual BST amount as may be allowed to GRIDCO by the Hon'ble Commission will be built into the retail tariff structure of the Petitioner Company which may be allowed through tariff.*

- (17) *The concept of BST Equalisation fund incorporated in the cash flow statement of the Petitioner company based on the assumption that the surplus cash generated by WESCO would be transferred to SOUTHCO and NESCO is not acceptable. Continuance of the three Distribution Companies as separate entities would entitle them a BST rate based on parameters specific to each Distribution Company. The benefit of reduced BST rates approved by Hon'ble Commission for the petitioner company would contribute to generate sufficient cash to breakeven in due course and also would enable it to avail finance from bank for its working capital provided that it achieves the performance parameters set by Hon'ble Commission. Therefore, the concept of BST Equalisation fund is not relevant and may be ignored.*
- (18) *The State govt. have already given a number of concessions based on the recommendations of the Committee of Independent Experts and the correctives suggested by the Hon'ble Commission. As such, the additional relief, which has been proposed in the next five years by way of sacrifice by the State govt. may not be accepted without prior approval of the State govt.*
- (19) *The Petitioner company may not be allowed to retain any thing towards Return on Equity until and unless they discharge their legal obligations in paying the BST, Loan Instalments and instalments under securitisation scheme of GRIDCO in full, loss reduction and collection efficiency parameters set by the Hon'ble Commission as may be allowed by the Hon'ble Commission from time to time. It is relevant to mention here that the Power Sector in the State of Orissa is passing through a very crucial stage and to make it a success it is necessary to have sacrifices from all the stakeholders. Here it may not be out of place to mention that the Hon'ble Commission have denied any return in equity to GRIDCO and OHPC till the sector turns around.*
- (20) *The Petitioners may be entitled to incentive on timely BST payment to GRIDCO but the same shall be in accordance with the provisions of the Bulk supply agreement and Order of the Hon'ble Commission.*
- (21) *The proposal for seeking advice from an outside agency on the restructuring of past dues and on evaluation of Business Plan is an internal matter to the Petitioners and GRIDCO is not bound by any of the recommendations of such agencies appointed by the petitioner.*

- (22) *The Petitioners may be allowed to recover cash outflow on account of VRS to its employees provided the VRS Scheme is in the interest of the Petitioners.*
- (23) *The comments of GRIDCO with regard to servicing of interest and principal liability have already been furnished in para 1.2(c). It is further submitted that the proposal of the Petitioner Company to transfer the liabilities to an Asset Restructuring Company and waiver of huge amounts payable to GRIDCO in the process of restructuring the balance sheet of the Petitioner Company through transfer of liabilities to the Asset Restructuring company are not at all acceptable to GRIDCO. The Assets and liabilities of the Petitioner Company can be retained in the balance sheet and whatever concessions would be received from other stake holders can be accounted for in the balance sheet. The additional revenue requirement, if any, after achieving the efficiency parameters fixed by OERC (reduction in Distribution Loss, improvement in billing and collection efficiency), can be allowed as a pass through by way of increased tariff subject to review of each item of cost by the Hon'ble Commission as the proposal of the Petitioners are to service the liabilities of the ARC through tariff hike.*
- (24) *The Petitioners have failed miserably to implement and execute capital works. On one hand, they were opposed to GRIDCO signing distribution contracts and delayed execution of contractual documents for transfer of distribution related contracts to Petitioners, which delayed execution of Capital works unnecessarily. Again, the Petitioners are of the view that due to low paying capability of consumers of orissa, the cost of Rs.709.32 Crore of Assets transferred to them under the Transfer Scheme, 1998 cannot be passed through tariff. On the contrary, they are proposing a capital investment of Rs.1500 crore for system improvement of WESCO, NESCO and SOUTHCO which would be passed through tariff. Such level of investment is not commensurate with the reduction of Techno commercial loss proposed in the Business Plan. However, Commission may consider all such capital expenditure as may be necessary after detailed scrutiny.*
- (25) *GRIDCO has no comments to offer on the measures undertaken by BSES but the past achievements show that the measures undertaken were inadequate to improve the performance. However, the proposal is subjective in nature and not specific.*
- (26) *GRIDCO has no objection for introduction of the concept of AT&C loss except that the same should be based on the recommendations*

*of the Hon'ble Commission read with the recommendations of Committee of Independent Experts. Moreover, the reduction in AT&C loss during 2008-09 to 2012-13 seems to be on much lower side. In addition, AT&C loss assumed for the base year 2002-03 is not as per the order of the Commission. The loss level for 2002-03 should be the loss allowed by the Commission in its tariff order dated 19.4.2002.*

- (27) *The Petitioners are entitled to make submissions to the Commission with its Annual Revenue Requirement and its recovery through tariff. The Annual Revenue requirement will include all legitimate cost incurred by the companies for undertaking the business of distribution and retail supply, which may be considered by the Commission for recovery through the Retail Supply Tariff. The proposition made by the Petitioners to write off huge amount of liabilities and proposal to have marginal increase in the retail tariff in the 1<sup>st</sup> two years and no tariff increase in the subsequent years do not seem to be the right course of action and are not acceptable to GRIDCO.*
- (28) *In fact what is required is that the Petitioners should accept the distribution loss reduction and improvement in collection efficiency parameters prescribed by OERC read with the recommendations of Kanungo Committee. After achieving the same, any shortfall in the revenue requirement of the Petitioners to be allowed/to be recovered through tariff after ascertaining the reasonableness or otherwise of all the expenditure proposed under various heads. Whether the same should be recovered in a single year or over a period of time is the sole discretion of the Commission.*
- (29) *In view of the above, GRIDCO submitted that the Petitioner Company may be directed to revise the Business Plan submitted by them to comply with the above.*

### **Observations of the Commission**

21. It is worthwhile to go through the purpose of privatising the distribution functions in Orissa. The Shareholders Agreement at clause 2 under the heading "Purpose", the following points have been agreed to between GRIDCO, BSES and Distcos :-

*The Investor recognises that GRIDC's principal objectives in selling a majority stake in SOUTHCO/WESCO/NESCO to the Investor are to:*

- (a) *improve the quality of service to customers by improving the security and reliability of the supply system and make available electricity at a competitive price*
- (b) *improve operational efficiencies and reduce losses*
- (c) *contribute to the increased economic growth in Orissa through the provision of superior electricity supply*
- (d) *attract private investment into the distribution business*
- (e) *reduce the need for funding by the Government of Orissa of the electricity sector*
- (f) *create opportunities for secure and increasingly more rewarding employment for technically qualified personnel in the electricity industry in Orissa; and*
- (g) *provide a stable environment for employees which will offer them better opportunities for career development.*

22. The signatories to the agreement are CMD, GRIDCO, CMD, BSES taking over the majority shares and the representatives of Distribution Companies, i.e. SOUTHCO/NESCO/WESCO. In clause 8.1 under “Financing of SOUTHCO/NESCO/WESCO”, the respective Distribution Companies, the following provisions have been made and which have been agreed to by three parties.

- (a) *If SOUTHCO/NESCO/WESCO requires further financing, it shall use and the Investor shall procure that it uses, all reasonable endeavours to obtain such finance from a third party lender on reasonable commercial terms without breaching covenants in SOUTHCO/NESCO/WESCO’s loan documentation at the time of such further financing provided always that nothing shall oblige a Shareholder to provide any guarantee or security in respect thereof.*
- (b) *If and to the extent that it is not possible to obtain debt finance in accordance with clause 8.1 or by any other reasonable means, then such further financing may be sought by an issue of ordinary share capital at a price agreed with the Auditors as being a fair and reasonable price. Any such issue of ordinary share capital shall be offered on a pre-emptive basis to the existing Shareholders and subject to clause 3.2 shall include a right of renunciation by Shareholders.*

23. In the preamble of shareholders agreement in clause (M) it is stipulated that “GRIDCO and the Investors have agreed to enter into this Agreement in order to regulate the arrangements between them relating to the management and operation of SOUTHCO/NESCO/WESCO”.

24. Clause 5.6 of the Shareholders Agreement deals with the support required by the Distribution Companies from the Investors BSES Ltd. as under :-

*“The investor undertakes to provide to SOUTHCO/NESCO/WESCO the technical resources and capability as may be reasonably necessary to enable the business to operate efficiently.”*

25. Further, in the Share Acquisition Agreement dated 31.3.1999 clauses 6.5, 6.6 and 6.7 run as follows:-

*6.5 The Investor acknowledges that it has made its own independent investigation, inspection, analysis and evaluation of:-*

- (i) the business, assets and liabilities of SOUTHCO;*
- (ii) the regulatory regime in India and particularly in Orissa to which SOUTHCO/NESCO/WESCO is subject;*
- (iii) Orissa itself;*
- (iv) the legal, financial and taxation consequences of entering into this Agreement; and*
- (v) the provisions of the Act and all regulations made by OERC and the implications thereof*

*and has entered into this Agreement on the basis of such investigation, inspection, analysis and evaluation and not merely in reliance on any information or representation which may have been given or made available to it by GRIDCO, SOUTHCO/NESCO/WESCO or any of their officers, employees, consultants or advisers.*

*6.6 The Investor acknowledges that it has satisfied itself as to the status, state and condition of SOUTHCO/NESCO/WESCO’s assets and as to their fitness for purpose.*

6.7 *The Investor acknowledges that it has had full access to the Data Room and that there are no warranties or representations given or made by GRIDCO as to:-*

6.7.1 *the accuracy or comprehensiveness of any of the information or documents contained in the Data room; or*

6.7.2 *the reliability of any of the assumptions made in the preparation of any statements, estimates or projections which may have been given or made available to the Investor.”*

26. From a plain reading of the above stipulations in the two agreements namely, shareholders Agreement and Share Acquisition Agreement, it is quite evident that the Investor i.e. M/s. BSES has apprised itself of the ground conditions before acquiring 51% share holding in the three Distribution Companies, namely, SOUTHCO, NESCO and WESCO. It has also appraised itself of the purpose mentioned in clause 2.1 mentioned above. The contention of BSES, that the stipulation in Clause 8.1 of Shareholders Agreement use of the word endeavour does not obligate M/s BSES to arrange funds for smooth running of the company. We have referred to the meaning of word “endeavour” as defined in the Chambers Dictionary as under:-

“an exertion of power towards some object; an attempt or trial. To do one’s endeavour - to do one’s utmost – to do what one can or make it one’s duty.”

However, the provisions of Clause 8.1 read along with clause 2.1 of the Share Acquisition Agreement makes it obligatory on the part of the Investor to mobilise necessary funds for successful and smooth running of the business. Nothing also is on record to prove that M/s. BSES has made any endeavour with their strong balance sheet and clout in the money market to mobilise the required funds to run Distribution Companies smoothly. In addition, Clause 5.6 of the Shareholders Agreement is specific wherein BSES had undertaken to provide the required technical and managerial support to the distribution companies.

27. Let us now examine how far the Investor has succeeded in complying with other provisions in clause 2.1 of the Shareholders Agreement. In clause 2.1.2 of the said agreement the Investor recognises GRIDCO's principal objective in selling the majority stake in SOUTHCO/NESCO and WESCO to the investor is to improve operational efficiency and reduce loss in the company. In this connection it will be relevant to refer to the Kanungo Committee Report which, inter alia, records the T&D loss percentage as stated by three Distribution Companies under BSES management upto 2000-01.

<b>T&amp;D LOSS %</b>			
<b>Year</b>	<b>NESCO</b>	<b>WESCO</b>	<b>SOUTHCO</b>
1996-97	44.4	42.1	45.1
1997-98	42.1	38.4	35.2
1998-99	44.6	44.6	43.7
1999-00	43.4	44.2	41.9
2000-01	44.4	43.9	42.5
* 2001-02	51.0	46.4	40.5
* 2002-03	41.4	38.3	39.1

\* Figures for 2001-02 and 2002-03 as per performance review report.

As on 31<sup>st</sup> March 2003, the AT&C loss level is as follows.

2000-01	55.5	55.7	53.5
2001-02	64.9	57.9	53.6
2002-03	51.4	48.1	50.5

28. From the above, it may be noted that the loss reduction has been very insignificant from 1.4.1999 to till 31.03.2003. The main reasons of non-achievement in this regard is due to non completion of metering of feeders, LV side of transformers and consumer metering. It goes without saying that metering is the most critical item of work which combined with HVDS system and aerial bunched conductor will bring down the loss drastically. In fact, remarkable achievements have been made in Central Power Distribution Company Limited, Hyderabad, wherein 11% reduction in T&D loss in one year has taken place by taking the aforesaid measures. MDs of three Distribution Companies were invited by OERC to a presentation made by Mr. TVSN Prasad I.A.S., Chairman & Managing Director, Central Power Distribution Company Limited,

Hyderabad, detailing out steps taken by him to reduce losses, increase billing and collection.

29. In the said meeting, it was acknowledged that metering of feeders, metering of LV side transformers, consumer metering along with HVDS system, aerial bunched conductor and spot billing will reduce the loss significantly and increase the cash flow of the company substantially. The Kanungo Committee report had recommended the Distcos to complete metering by October, 2002. The Committee's observation in this regard is quoted bellow:-

*“100% consumer metering within a year and immediate metering at the low voltage terminals of step down transformers should be provided so that supplies into HT & LT systems can be quantified for purpose of proper energy accounting which is practically missing. This has not been done so far.”*

30. During the performance review meetings conducted bimonthly by the Commission, it was stated by three BSES managed companies that they need funds to the tune of Rs.28 Cr. in total for three companies for completion of metering work as envisaged above. They were advised by the Commission to mobilize this amount through their parent holding company and complete the work which according to them would take six months time. The investment will be paid back in the next six months through improved billing and collection. Unfortunately, no such step had been taken by the Distribution Companies or the parent company i.e. BSES. In the affidavit filed by the Distribution Companies and endorsed by the BSES, they plan to complete the feeder metering by 31.10.2003 and LV side transformer metering by 31.03.2004 along with consumer metering for the purpose of energy audit.

31. The Commission is conducting a bimonthly review of performance of the Distribution Companies and GRIDCO for more than one year. Last such review was conducted in the month of June'03 covering the performance for the FY 2002-03 and April to May 2003. The position of companies wise outstanding arrears from 01.4.1999 till 31.03.2003 are as under:-

NESCO	364.92 Crore
WESCO	378.95 Crore
SOUTHCO	294.83 Crore
	-----
	1038.70 Crore

32. These arrears have accumulated from the date of take over of the Distribution Companies by M/s. BSES i.e. from 01.4.99 upto 31.3.03. The Commission has been all along stressing upon these companies to make special drive for collection of these outstanding arrears on top priority basis. But neither any positive step has been taken to collect these arrears nor any worthwhile measure has been initiated to ascertain the uncollectable amounts, if any. The total outstanding arrears come to Rs.1038.70 Cr., which is quite substantial. If 50% of the amount is collected, GRIDCO's arrear dues can be liquidated and the companies will have sufficient funds at their disposal to take up further works.

33. Achievement in regard to the PMU works is very unsatisfactory. The percentage of works completed so far may be around 35-40%. It may be mentioned here that PMU works under distribution were planned to reduce technical and commercial losses in the distribution system and also improve the quality of supply to the consumers. The World Bank fund is scheduled to be closed by 31.01.2004. It is not understood how the companies are planning to complete the works within that time. The performance review report of each of the companies under BSES management has been regularly endorsed to the CMD, BSES for necessary action. But unfortunately M/s BSES have done precious little in this regard.

34. One of the mandates in the distribution privatisation was to bring professional skills into the management of the Distribution Companies. There is a specific and unconditional undertaking by BSES as investor in Clause 5.6 of the Shareholders Agreement to provide the required technical resources and capability to the distribution companies. Unfortunately except MD and a handful of officers, mobilisation of manpower at different streams in various discipline has not been done by BSES, as a

result of which the inefficiency, lack of consumer service and corrupt practices continue unabated. This position has continued from 01.4.99 onwards till date, despite the Commission having specifically pointed out the deficiencies in the various review meetings.

35. Therefore, in all the major fronts, performance of Distribution Companies have been dismally bad and no tangible measure has been taken by the parent company to improve the situation.

36. Although, Commission has not accepted the business plan as such filed by the Distribution Companies on 02.5.03, it would be in the interest of justice to address some of the major points/conditions raised by them so that no confusion exists in future.

(a) Merger of three BSES management company – The distribution functions in Orissa was divided into four zones which were now being managed by four companies. This was done with a purpose to bring in competition in distribution. Moreover, the Electricity Act, 2003 envisages promotion of a licensee within a licensed area of a company to promote competition. Therefore, the proposal of M/s. BSES to merge the three BSES management company can not be entertained.

(b) Creation of Assets Reconstruction Company – This proposal is made by M/s. BSES to transfer all the outstanding liabilities of the Distribution Companies and find out a modality to service the liabilities. During the course of hearing, the Commission had all along stressed that company wise outstanding BST bill dues of GRIDCO from 01.4.1999 to 31.3.2003 may be worked out and agreed to by GRIDCO and Distcos. Treatment of Delayed Payment Surcharge (DPS) should be in accordance with the formula adopted while securitising the NTPC dues. It appears that 60% DPS has been waived by NTPC to GRIDCO.

It appears from the filing of the three Distribution Companies that the State govt. and state govt. undertakings are to pay Rs.160 cr. arrears electricity dues to them. It is the Commission's suggestion that this amount may be paid by the State Govt. directly to

GRIDCO to clear the NTPC arrears dues on account of the Distribution Companies which would reduce to that extent the dues payable to GRIDCO. The balance amount may be serviced by directly paying GRIDCO, the current dues of State govt. and Govt. undertakings by the state Govt. which will be around Rs.60 crores annually. This arrangement will ensure liquidation of the balance outstanding dues in a regular manner. So there is no point in creating an Assets Reconstruction Company and dump the payables of GRIDCO in the said company without a viable mode of liquidating the same.

(c) Introduction of Anti-theft Law – This has already been taken care of in the Electricity Act, 2003 which has come into force from 10.06.03. Therefore, Distribution Companies and State Govt. should take appropriate steps for immediate implementation of the provisions of law.

(d) The companies have made certain claims about increase of A&G expenses, staff salaries, retail tariff, etc. which no regulator can commit in advance for future years. It may be recalled that the Commission has decided in its 2002-03 tariff order to adopt the long-term tariff strategy principles from 01.4.2003 onwards. According to the LTTS principles, all uncontrollable costs will be a pass through. There will be incentives/disincentives in reducing the expenses in controllable costs. Beyond this, no further commitment can be given.

(e) It appears that the World Bank loan, APDRP funds are not being passed on to them in time by the State Govt. for which they are unable to complete the works in time. It goes without saying that the World Bank funds and APDRP funds are made available for specific purposes. Therefore, it is necessary to pass it on to the companies as quickly as possible so that they do not take a plea of non-completion of the project due to delay in receipt of funds from the State Govt.

37. The petitioner companies during the course of hearing of the case mentioned that although State Govt. has issued Notification on 29.01.03 in acceptance of the Kanungo Committee Recommendations and correctives suggested by OERC, but those are yet to be implemented. For example, interest on World Bank loan is still being charged @13% instead of 30% grant and 70% loan which will mean an overall interest rate of 9.1% on the total amount. There has been over recovery of the interest by the State Govt. which

needs to be adjusted. Similarly, the PFC/REC loans are supposed to be charged at an interest rate of 8.5% as per the Notification, but it is being charged @13.887% thereby leading to recovery in excess of what is due. We checked the facts from GRIDCO which corroborated the above statement. GRIDCO also further stated that the payables and receivables of GRIDCO have also not been reconciled so far as per the Notification. Once it is reconciled, GRIDCO will receive a substantial amount from the State Govt.

38. It is unfortunate that State Govt. being owner of the entire power sector in Orissa has not implemented the recommendations and correctives accepted by it. The State Govt. has also filed before the Hon'ble High Court through an affidavit accepting the recommendations and correctives in case No. OJC 6751 of 2001 (L.I. Parija and others). It is imperative that the State Govt. should quickly implement the recommendations/correctives as per its Notification No.1068 dt.29.01.03, so that revised liabilities in respect of loans and receivables by GRIDCO are ascertained and further action is taken to liquidate them.

39. Let us examine the prayer of the three Distcos regarding relaxation of Escrow for payment of staff salary and urgent O&M expenses. Bulk Supply Agreement between GRIDCO and Distcos in Clause No.5.2 envisages that the Distcos will open an Irrevocable Revolving Letter of Credit (IRLC) backed by a default escrow in one of the Banks. The monthly BST bill of GRIDCO will be negotiated through this LC. If full payment is received within 48 hours, the Distcos will get a rebate of 2% on the payment received as per 2002-03 Tariff Order. In case LC does not operate, default escrow will be triggered and all receivables of the Distcos will come to the escrow account till the entire outstanding dues is liquidated.

40. Till this point of time the Distcos have not put in place a LC as per the Bulk Supply Agreement, as a result of which, the escrow mechanism has been operating. Since there are huge arrears of BST bill from 01.4.99 the entire receivables of Distcos are coming to escrow account and then to GRIDCO's account. It is interesting to note that if Distcos clear the BST bill through LC, they get a discount of 2% on the payables which is

a substantial benefit to them. Annual BST bill of the three BSES companies namely, SOUTHCO, NESCO & WESCO comes to Rs.950 crore together. They could save Rs.19 crore annually, if they pay within 48 hours. They will also avail a rebate of 1% if they pay BST bills within 15 days, which will amount to Rs.9.5 crore annually. This amount would be available to them for executing other works. This is something BSES management should have reckoned and ensured that the Distcos open the LC to avail the substantial amount of discount.

41. Escrow Agreement is a tripartite agreement. The signatories to the agreement are GRIDCO, Distcos & Union Bank of India, the escrow agent operating the account. Clause No.9 of the escrow agreement envisages that once Distcos securitise the outstanding arrears of GRIDCO from 1.4.199 till July, 2000, a month before escrow agreement was executed, this amount will not be recovered through escrow mechanism once parties agree for securitisation of the said amount. Only current BST bills will be covered. Had the securitisation taken place, the Distcos could have retained the excess amount after paying full BST bill and there would have been no need for escrow relaxation. BSES Ltd., the holding company should have ensured securitisation of the dues to avoid the present imbroligo.

42. The Distcos further stated that due to locking up of their entire receivables, they are not able to pay the staff salary regularly although their payment to GRIDCO is much more than the BST Bill. Secondly, they are not able to mobilise any loan capital because the lenders could not be provided with any security of payment as a parri passu charge against the receivables. The record available shows that the three BSES managed cos. i.e. SOUTHCO, NESCO and WESCO have paid to GRIDCO in FY 2002-03 a sum of Rs.938.73 crore against a BST bill of Rs.947.55 crore after meeting staff salaries. In the months April, May, June and July, 2003 against BST bill of Rs.329 Cr., they have paid Rs.330.5 Cr.

43. The Distcos further stated that each month unless the escrow is relaxed by GRIDCO/State Govt., they are unable to disburse the salaries. Delay in payment of salary

has led to labour unrest in some of the companies. They further, stated that it was unfair to withhold the salaries of staff when their payment to GRIDCO's BST bill is not affected and under similar circumstances, staff salaries of CESCO and GRIDCO are being regularly paid though CESCO is paying less than the BST bill and GRIDCO is a loss making company.

44. It is observed that CESCO is working under an administrator appointed by the Commission. As such, CESCO's position is not comparable.

45. The Hon'ble Court has attached utmost importance in clearing the staff salaries in preference to other payments in case of CESCO. The Payment of Wages Act, 1936 not only stipulates payment of staff salaries in preference to other payments but also states that staff salaries are paid by 10<sup>th</sup> of each month.

### **ORDER**

46. After going through the relevant records like Share Holders Agreement, Share Acquisition Agreement, the bidding documents and the very purpose of privatisation, the Commission is satisfied that M/s BSES as the majority stake holder in the three Distcos viz. SOUTHCO, NESCO, WESCO has the responsibility and obligation to ensure a satisfactory financial and physical performance of the three Distcos under its management. The word "Endeavour" in clause 8.1 of the Shareholders Agreement cannot be read or interpreted in isolation without the context of the facts leading to conclusion of such an agreement between the parties. Therefore, as desired by GRIDCO and financial institutions like PFC M/s. BSES has to provide an undertaking stating its commitment to ensure hundred percent BST bill payment by Distcos to GRIDCO from 01.4.03 onwards. M/s. BSES in its affidavit dt.20.8.03 reiterates that it will honour the commitments under the shareholders agreement and share acquisition agreement.

47. The outstanding dues against BST bill of GRIDCO from 01.4.99 the date of takeover the distribution business of three Distcos by BSES till 31.3.03 is to be worked out between GRIDCO and the respective Distcos. The servicing of this debt will be in the

manner as already outlined in Para 36(b) of this order under the heading, “observation of the Commission”.

48. During course of hearing it was brought to our notice that there was a dispute regarding adjustment of monthly payment of BST bill. Distcos claim that the monthly amount paid is to be set off against arrears where as GRIDCO maintains that this should be adjusted against current demand. As a result of this conflict there is a stalemate in arriving at an agreed figure of arrear dues. They were planning to approach the Commission to resolve the dispute. In order to save time and expedite the process of securitisation, we hereby clarify that this adjustment will be guided by the stipulation in clause 9 of Escrow Agreement where the arrears were proposed to be securitised. Obviously any payment received will be adjusted against the current bill.

In fact, Distcos in their business plan have stated that in FY 2002-03 against a current BST bill of Rs.947.55 crore they have paid Rs.938.73 Crore. They are also claiming escrow relaxation basing on the fact that they have made the payment after having funds for staff salary. Therefore, Commission is of the opinion that the monthly payment by Distcos should be adjusted against current dues. This exercise of securitisation of past dues for the period from 1.4.99 to 31.3.03 should be completed by 30.9.03 positively as already committed by the Distcos through affidavits. DPS should be treated in the manner already clarified in earlier paragraphs.

49. 100% Feeder metering is to be completed by 31.10.03 & 100% LV side transformer metering along with consumer metering to be completed by 31.03.04 positively as committed by the Distco. Respective Divisional officer, SDO, JE and line staff should be made accountable for the losses in the feeder, LT line based on these meter readings. A mechanism through computerization should be put in place to regularly monitor these meter readings. AT&C loss reduction should be as per benchmarks fixed by the Commission.

50. Completion of PMU works in time should be ensured so that investment made so far would yield benefits to the consumers by improving the quality of service. As no field work could be taken up during July to October due to agricultural operations and rains, World Bank may be approached by GRIDCO and Distcos to extend the date of World Bank loan from 31.01.04 at least 30.6.04.

51. The review team of the Commission visited the Distribution Companies and have noticed, among other things, that many sections are working without Junior Engineers. Some linemen are in charge of the sections. Even basic records were not available for inspection in these sections. Similarly, some SDOs are in charge of two subdivisions due to retirement. No internal audit is being carried out in the divisions and subdivisions and sections. Issues pertaining to employees are lying unattended. It is, therefore, very imperative that professional skills at various levels are mobilised quickly to fill up these vacancies for smooth functioning of the Distcos as a whole. Present situation is clearly contrary to clause 5.6 of the shareholders agreements whereunder BSES had undertaken to provide the requisite technical and managerial support. BSES during the proceedings repeatedly committed to recruit 15 personnel at various levels in the three companies. We are yet to know what has been done so far.

52. We urge the State Govt. to quickly implement the correctives as per the Notification 1098 dt.29.01.03 incorporating Kanungo Committee recommendations and OERC correctives. Govt. should also ensure prompt release of the World Bank and APDRP funds to Distcos so that they can take up the PMU and metering works.

This exercise may be completed by 30.09.2003.

53. The Electricity Act, 2003 contains detailed provisions for dealing with theft, etc. State Govt. should extend law and order support to the Distcos to enable them to collect the arrears as well as current dues. For successful implementation of anti theft law, special courts and police stations may be set up on priority basis.

54. By 31.10.03 the three distribution companies will open IRLC (Irrecoverable Revolving Letter of Credit) for liquidating the BST Bill of GRIDCO as per the Bulk Supply Agreement. M/s. BSES should ensure opening of such an account. Annual saving to the extent of 2% of BST bill will be available to the Distcos by this arrangement as per 2002-03 Tariff Order.

55. Payment of staff salaries cannot be withheld due to reasons mentioned earlier and court's observation in case of one of the Distcos. Therefore, the three BSES managed Distcos individually will retain the balance amount after paying the 100% BST bill of GRIDCO to meet the staff salary payments and urgent O&M costs. In case, there is some shortfall in one month, the same should be made good in the next month along with hundred percent current BST bill of that month. Two consecutive shortfalls in payment of BST will trigger operation of the escrow mechanism till the arrear shortfalls are liquidated. This arrangement does not absolve the Distcos of regular payment of the loan components, interest on NTPC bonds and other loan covenants as stipulated in the respective agreements.

56. The MDs of three distribution companies shall prepare a monthly progress report on the performance of the respective Distcos commencing from 01.10.03, and forward the report to the Chairman of the Distcos for necessary comments. The report along with the Chairman's comments is to be filed with the Commission within 10 days of the closure of the month. The report should highlight overall performance of each Distco in respect of :-

- a) 100% payment of BST bill of GRIDCO.
- b) Progress on securitisation of past dues of GRIDCO for the period from 01.4.99 to 31.3.2003.
- c) Metering of feeders, LV side of Transformers and consumer metering and computation of losses and steps taken for reduction of loss.
- d) Arrears collection.
- e) Fielding of professional skills by M/s. BSES.
- f) Funds flow from the State Govt. (World Bank and APDRP Fund).

- g) Implementation of the Correctives as per Notification 1068 dt.29.01.03.
- h) Any other issues, it is felt should be brought to the notice of the Commission.

57. The review report should be sent to CMD, BSES and to the Commission. We dispose of the case sincerely hoping that all the stakeholders would extend their support by promptly addressing various issues facing the Distcos and their actions should lead to an overall improvement in the performance of the Distcos so that consumers reap the benefits. M/s. BSES now under a new management should address the various issues and problems mentioned earlier in this order and demonstrate by action not only their commitment to the reform process in Orissa but also their intention to continue and carry forward the business in a professional manner to new heights as envisaged in the policy statement for reform by the Govt. of Orissa. The Investor, BSES Limited cannot take an indifferent attitude to the working of the three distribution Companies, its financial, technical and managerial requirements and other necessities for effective and sustained growth. During the proceedings the Commission was surprised to see the attitude on the part of BSES Ltd. that it has no legal responsibility for the working of the three distribution companies. Such an attitude is neither conducive to the proper power sector reforms in the state nor consistent with the stipulations agreed to by BSES Ltd. under various agreements signed with GRIDCO based on which the majority and controlling shares in the three distribution companies came to be vested in BSES Limited.

58. The Business Plan submitted by the three Distribution Companies has not been accepted for the reasons contained herein above. The three Distribution Companies and BSES Limited (the Investor), should submit a business plan for the effective working of the three Distribution Companies consistent with the observations contained in this Order. This business plan before submitting to the Commission, should be discussed by the three Distribution Companies with Grid Corporation of Orissa Limited and the State government and should be finalized taking into consideration the views expressed by them. It is needless to emphasize that the three Distribution Companies, supported by BSES Limited should have a satisfactory business plan if the distribution activities are to

revive and the Distribution Companies as Licensees duly discharge their functions. The business plan may be finalized and filed before the Commission within a period of fifteen days.

59. The Commission will monitor the implementation of the above directions from time to time.

**Sd/-(B.C. JENA)**  
**MEMBER**

**Sd/- (D.C. SAHOO)**  
**CHAIRMAN**