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ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
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CASE No. 42 of 2005, 55 of 2006 & 144 of 2010

Present: Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member

Date of Order: 16.05.2025

IN THE MATTER OF: Corrigendum to the Order dated 09.05.2025 passed in Case Nos. 42 of 2005, 55 of 2006 & 144 of 2010.

AND

IN THE MATTER OF: Compliance with the common judgment dated 05.10.2023 passed by the Hon'ble Supreme Court of India in the Civil Appeal No.414 of 2007 and connected Civil Appeal Nos. 417 & 759 of 2007, 463 & 572 of 2011, 2939-41 & 2942-43 of 2011, 3595-97 of 2011, 2674 of 2013, 10251-63 of 2013, 2625-38 of 2014, 3858-60 of 2014, 1380-82 of 2015 and 8037-39 of 2015 in the matter of different tariff Orders (Transmission, BST and RST) approved by the Commission, in so far as the Bulk Supply Tariff (BST) of GRIDCO for the FY 2006-07, FY 2007-08 and FY 2011-12 are concerned.

Corrigendum Order

The Commission, vide Order dated 09.05.2025 in Case No. 42 of 2005, 55 of 2006 & 144 of 2010, has passed the compliance order in respect of the common judgment dated 05.10.2023 passed by the Hon'ble Supreme Court of India in the Civil Appeal No.414 of 2007 and other connected Civil Appeals.

2. In the said Order, some typographical errors have crept in. The Commission, therefore, rectifies the same suo motu by passing an Order in the form of a corrigendum.
3. In page 25, Para 19, line 7 & 8, the following shall be read as “**vide order dated 20.03.2013 of this Commission in Case No.101 of 2012**” instead of “**vide order dated 20.03.2018 of this Commission in Case No.101 of 2013**”.
4. Except for the above, all other paragraphs of the said Order dated 09.05.2025 shall remain unaltered.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member



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Present : Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member

Case No. 42 of 2005, Case No.55 of 2006 & Case No. 144 of 2010

In the Matter of: Compliance with the common judgment dated 05.10.2023 passed by the Hon'ble Supreme Court of India in the Civil Appeal No.414 of 2007 and connected Civil Appeal Nos. 417 & 759 of 2007, 463 & 572 of 2011, 2939-41 & 2942-43 of 2011, 3595-97 of 2011, 2674 of 2013, 10251-63 of 2013, 2625-38 of 2014, 3858-60 of 2014, 1380-82 of 2015 and 8037-39 of 2015 in the matter of different tariff Orders (Transmission, BST and RST) approved by the Commission, in so far as the Bulk Supply Tariff (BST) of GRIDCO for the FY 2006-07, FY 2007-08 and FY 2011-12 are concerned.

AND

In the Matter of: Shri Susant Kumar Sarangi, Director, WESCO, NESCO & SOUTHCO Ltd. along with Shri Buddy Ranganadhan, Learned Senior Counsel, Shri Dushyant Minocha, Learned Advocate & Shri Hasan Murtaz, Learned Advocate on behalf of erstwhile DISCOMs (WESCO, NESCO & SOUTHCO Ltd.).

AND

In the Matter of: Shri R.K. Mehta, Learned Senior Counsel, Ms. Himanshi Andely, Advocate along with Shri B.K. Das, Sr. GM, Shri L.K. Mishra, DGM (F) R&T, Shri S.K. Sahoo, CFO & Ms. Susmita Mohanty, DGM on behalf of GRIDCO Ltd.

AND

In the Matter of: Ms. Sonali Pattnaik, Manager (Legal), DoE, Government of Odisha.

ORDER

Date of Hearing: 01.10.2024

Date of order:09.05.2025

The Hon'ble Supreme Court of India, vide the common Judgement dated 05.10.2023, while disposing of Civil Appeal No.414 of 2007 and connected Civil Appeal Nos. 417 & 759 of 2007, 463 & 572 of 2011, 2939-41 & 2942-43 of 2011, 3595-97 of 2011, 2674 of 2013, 10251-63 of 2013, 2625-38 of 2014, 3858-60 of 2014, 1380-82 of 2015 and 8037-39 of 2015 in the matter of different tariff Orders (Transmission tariff of OPTCL, BST of GRIDCO and RST of DISCOMs) approved by this Commission for different years, has been pleased to issue

the following directions in view of provisions of the Section 125 of the Electricity Act, 2003 and Section 100 of the Code Civil Procedure, 1908 involving question of law:

“i. The order impugned in Civil Appeal No.414 of 2007 is modified as stated in paragraphs 29 and 34 above. This appeal, only to that extent, is partly allowed;

ii. The order impugned in Civil Appeal No.417 of 2007 is modified in terms of paragraph 40 above. This appeal is partly allowed only to the above extent;

iii. The rest of the appeals are dismissed;

iv. The Commission shall proceed to implement the impugned orders of the Appellate Tribunal as modified above; and

v. The Commission shall pass consequential and incidental orders in accordance with law.”

2. In obedience to the above Judgment of Hon'ble the Apex Court in Civil Appeal No.414/2007, Civil Appeal Nos. 463 & 572 of 2011, Civil Appeal Nos. 2942 & 2943 of 2011 and Civil Appeal No. 2674 of 2013 relating to the Annual Revenue Requirement (ARR) and Bulk Supply Tariff (BST) matters of GRIDCO for the FY 2006-07, FY 2007-08 and FY 2011-12, the corresponding Cases such as this Commission Case Nos. 42/2005, 55/2006 & 144/2010 respectively were reopened. Accordingly, the Commission issued Public Notice dated 01.03.2024 to intimating the Respondents, who were parties in the original tariff proceedings before the Commission, to file their written submissions/objections or suggestions, as the case may be, if any. The representatives of respective erstwhile Distribution Companies i.e. WESCO, NESCO & SOUTHCO so also the representatives of GRIDCO, OPTCL, Department of Energy, Government of Odisha have appeared before the Commission and participated in hearing taken up on hybrid mode.
3. GRIDCO vide its initial written submission on 02.04.2024 (received on 03.04.2024) claimed Rs.3,039.41 Cr towards finance cost against loans availed for the period from FY 2015-16 to FY 2022-23. The claim towards differential Finance Costs to the tune of Rs.3039 crore as per Audited Accounts pertaining to the period from FY 2015-16 to FY 2022-23 is fully justified in view of Hon'ble Supreme Court's direction vide Para 29 of Common Judgment dated 05.10.2023. On account of consistent/persistent defaults by the DISCOMs in respect of Non-settlement of BSP, NTPC Bonds and other Securitized Dues by DISCOMs during the pre-revocation period, the financial obligation continued in the subsequent years towards repayment of previous Loans availed during the Pre-revocation period. This was disallowed by this Commission in the truing-up exercises of respective years.
4. The Respondents, erstwhile DISCOMs (WESCO, NESCO & SOUTHCO), have filed their initial written submission on 08.04.2024 and additional written submission on 29.08.2024, 02.09.2024 & 14.10.2024. The Respondents – Erstwhile DISCOMs, in their submission, have

raised four (4) issues namely (a) GRIDCO's claim of Rs.3039.41 Crs. pertaining to post license revocation period of erstwhile DISCOMs and three issues relating to claims of DISCOM i.e. (a) Principal repayment of loan, (b) Revenue from Export Earning and (c) Simultaneous Maximum Demand (SMD) pertaining to Annual Revenue Requirement (ARR) and Bulk Supply Tariff (BST) orders dated 23.03.2006 & 22.03.2007 of this Commission for the FY 2006-07 & FY 2007-08 respectively and to pass on consequential benefits to DISCOM as per the Judgment dated 05.10.2023 of the Hon'ble Apex Court pursuant to the orders dated 13.12.2006 & 09.11.2010 passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal Nos. 74, 75 & 76 of 2006 and in Appeals Nos. 58 & 59 of 2007. The claims are summarized as under:

a) GRIDCO's claim for Rs.3039.41 Crs. (Post revocation period of erstwhile DISCOMs)

The GRIDCO has claimed an amount of Rs.3039.41 Crs. from erstwhile DISCOMs towards finance cost against loans availed for the period from FY 2015-16 to FY 2022-23. In fact, there is absolutely no correlation between the monetary claims raised by GRIDCO for the period post FY 2015-16 (when admittedly the license of the erstwhile DISCOM(s) stood revoked) and the directions contained in the SC Judgment. The DISCOMs have prayed the Commission to dismiss the claims raised by GRIDCO.

b) Principal repayment of loan

The Respondents (WESCO NESCO & SOUTHCO), have submitted that, in the ARR of GRIDCO for the FY 2006-07 & FY 2007-08, this Commission had allowed Rs.480.12 Cr. & Rs.464.86 Cr. respectively towards principal repayment of loan relating to power purchase cost. This was challenged by them before the Hon'ble APTEL and the Hon'ble APTEL, vide their orders dated 13.12.2006 & 09.11.2010, had disallowed the principal repayment of loan as the same has already been passed through in the cost of energy supplied by GRIDCO in the past to the DISCOMs and that amount cannot be allowed to pass through twice through the tariff of the consumers as well as on the DISCOMs. If the Principal loan amount is allowed to pass through, it would amount to passing through the same burden twice on the consumers. Further, the above direction of the Hon'ble APTEL towards principal repayment of loan amounts has also been upheld by the Hon'ble Apex Court, vide their common judgment dated 05.10.2023. However, this principal repayment has already been transferred to DISCOMs through BSP in the ARR of respective years.

Therefore, the erstwhile DISCOMs have claimed Rs.2997.07 Cr. towards disallowed principal repayment of loan amount of Rs.944.98 Cr (Rs.480.12 Cr. + Rs.464.86 Cr.) for two years i.e. FY 2006-07 & FY 2007-08 and carrying cost (interest) of the same of Rs.2052.09 Cr from FY 2006-07 to FY 2023-24.

c) Export Sale of Power

The Respondents, the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO), have submitted that the Hon'ble APTEL, vide their order dated 13.12.2006, had directed this Commission to consider the export sale of power of Rs.943.00 Cr. as revenue earning of GRIDCO and to treat the same as receivable during the relevant year. Further, the above direction of the Hon'ble APTEL in respect of revenue earning from export sale of power has also been upheld by the Hon'ble Apex Court, vide their common judgment dated 05.10.2023. Therefore, the erstwhile DISCOMS have claimed Rs.3,052.26 Cr. towards earning from export sale of power of Rs.943.00 Cr and carrying cost (Interest) of Rs.2,109.26 Cr. from FY 2006-07 to FY 2023-24 on the aforesaid earning from export sale of power by GRIDCO.

d) Simultaneous Maximum Demand (SMD)

The Respondents, erstwhile DISCOMs (WESCO NESCO & SOUTHCO), have submitted that, the Hon'ble APTEL, vide the judgment dated 13.12.2006, had directed this Commission to consider Rs.43.00 Cr as excess revenue earned by GRIDCO from proportionate increase in average Maximum Demand on account of 11% increase in the power purchase by DISCOMs during FY 2006-07. Further, the above direction of the Hon'ble APTEL towards excess revenue earning from SMD (Rs.43 Crs.) has also been upheld by the Hon'ble Apex Court, vide their common judgment dated 05.10.2023. The Respondents – erstwhile DISCOMs have submitted that assuming without admitting that Principal Repayment of loan as not being treated as a component of expense, revenue from exports sales of power and Simultaneous Maximum Demand (SMD) have been treated as items of revenue/receivables in the truing-up order even then GRIDCO is liable to pay holding cost of the erstwhile DISCOM(s) till the date of the truing up order passed by this Commission. Further, beyond the period of FY 2011-12, the quantum of holding cost will attract carrying cost thereon till the date of actual payment/realization by GRIDCO. The contents of the same are not being repeated for the sake of brevity. All the remaining contents in the reply are specifically denied for lack of clarity in the truing-up order dated 19.03.2012 passed by the Commission. Accordingly, the erstwhile DISCOMS have

claimed Rs.139.17 Cr. towards revenue earning of Rs.43.00 Cr. from SMD and its carrying cost (Interest) of Rs.96.17 Cr. from FY 2006-07 to FY 2023-24.

In view of the above, the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO), have claimed Rs.6,188.50 Cr (Rs.2997.07 Cr. + Rs.3052.26 Cr. +Rs.139.17Cr) and accordingly, have prayed before the Commission to grant consequential benefits to them and to factor in the past power purchase dues of GRIDCO.

5. In response to the above claims of erstwhile DISCOMs (WESCO NESCO & SOUTHCO), vide their submissions dated 09.04.2024, 29.08.2024 & 30.09.2024, GRIDCO has filed its counter reply on 09.08.2024 (received on 12.08.2024), 13.09.2024 (received on 17.09.2024) and 17.10.2024 respectively. After conclusion of hearing, an additional submission was made by the erstwhile DISCOMs on 14.10.2024. GRIDCO has submitted that, the claim of R-Infra managed DISCOMs (WESCO NESCO & SOUTHCO) is completely misconceived, baseless, misleading and denied in toto. In the matter of Truing-up of WESCO, NESCO, SOUTHCO, CESU, GRIDCO and OPTCL, vide Order dated 19.03.2012 in Case Nos. 29, 30 & 31 of 2007 and in Case Nos. 6, 7 & 8 of 2012, this Commission had decided the methodology of Truing-up of accounts of GRIDCO. Accordingly, the Commission was following the said methodology and the Truing up of account of GRIDCO was undertaken up to the financial year 2010-11 basing on the Audited Accounts of GRIDCO. Therefore, the aforesaid claims of R-Infra managed DISCOMs (WESCO NESCO & SOUTHCO) have already attained finality through Truing-up of expenses of GRIDCO for the respective financial year, vide Order dated 19.03.2012, of this Commission in Case of 6 of 2012. Further, the aforesaid Methodology / Approaches adopted by the Commission has never been challenged by R-Infra managed DISCOMs before any Forum till date and thereby has attained finality. The summary of replies of GRIDCO in respect of three issues/ claims raised by R-Infra managed DISCOMs are as under:

a) **Principal Repayment of Loan**

GRIDCO has submitted that even though the Commission had approved and allowed Principal Repayment obligation of Rs.480.12 Cr. & Rs. 464.86 Cr. in the ARR & BSP order of GRIDCO for the FY 2006-07 & FY 2007-08 respectively, the same was not considered by the Commission during the Truing up exercise vide Order dated 19.03.2012 in Case of 6 of 2012. There is no question of DISCOMs bearing the loan through BSP since the Commission has not recognized the loan in subsequent truing up

order. Therefore, the claim raised by R-Infra managed DISCOMs regarding principal repayment of loan does not survive and is liable to be rejected.

b) **Export Sales of Power**

GRIDCO has submitted that, R-Infra managed DISCOMs have submitted that extra revenue accrued to GRIDCO on account of export sale of surplus power during FY 2006-07 would result in lower power procurement costs for GRIDCO. The aforesaid submission by the R-Infra managed DISCOMs is completely erroneous and baseless as the Commission had already carried out the truing -up exercises basing on the actual revenue earned from sale of surplus power by GRIDCO as per the audited accounts of respective financial year. Therefore, this issue has also attained finality and does not survive anymore. Further, in this regard, relevant findings of Hon'ble APTEL in Appeal No. 58 & 59 of 2007 with regard to ARR & BSP Order for FY 2007-08 and Hon'ble Supreme Court in CA No. 414 of 2007 are reproduced below:

Relevant Extract of APTEL's directions with regard to ARR & BSP Order for FY 2007-08

Quote:

25. SUMMARY OF OUR FINDINGS:

XXXXXXXXXXXXXXXXXX

(ii) *The next issue is with regard to treatment of income from the sale of energy by GRIDCO outside the State. According to the Appellant, the State Commission has arbitrarily taken out the revenue attributable to the export sales by GRIDCO from the Annual Revenue Requirement. This contention cannot be accepted. It has been held by the State Commission that the GRIDCO is free to purchase additional power from any source and trade in the open market. The extra revenue earned through trading of power by GRIDCO shall bridge the gap to some extent in Annual Revenue Requirement for FY 2007-08 and also reduce the burden of the consumers of the State by way of liquidating the power liabilities. In the present case, the State Commission has not considered the cost of power to be purchased as well as the revenue to be earned from trading of surplus power outside the State. Admittedly, the State Commission has taken up the truing up exercises and in such a truing up, the State Commission has taken into consideration the actual receipts and expenditure of GRIDCO. In the said Order, the State Commission has clearly stated that income from export of power is accounted for in the truing-up exercises after availability of Audited Accounts. Therefore, this issue of revenue from sale of surplus powers does not survive.*

Unquote

Relevant extract of Hon'ble Supreme Court's Judgment dated 05.10.2023 in Civil Appeal No. 414 of 2007:

Quote

“34. We may note here that while passing an order pursuant to the order of remand, all the contentions based on the findings of the Appellate Tribunal and the Commission for subsequent years, as approved by this Court, must be taken into consideration by the Commission. If, in subsequent orders as approved by this Court, different criteria or different principle was applied, submissions based on the same can always be canvassed in the proceedings pursuant to the order of remand”.

Unquote

Thus, it is submitted that revenue earned from sale of surplus power by GRIDCO was duly considered in the accounts and factored in the costs incurred for the respective financial year by GRIDCO as well as in the Truing-up exercise by the Commission and the same was passed through in tariff of the State Consumers. The actual audited expenses were trued-up against the actual revenue (including revenue from export sale of power) complying with the directions of Hon’ble APTEL which has been upheld by Hon’ble Supreme Court. There is no further scope for erstwhile R-Infra DISCOMs to claim the revenue earned from export sale of surplus power at this point of time. Therefore, this issue does not survive anymore and the claim being devoid of merit is liable to be rejected.

c) Simultaneous Maximum Demand

GRIDCO has submitted that, the claim of R-Infra DISCOMs with regard to increased revenue on account of simultaneous maximum demand in proportion to the increase in quantum of energy of 11%, yielding an additional sum of Rs.43.00 Cr annually to GRIDCO is misconceived and untenable. As per ARR & BST Orders of GRIDCO passed by the Commission, Two Part Tariff was in force till FY:2007-08 which stipulated that BSP revenue comprises both Demand Charges as well as Energy Charges levied at approved Tariff. The SMD projections approved by the Commission were estimated figures but the Demand Charges were claimed on Actual SMD at applicable rate. As per the principle adopted by the Commission in the Truing-up Order dated 19.03.2012 in Case No. 6 of 2012, actual revenue earned by GRIDCO including the revenue from actual SMD were duly Trued-up. While truing up the revenue as per “Actual SMD”, the Commission had duly addressed the question of the alleged 11% rise /increase in demand for the whole year. Therefore, this issue raised by R-Infra DISCOMs no more survives.

Since the Commission has already considered all the above issues in Truing-up exercises of GRIDCO for FY 2006-07 and FY 2007-08, the claims of R-Infra managed

DISCOMs, vide submissions dated 09.04.2024 & 29.08.2024, pertaining to FY 2006-07 & FY 2007-08 do not survive are liable to be rejected.

GRIDCO submits that the principle of truing up is equally applicable to all the above issues of loan repayment, export sales and SMD for the FY 2006-07 & FY 2007-08, so also in the later years.

6. In response to the directions of the Hon'ble Supreme Court of India in their Judgment dated 05.10.2023 in Civil Appeal No. 414 of 2007 along with connected Civil Appeals, the Department of Energy, Government of Odisha, vide their letter dated 20.11.2024, has submitted their views as under:

Quote

1. *That as per judgment dt. 5th October 2023, of the Hon'ble Supreme Court passed in Civil Appeal No. 414 of 2007 the Commission vide Notice dated 18.12.2023, re-opened cases including the cases in respect of BSP of GRIDCO and RST of erstwhile DISCOMs.*
2. *That Civil Appeal No. 414 of 2007 and other Appeals tagged thereto included Tariff Matters for the past years of various Licensees of State Power Sector including erstwhile DISCOMs, GRIDCO and OPTCL as under:*
 - I. *Determination of ARR & BSP of GRIDCO for FY 2006-07, 2007-08, 2011-12;*
 - II. *Determination of ARR & Transmission tariff of OPTCL for FY 2006-07 and 2007-08;*
 - III. *Determination of ARR & RST Tariff of DISCOMs from FY 2006-07 to FY 2014-15 except FY 2009-10, Truing Up of DISCOMs from FY 2000-01 to 2010-11.*
3. *Taking shelter of the Judgment dated 05.10.2023 in CA No. 414 of 2007 of Hon'ble Supreme Court and other Connected Cases, vide affidavit dated 09.04.2024, Respondent, R-Infra Managed DISCOMs have claimed an alleged amount of Rs.4,745.46 Crores. Further, R-Infra Managed DISCOMs have claimed an alleged amount of Rs.17,536.65 Crores and prayed for consequential Benefits to be passed on to them against RST Orders of the Commission in respect of erstwhile DISCOMs from FY 2006-07 to FY 2014-15, except FY 2009-10 and Truing-up Orders from FY 2000-01 to FY 2010-11.*
4. *Department of Energy, Government of Odisha denies all allegations, averments and submissions contained in Submissions dated 09.04.2024 filed by R-Infra managed DISCOMs which are contrary to or inconsistent with the record and/or what is stated hereinafter.*
5. *The Submissions of Respondent R-Infra managed DISCOMs are patently erroneous, misconceived and misleading.*
6. *xxx xxx xxx xxx*
7. *That it is submitted that most of the issues with regard to RST of FY 2006-07 to FY 2014-15 except FY 2009-10 raised in the submissions of R-Infra managed DISCOMs have been dealt with in the Judgment dated 21.08.2017 of APTEL in Appeal No. 64 of 2015 and therefore attained finality and needs to be interference.*

8. *That Hon'ble Commission prudently finalise the tariff every year as per rule and regulation. Tariff is already fixed as per existing Rules and Regulations by Hon'ble OERC which may not be tinkered with.*
9. *That, it is submitted that, as per the Judgment of the Hon'ble Supreme Court, which is sought to be implemented through the present proceedings, there are no direction qua the Department of Energy, Govt. of Odisha. However, in the interest of justice and for proper adjudication of the matter; the Department humbly prays that the Commission may pass order in conformity with the judgment dt. 05.10.2023 of the Hon'ble Supreme Court in Civil Appeal No.414 of 2007, keeping in view the larger interest of the consumer of the state and not to burden the current consumers by increasing BSP or RST dues of the past period if any.*
10. *Anything not specifically admitted or dealt with shall be deemed to have been denied.*
xxx xxx xxx xxx
11. xxx xxx xxx xxx

Unquote

7. The Commission heard the matter in extenso in hybrid mode and perused the written submissions of the parties. GRIDCO had approached the Hon'ble Supreme Court (a) on the matter relating to the ARR & BST order of this Commission for the FY 2006-07, vide Civil Appeal No. 414/2007 against the order dated 13.12.2006 of the Hon'ble APTEL passed in Appeal Nos. 74, 75 & 76 of 2006 filed by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO), and (b) on the matter relating to the ARR & BST order of this Commission for the FY 2007-08, vide Civil Appeal Nos. 463 & 572 of 2011 against the order dated 09.11.2010 of the Hon'ble APTEL passed in Appeal Nos. 58 & 59 of 2007 filed by the erstwhile DISCOMs (WESCO & NESCO). Similarly, the erstwhile DISCOMs (WESCO & NESCO) had approached the Hon'ble Apex Court on the matter relating to the ARR & BST order of this Commission for the FY 2007-08 in Civil Appeal Nos. 2942 & 2943 of 2011 against the order dated 09.11.2010 of the Hon'ble APTEL arising out of Appeal Nos. 58 & 59 of 2007. This Commission, vide their Civil Appeal No. 2674 of 2013, had also approached the Hon'ble Supreme Court on the matter relating to the ARR & BST order of the Commission for the FY 2011-12, against the order dated 29.11.2012 of the Hon'ble APTEL passed in Appeal No. 116 of 2011 filed by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) jointly.
8. In Civil Appeal No. 414/2007 pertaining to ARR & BST order of this Commission for the FY 2006-07, the Hon'ble Supreme Court has directed as follows:

"CIVIL APPEAL NO.414 OF 2007

27. *In this appeal, one of the issues raised was of locus standi of DISCOMS to challenge BST orders. We fail to understand how the issue of locus standi arises. DISCOMS always have the locus to challenge the orders of the Commission, which affect them. Whether they are adversely affected by the fixation of ARR and BST of GRIDCO will depend on the facts of each case. The RST determination of DISCOMS depends on BST determination. Therefore, the DISCOMS can be aggrieved parties as regards the*

determination of BST. Therefore, the plea of absence of locus standi cannot be accepted. This appeal deals with the issue of the determination of ARR and BST of GRIDCO for the year 2006-2007. The Appellate Tribunal decided the appeals preferred by DISCOMS by the impugned order. There were eight questions framed by the Appellate Tribunal, which read thus:

- “A. Whether OERC acted illegally and with a mis-direction in allowing Rs.480 crores, being the principal loan amount to pass through in the BST tariff of the GRIDCO?*
 - B. Whether the export earnings of power by GRIDCO has been rightly assessed? Whether the exclusion of export earnings from the Revenue of GRIDCO is illegal and consequently the annual revenue requirement and tariff determination are liable to be modified?*
 - C. Whether the failure to undertake trueing up exercise by Regulatory Commission for the previous years suffers with illegality and liable to be interfered and consequential direction requires to be issued?*
 - D. Whether quantum of power procurement estimated by the GRIDCO and approved by the Regulator without reference to the actuals is liable to be interfered and modified?*
 - E. Whether the cost of procurement as approved by the Regulatory Commission is liable to be interfered as excessive, arbitrary and suffers with errors?*
 - F. Whether passing of higher interest burden to the Discoms is sustainable or liable to be interfered?*
 - G. Whether the determination of simultaneous maximum demand (SMD) in MVA and the consequence of the demand and energy charged by OERC is sustainable or liable to be interfered?*
 - H. Whether GRIDCO, the 1st respondent has a surplus of Rs.618 Crores as contended by the appellants? And whether the said amount should be directed to be utilized to reduce BST and reduce the gaps in ARR?”*
- 28. On Question A regarding allowing Rs.480 crores, being the principal loan amount, to pass through in BST of GRIDCO, the Appellate Tribunal noted the contention that the loan had to be raised by GRIDCO as BST arrears have not been cleared by the DISCOMS. It was also noted that GRIDCO has no fixed assets, and therefore, repayment of the loan cannot be made through depreciation. The Appellate Tribunal also noted the contention that a substantial portion of the loan was required to be raised due to non-payment of dues by DISCOMS. The Appellate Tribunal observed that the amount due and payable by DISCOMS to GRIDCO has to be recovered by GRIDCO in a manner known to law. GRIDCO claimed the amount of Rs.480.12 crores towards repayment of the principal loan amount and not the interest on the amount borrowed. The Appellate Tribunal rightly observed that the amount of Rs.480.12 crores has already been passed through the cost of energy supplied in the past to DISCOMS. The Appellate Tribunal, therefore, observed that the amount cannot be allowed to pass through twice through the tariff on the consumers as well as on the DISCOMS. The cost of energy supplied for the earlier period has already been passed through in BST which is recovered by DISCOMS through RST. The loan was allegedly taken by GRIDCO as the amounts due were not paid by DISCOMS. If the principal loan amount was again allowed to pass through, it will amount to passing through the same burden twice on the consumers. We find no error in the view taken by the Appellate Tribunal when it came to the conclusion that it is for GRIDCO to recover the said amount from DISCOMS in accordance with the law.*

29. *However, in subsequent orders for subsequent years, the Appellate Tribunal held that the interest payable on the loan, being the cost, may be allowed to pass through. We have confirmed the view while dealing with the other impugned orders. The interest cannot be equated with the principal loan amount, as the interest will amount to the cost incurred by GRIDCO. However, the interest burden can be passed on to DISCOMS in proportion of their outstandings. Therefore, while passing a fresh order in terms of the final order, the Commission will have to allow the interest on the loan to pass through, as observed above, but the principal loan amount cannot be allowed to pass through.*
30. *On Question B, the Appellate Tribunal found that the revenue earned by GRIDCO from trading of surplus power outside the State cannot be excluded from the earnings of GRIDCO. The Appellate Tribunal held that when the entire purchase of power by GRIDCO was considered and allowed as expenditure, there was no reason to exclude the power which has been exported, on which GRIDCO has earned a substantial amount. The income received by GRIDCO by the export of power is revenue. It must be treated as receivable during the relevant year. In earlier years, this was the approach adopted by the Commission. The Appellate Tribunal found that GRIDCO had earned Rs.943 crores by export of power, which was an uncontroverted factual position. We cannot overturn this finding of fact. To that extent, the Appellate Tribunal is right. In fact, the Appellate Tribunal found that during the earlier years, the export earnings of GRIDCO were taken into consideration.*
31. *On the issue regarding Simultaneous Maximum Demand (SMD) in Question G, the Appellate Tribunal observed that while 11% increase in the purchase of power by DISCOMS in the financial year 2006-2007 has been approved as compared to the purchase approved for the financial year 2005-2006, the same has not been taken into consideration for determination of SMD. Therefore, a direction was issued to the Commission to increase in proportion to the increase in quantum of energy of 11 per cent, as this increase may yield an additional sum of Rs.43 crores annually to GRIDCO.*
32. *On Question C, the Appellate Tribunal rightly directed the Commission to undertake the truing-up exercise for the earlier two financial years.*
33. *Ultimately, the Appellate Tribunal directed de novo consideration of the determination of ARR and BST of GRIDCO for the financial year 2006-2007 in the light of the observations made in the impugned judgment.*
34. *We may note here that while passing an order pursuant to the order of remand, all the contentions based on the findings of the Appellate Tribunal and the Commission for subsequent years, as approved by this Court, must be taken into consideration by the Commission. If, in subsequent orders as approved by this Court, different criteria or different principle was applied, submissions based on the same can always be canvassed in the proceedings pursuant to the order of remand.*
35. *Therefore, as far as Civil Appeal No.414 of 2007 is concerned, we find no merit in the appeal except what is held in paragraph nos.29 and 34 above.”*
9. Thus, as far as the Civil Appeal No.414 of 2007 is concerned, vide paragraph 29 of the judgement dated 05.10.2023, the Hon’ble Apex Court has directed that:

“..... while passing a fresh order in terms of the final order, the Commission will have to allow the interest on the loan to pass through but the principal loan amount cannot be allowed to pass through” and similarly at para 34, it is directed that **“..... while passing an order pursuant to the order of remand, all the**

contentions based on the findings of the Appellate Tribunal and the Commission for subsequent years, as approved by this Court, must be taken into consideration by the Commission. If, in subsequent orders as approved by this Court, different criteria or different principle was applied, submissions based on the same can always be canvassed in the proceedings pursuant to the order of remand”.

While taking up compliance of the above directions of the Hon’ble Apex Court, it becomes pertinent to mention that during the pendency of Civil Appeal No. 414 of 2007 before the Hon’ble Apex Court, this Commission had carried out the Truing up exercise of each component of ARR and BST of GRIDCO for the FY 1996-97 to 2010-11 and had passed Order dated 19.03.2012 in Case No. 06 of 2012. The Truing up exercise having since been completed, the estimation in the ARR & BST order for the FY 2006-07, which was subject matter of challenge before Hon’ble APTEL, has lost its relevance. While approving the ARR, the different expenditure is estimated for the future years. But during truing up, the audited account of the relevant year reflecting the actual expenditure/income is made available with the Commission and the uncontrollable cost which could not be properly estimated during approval of ARR is allowed after prudence check. Therefore, the actual income (including actual revenue earned from the export sale of power and actual revenue earned from SMD) and expenditure (other than the repayment of principal loan amount) basing on the audited accounts was taken into consideration, the details of which are available in Annexure-2 of the Order dated 19.03.2012 passed in Case No.06 of 2012. It is pertinent to mention here that the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) had not challenged the Truing up order of GRIDCO dated 19.03.2012 passed by this Commission in Case No. 06 of 2012 in any Forum. GRIDCO had also accepted the Truing -up order dated 19.03.2012 made by this Commission as it was carried out basing on the audited accounts of GRIDCO. Therefore, the present claims of Rs.4745.46 Cr (i.e., principal repayment of loan amount of Rs.480.12 Cr, revenue from export sale of power of Rs.943.00Cr, excess revenue earned from SMD of Rs.43.00 Cr and carrying cost of Rs.3279.34 Cr from FY 2006-07 to FY 2023-24) by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) relating to the ARR & BST Order of the Commission for the FY 2006-07 have lost its relevance as those claims have already been addressed in Truing up order dated 19.03.2012 of this Commission passed in Case No. 06 of 2012. As a result, the DISCOMs have no claim in this regard now. With these observations, the

directions of the Hon'ble Supreme Court in Civil Appeal No. 414 of 2007 are compiled with, so far as the claims of the DISCOMs for Rs.4745.46 Cr. with regard to Loan repayment, Export revenue and SMD are concerned. Hence, no further action in respect of direction of the Hon'ble Supreme Court in Civil Appeal No. 414 of 2007 is required.

10. Now, we proceed to give effect to the order of Hon'ble Apex Court in Civil Appeal Nos. 463 & 572 of 2011 and Civil Appeal Nos. 2942 & 2943 of 2011 (Cross Appeals on the issues which are not the subject matter of Civil Appeal Nos. 463 & 572 of 2011) arising out of the order of the Hon'ble APTEL in Appeal Nos. 58 & 59 of 2007 filed by erstwhile DISCOMs (WESCO & NESCO) which are relating to the ARR & BST order of the Commission for the FY 2007-08. In Civil Appeal Nos. 463 & 572 of 2011 and 2942 & 2943 of 2011, the Hon'ble Apex Court has directed as follows:

“CIVIL APPEAL NO.463 AND 572 OF 2011

36. *These appeals arise out of the determination of ARR and BST of GRIDCO for the financial year 2007-2008. DISCOMS challenged the order of the Commission. On the issue of the locus of DISCOMS to challenge the ARR and BST of GRIDCO, the contention of DISCOMS was that though BST payable by DISCOMS was increasing every year, there was no corresponding increase in RST. In the facts of the case, in paragraphs 15 and 16, the Appellate Tribunal rightly held that DISCOMS had the locus to challenge the order of the Commission fixing BST and ARR of GRIDCO. The Appellate Tribunal rightly observed that there was an uncovered revenue gap in the ARR of DISCOMS. Therefore, if they succeed in getting BST reduced, they will have more financial cushion to absorb expenses.*
37. *As regards the Commission's action of allowing a sum of Rs.464.86 crores towards repayment of the principal loan, the Appellate Tribunal held against the appellant-GRIDCO. We have already approved the finding on the same issue for the earlier financial year 2006-2007. The Appellate Tribunal rightly observed that GRIDCO has to recover the outstanding amounts from DISCOMS by a method known to law. While recording the finding on the principal loan amount, the Appellate Tribunal rightly held that the interest will have to be taken as the cost of the loan, which should be included in the ARR but not the principal loan amount. Therefore, we find no error at all in the view taken by the Appellate Tribunal.”*

“CIVIL APPEAL NOS.2942-43 OF 2011

38. *These appeals are in the nature of cross-appeals against the same impugned order, which is the subject matter of challenge in Civil Appeal nos.463 and 572 of 2011. These appeals are mainly on the issue of truing-up exercise. The contention of DISCOMS, which are the appellants in these appeals, was that they have taken over the business from 1st April 1999 and therefore, the period of 1996-1997 and 1997-1998 should not be taken into consideration by the Commission for truing-up exercise. The appellants have relied upon certain clauses of the transfer scheme. They have also relied upon the National Electric Policy, which provided that in case of privatisation, the successor entity should not be made to suffer liabilities in the past. A perusal of the order of the Appellate Authority shows that in one paragraph, this issue has been considered without*

referring to legal and factual contentions raised by DISCOMS, especially on the National Electric Policy and the effect of the scheme. However, we find that the order of revocation of the licenses granted to DISCOMS has been confirmed, and the Appellate Tribunal has observed that in the truing-up exercise, no liability is being imposed on the DISCOMS, and the ultimate benefit or burden of truing-up is passed on to the consumers as a part of the tariff. Hence, no interference can be made in these appeals.”

11. The Civil Appeal Nos. 2942 & 2943 of 2011 have been dismissed by the Hon’ble Apex Court vide their common judgment dated 05.10.2023. The Civil Appeal No.463 & 576 of 2011 arising out of the orders dated 09.11.2010 of Hon’ble APTEL in Appeal Nos. 58 & 59 of 2007 have been confirmed by the Hon’ble Apex Court. The Hon’ble APTEL in the said orders dated 09.11.2010 had directed on various issues raised by the Appellant namely (a) underestimation of the quantum of power procurement, (b) treatment of income from the sale of energy by GRIDCO outside the State, (c) interest on loan, (d) repayment of principal of loan taken by GRIDCO mainly for payment to generators, (e) truing up exercise for the period for FY 1996-97 to 1998-99, (f) miscellaneous income and (g) allocation of interest. The detail findings on the above matter by the Hon’ble APTEL are quoted below:

Quote

“25. SUMMARY OF OUR FINDINGS:

- (i) *The 1st issue is relating to the under estimate of the quantum of power procurement. According to the Appellant, the quantum of availability of power from Hydro Power Stations of the State should have been computed on the basis of actual drawal from the said stations during the previous years and not on the basis of the design energy. This contention is misconceived. The availability of hydro power can never be estimated on the basis of the actual generation during the previous year. It cannot be disputed that the quantum of availability of hydro power depends entirely on the rainfall which being a natural phenomenon is always uncertain. Therefore, it will be extremely risky to estimate the quantum of generation on the basis of the actual generation in the previous year. As such, the State Commission cannot formulate Tariff on the basis of uncertainties which are dependent on vagaries of nature. It is contended by the appellants that the Tariff Regulations of the State Commission do not provide for the principle of determination of Generation Tariff. Therefore, the provisions relating to the determination of Tariff for retail sale could have applied. This contention is not valid since the said Regulation cannot be applied to generation Tariff as the Regulation provides for estimation of Quantum of Power purchases of Distribution Companies on the basis of the actual purchases made during the previous year. As per the Regulations and provisions of the Act, the State Commission shall be guided by the Central Commission Regulations for determination of Tariff applicable to the Generation Companies. In the present case the State Commission gave a finding on this issue only on the basis of the earlier Order of the State Commission determining the Annual Revenue Requirement (ARR) and Generation Tariff Order for the Financial Year 2007-08. The said Order has never been challenged by the Appellants. Further, for the FY 2007-08, the Quantum of Power was determined by the State Commission in the truing up exercise on the basis of the projections of the Generators and the State Commission has already taken the actual power purchase and power sale up to FY 2008-09 as per*

the Audited Accounts. In view of the above circumstances, this Issue of Quantum of Power Purchase does not survive.

- (ii) *The next issue is with regard to treatment of income from the sale of energy by GRIDCO outside the State. According to the Appellant, the State Commission has arbitrarily taken out the revenue attributable to the export sales by GRIDCO from the Annual Revenue Requirement. This contention cannot be accepted. It has been held by the State Commission that the GRIDCO is free to purchase additional power from any source and trade in the open market. The extra revenue earned through trading of power by GRIDCO shall bridge the gap to some extent in Annual Revenue Requirement for FY 2007-08 and also reduce the burden of the consumers of the State by way of liquidating the power liabilities. In the present case, the State Commission has not considered the cost of power to be purchased as well as the revenue to be earned from trading of surplus power outside the State. Admittedly, the State Commission has taken up the truing up exercises and in such a truing up, the State Commission has taken into consideration the actual receipts and expenditure of GRIDCO. In the said Order, the State Commission has clearly stated that income from export of power is accounted for in the truing-up exercises after availability of Audited Accounts. Therefore, this issue of revenue from sale of surplus powers does not survive.*
- (iii) *The next issue is with regard to Interest on Loan. According to the Appellant, the State Commission has allowed interest at the rate of 8.5% but in the computation Table-40, interest has been allowed at the rate of 12.15 %. Although GRIDCO has proposed a sum of Rs.4.60 crores as interest in the Annual Revenue Requirement application, subsequently, the same was re-worked by State Commission on the basis of documents and arrived at correct figure of Rs.4.69 crores. Similarly, even though GRIDCO originally proposed a sum of Rs.17.08 crores as interest in the ARR application in respect of pension, gratuity funds, subsequently, the same was re-worked by the State Commission on the basis of documents produced by the Respondents and arrived at the correct figure of Rs.19.09 crores. Therefore, the errors pointed out by the Appellant were rectified by the State Commission during the process of scrutiny. Therefore, this issue also has no merit.*
- (iv) *The next issue is repayment of principal of loan taken by GRIDCO mainly for payment to generators on account of non-payment of dues to be paid by the distribution companies.*

 - (A) *According to the Appellant, the State Commission has committed error in allowing a sum of Rs. 464.86 crores towards repayment of principal and this is against the principles of accounting and against the directions which have been given by the Tribunal in its earlier judgment dated 13.12.2006. This amount pertains to amounts payable by the distribution companies to GRIDCO in the past towards the Bulk Supply which was already included in the ARRs of previous years. Hence including the same in the current year would amount to double counting. It is also submitted by the appellants that in the past the full payments to GRIDCO could not be made since the State Commission had not allowed tariff to cover the entire cost of the distribution companies. While the Bulk Supply Price had been constantly increasing, there was no corresponding increase in the Retail Supply Tariff.*
 - (B) *According to the Learned Counsel for the Respondent, normally if the loan is taken to create an asset, depreciation is allowed for repayment of principal component of loan. However, in this case the loans were taken for payment of the Power Purchase Bills of Generators, due to non-payment of Power Purchase Bills of GRIDCO by the Distribution Licensees and not for creating any assets. It is*

because the distribution companies failed to make the payment of the outstanding dues, the State Commission had to devise a mechanism for repayment of the principal.

- (C) *In our opinion, the ARR should include the 'cost' incurred by the licensee in carrying out its business. The cost of loan is 'interest'. Similarly cost of equity is 'ROE'. This interest and ROE can be booked to Revenue Requirement or Tariff. The principal repayment of loan cannot form a part of revenue requirement. In the present case charging the principal amount of loan taken for generator's bill by GRIDCO to the revenue requirement will result in double counting of expenses. Also the outstanding amount still remains as Liability in the accounts of Distribution Licensees and Asset in the books of accounts of GRIDCO. This booking of principal repayment of loan to revenue requirement is wrong and against the fundamental accounting principles. Thus this point is decided in favour of the Appellants*

The State Commission in order to ensure that GRIDCO meets its obligation to pay the principal amount of loan has devised a methodology which is against the accounting principles and results in double payment. In our opinion, the correct remedy has to be found in the root of the problem, i.e. inability of the Distribution Licensees to pay the past arrears due to their poor financial health. The State Commission is directed to take necessary action on the directions given by the Tribunal in its judgment dated 08.11.2010 in Appeals No. 52 to 54 of 2007 on the ARR of the Distribution Licensees for FY 2007-08 and in para 21 (F) & (G) of this judgment.

- (v) *The next issue is with regard to truing-up exercise. According to the Appellants, the Appellants took over the business of the Distribution Companies with effect from 1.4.1999. As such, the period from 1996-97 to 1998-99 should not have been taken into consideration by the State Commission in for the purpose of truing up under the Transfer Scheme. The issue of truing-up in the present case has been appreciated in the context of peculiar facts and circumstances in the State of Orissa. Truing up is adjustment of Actual Revenue & Expenditure against the approved Revenue & Expenditure based on estimation by the State Commission. An entity in management of the Licensee is not relevant for truing up as an entity may keep changing hands but the juristic entity remains uninterrupted. If the bulk supply tariff goes up, there has to be increase in the retail supply tariff in direct proportion. The GRIDCO as licensee has carried out the business of transmission and retail supply of electricity from 1.4.1996. With disinvestment of Distribution Companies business from GRIDCO to the four Distribution Companies from 1.4.1999, the GRIDCO carried on the business of transmission and bulk supply of electricity in Orissa. The above disinvestment of business of GRIDCO to Distribution Companies was made pursuant to the Orissa Electricity Distribution Companies Rules, 1998. Subsequently, on enactment of the Electricity Act, 2003, the business of trading and transmission of electricity by GRIDCO was transferred to Orissa Power Transmission Corporation Limited from 1.4.2005. According to the Appellant, as a consequence of truing-up for FY 1996-97 and FY 1998-99, the State Commission has imposed a liability prior to 1.4.1999 on the Distribution Licensees contrary to 1998-99 Transfer Scheme. This submission is not correct since as a result of the truing up, no liability is being imposed on the Distribution Companies like the appellants and the ultimate benefit or burden of truing up is passed on to the consumer as part of the Tariff. Therefore, the submission of the appellant with regard to the truing up does not deserve acceptance.*

- (vi) *The next issue is with regard to Miscellaneous Income. According to the Appellant, the State Commission ought to have considered the same amount of Miscellaneous Income in the Annual Revenue Requirement (ARR) of GRIDCO on the basis of the Actual Miscellaneous Income in the previous year. The Miscellaneous Income in the case of GRIDCO and the Distribution Companies stand on a different footing since the component of the Miscellaneous Income is quite different amongst these two cases. The income on account of Short-Term Deposits cannot be anticipated since the State Commission is always leaving a large gap in the Tariff in FY 2006-07 and FY 2007-08 which the years were exceptionally good years for hydel generation. On account of good monsoon, the GRIDCO earned some surplus which was prudently invested. The surplus earned as well as interest earned by the GRIDCO from past have admittedly been trued up by the State Commission. Therefore, this point also would fail.*
- (vii) *The next issue is with reference to the Allocation of interest. According to the Appellant, the interest on loan ought to be allocated to the Distribution Companies not on the basis of the quantum of energy purchased by them but on the basis of their respective outstanding. It is to be pointed out that the interest on loan is a component of Annual Revenue Requirement of GRIDCO. The total Annual Revenue Requirement of GRIDCO is allocated among the Distribution Companies in equitable manner so as to fix uniform Retail Supply Tariff for different categories of consumer States. For this reason, the State Commission has fixed different rates of Bulk Supply Tariff for the four Distribution Licensees in the State which have different mix of consumers load. Moreover, if the interest on loan is allocated on the basis of respective outstanding, then the Central Electricity Supply Utility will also be affected which is not a party to this Appeal. Therefore, there is no merit in this contention also.*
26. *In the light of the above findings, except the 4th issue i.e. Repayment of the principal, we conclude that the reasonings given by the State Commission in the impugned order on other issues do not suffer from any infirmity. In view of above we set aside the order to the extent of 4th issue, i.e. Repayment of principal and confirm the findings on all the other issues. The State Commission is directed to take necessary action as stated in para 21 (F) & (G) above."*

Unquote

12. In view of the above judgment dated 09.11.2010 of the Hon'ble APTEL, so far as the Appeals of the erstwhile DISCOMs (WESCO & NESCO) in Appeal Nos. 58 & 59 of 2007 pertaining to ARR & BST order dated 22.03.2007 of GRIDCO for the FY 2007-08 passed in Case No. 55 of 2006 of this Commission are concerned, the Hon'ble APTEL has confirmed the order of this Commission in respect of (a) Underestimation of quantum of power procurement, (b) Sale of energy by GRIDCO outside the State, (c) Interest on Loan, (d) Truing-up, (e) Miscellaneous Income & the (f) Allocation of interest. However, at para 26, the Hon'ble APTEL has directed that

"In the light of the above findings, except the 4th issue i.e. Repayment of the principal, we conclude that the reasonings given by the State Commission in the impugned order on other issues do not suffer from any infirmity. In view of above we set aside the order to the extent the 4th issue, i.e. Repayment of principal and

confirm the findings on all the other issues. The State Commission is directed to take necessary action as stated in para 21 (F) & (G) above.”

In the context of the above directions of the Hon’ble APTEL, it is pertinent to mention that during the pendency of Civil Appeal Nos. 463 & 572 of 2007 & Civil Appeal Nos. 2942 & 2943 of 2011 before the Hon’ble Apex Court, this Commission had carried out Truing up exercise of each component of ARR and BST of GRIDCO for the FY 1996-97 to FY 2010-11 and had passed Order dated 19.03.2012 in Case No. 06 of 2012. As the Truing up exercise has been completed, the estimation in the ARR & BST order for the FY 2007-08, which was the subject matter of challenge before the Hon’ble APTEL, on the ground of non-consideration of Repayment of principal loan amount of Rs.464.86 Cr. in the ARR has lost its relevance. It is so because, the exercise of Truing up of Accounts involved consideration of the actual income and expenditure (other than the Repayment of principal loan amount of Rs.464.86 Cr.) on the basis of Audited Accounts passed in Case No. 06 of 2012. The erstwhile DISCOMs (WESCO & NESCO) have not challenged the Truing -up order dated 19.03.2012 passed by this Commission in Case No.06 of 2012 before any Forum, and GRIDCO has also accepted the Truing up order dated 19.03.2012 passed by this Commission, as it was carried out basing on the Audited Accounts of GRIDCO. In view of the above, the present claims of Rs.1443.04 Cr (i.e., Principal repayment of loan amount of Rs.464.86 Cr. and carrying cost of Rs.978.18 Cr. from FY 2006-07 to FY 2023-24) by the erstwhile DISCOMs (WESCO & NESCO) relating to the ARR & BST Order of the Commission for the FY 2007-08 have lost relevance as the said claims have already been addressed and disposed of vide the Truing up order dated 19.03.2012 passed in Case No.06 of 2012. With above observations, the directions of the Hon’ble Apex Court in Civil Appeal Nos. 463 & 572 of 2011 and Civil Appeal Nos. 2942 & 2943 of 2011, which in turn, confirmed the order dated 09.11.2010 of the Hon’ble APTEL passed in Appeal Nos. 58 & 59 of 2007, are complied with.

13. Now, we proceed to give effect to the order of Hon’ble Apex Court in Civil Appeal Nos. 2674 of 2013 arising out of the order dated 29.11.2012 of the Hon’ble APTEL in Appeal No. 116 of 2011 which are relating to the ARR & BST order of this Commission for the FY 2011-12. In Civil Appeal Nos. 2674 of 2013, in their order dated 05.10.2023, the Hon’ble Apex Court has directed as follows:

“CIVIL APPEAL NO. 2674 OF 2013

39. *Now, we turn to Civil Appeal No.2674 of 2013, wherein the challenge is to the order dated 29th November 2012 passed by the Appellate Tribunal. This is an appeal preferred by the Commission. The Appellate Tribunal partly allowed the appeal*

preferred by DISCOMS. The appeal arose out of the order dated 18th March 2011 passed by the Commission on an application made by GRIDCO for fixing BST for the financial year 2011-2012. By the said order, BST was substantially increased. The Appellate Tribunal, by the impugned order, rejected the contention of DISCOMS that the Commission had committed an error in estimating a lower quantum of power available to GRIDCO. However, on the issue of whether the Commission committed an error in not considering the sale of surplus power outside the State by GRIDCO, the Appellate Tribunal held in favour of DISCOMS on the basis of its earlier decision for the financial year 2009-2010 by the judgment dated 1st March 2012. The sale of surplus power will have to be treated as the revenue of GRIDCO. We have already approved this view in the earlier part of the judgment. Even on the issue of doing the true-up exercise of GRIDCO provisionally, the Appellate Tribunal relied upon its earlier order dated 9th November 2010 and answered the issue in terms of the said decision. Incidentally, we have held by this judgment that the view taken by the Appellate Tribunal in Appeal Nos.58 and 59 of 2007 was correct. Again, relying upon its judgment dated 9th November 2010, the Appellate Tribunal held that repayment of the principal amount of the loan could not be allowed to pass through in the ARR of GRIDCO. We have already approved the said view. Moreover, the finding of the Commission on the issue of allowing excess payment by GRIDCO towards FPA for NTPC bonds was answered by the Appellate Tribunal against the appellant before it, thereby, confirming the view of the Commission. As in other cases, we are wondering how the Commission could challenge the order of the Appellate Tribunal, by which validity of its own order was tested. Therefore, we decline to entertain the appeal.”

14. Civil Appeal No. 2674 of 2013 has been dismissed by the Hon’ble Apex Court confirming the order dated 29.11.2012 of the Hon’ble APTEL in Appeal No. 116 of 2011. The Hon’ble APTEL in the said Appeal had directed as follows:

“xxxxxxxxxxxx

6. *We shall now deal with each of the above issues one by one. The first issue before us for consideration is as to **whether the Commission was right in estimating a lower quantum of power availability to GRIDCO?***

7. *The issue in question for consideration had also been raised by the Appellants in Appeal No. 58 & 59 of 2007 and this Tribunal in its judgment dated 9.11.2010 has decided the same against the Appellants in the following terms:*

“18. The first issue is regarding under-estimation of the quantum of the power procurement.

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8. *In view of the decision arrived at by this Tribunal in Appeal No. 58 & 59 of 2007, this point is decided against the Appellant accordingly.*
9. *The second issue for consideration is as to **whether the Commission was right in not considering the sale of surplus power outside the State by GRIDCO?***
10. *This issue had also been raised earlier by the Appellants in Appeal Nos. 88 of 2009 and also by the 2nd Respondent in Appeal No. 106 of 2010 against the BSP orders passed by the Commission for FY 2008-09 and 2010-11*

respectively. This Tribunal in its Judgment dated 1st March 2012 in Appeal No.106 of 2010 had confirmed the principle laid down by it in its earlier judgment dated 30th August 2011 on the same issue in Appeal no. 88 of 2009 filed by the GRIDCO against the BSP order for FY 2009-10. The relevant extract of judgment dated 1st March 2012 is quoted below:

“10. In respect of issue No.(e), i.e. **“Bridging of the Revenue Gap”**, the same is covered by Para No.8.5 of the above judgment. Para 8.5 of the above judgment is quoted below:

“8.5. We agree with the contention of learned counsel for the Appellant that the State Commission should have decided the BSP after considering income from the estimated sale of surplus energy. The actual income from UI and trading for FY 2007-08 may not give the correct picture for FY 2009-10 due to growth in demand. For estimating income from the trading of surplus power available in the state for FY 2009-10, the assessment of requirement and availability of electricity for the FY 2009-10 has to be made. In this case the State Commission appears to have decided to leave the revenue gap with the intent of keeping the BSP at the current level. The proposed support of the State Government to the distribution licensees for augmentation of distribution system is not likely to impact the BSP. The Judgment of the Tribunal dated 9.11.2010 in Appeal Nos. 58 and 59 of 2007 referred to by the Respondents will not be of any help in this matter. In view of above we decide this issue in favour of the Appellant and direct the State Commission to true up the financials of the Appellant for FY2009-10 and allow actual costs with the carrying cost”. {emphasis added)

11. In view of the decision arrived at by this Tribunal in Appeal no. 88 of 2009 and confirmed in Appeal no. 106 of 2010, this point is decided in favour of the Appellant.
12. Third issue for consideration is as to **whether the Commission was right in doing the Truing Up for GRIDCO provisionally.**
13. The issues has been considered and decided by the Full Bench of this Tribunal in Appeal no. 58 & 59 of 2007 as under: -

“ 22. The next issue is with regard to truing up.

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(I) The regulatory treatment of past losses and liabilities for the purpose of determination of tariff does not place the distribution companies in any adverse position because of bulk supply tariff fixed by the State Commission becomes power purchase cost to the distribution companies. This cost is allowed to be recovered by the distribution companies in full in the tariff fixed by the State Commission while approving the retail supply tariff. It is contended by the distribution companies that as a consequence of the truing-up for FY 1996-97 and FY 1998-99, the State Commission is seeking to impose liabilities prior to 01.04.1999 on the distribution licensees contrary to the 1998 Transfer Scheme. This submission is not correct since as a result of the truing-up no liability is being imposed on the distribution companies and the ultimate benefit or burden of truing up is passed on to the consumer as a part of tariff. Therefore, the submission of the Appellants with regard to truing-up does not deserve acceptance.”

14. The learned counsel for the Appellants submitted that this issue is also pending in the Appeal No. 2942-43 of 2011 before the Hon'ble Supreme

Court. As the Hon'ble Supreme Court has not granted any stay, the decision of this Tribunal in Appeal No. 58 & 59 of 2007 shall be applicable in this case also.

15. *The fourth issue for our consideration is as to **whether the Commission was right in allowing the repayment of loan principal as pass thru in the ARR of GRIDCO?***
16. *This issue is also covered by the earlier Full Bench judgment of this Tribunal in its Judgment dated 09-11-2010 in Appeals No. 58 & 59 of 2007 relating to the Bulk Supply Tariff passed by the Commission for the FY 2007-08. Relevant extracts of the above judgment is quoted below:*

"21...

(E) In our opinion, the Annual Revenue Requirement should include the 'cost' incurred by the licensees in carrying out its business. The cost of loan is the 'interest' paid by the licensees. Similarly the 'cost' of equity is 'Return on Equity'. Thus interest and ROE can be booked to Revenue Requirement or Tariff. The principal repayment of loan or the capital cost of a project cannot form a part of revenue requirement. In the present case, charging the principal amount of loan taken for payment of generator's bill by GRIDCO to its revenue requirement will result in double counting of the expenses. Let us take an example. Suppose GRIDCO took a loan of Rs. 100/- to pay the generator's bill during 2000-01. The power purchase cost of Rs. 100/- will be included in the ARR of 2000-01 and accordingly the Bulk Supply Tariff of GRIDCO will be determined. Suppose the repayment of principal falls due @ 20/- per annum during 5 years period from 2001-02 to 2005-06. Thus principal of Rs. 100/- is repaid between 2001-02 to 2005-06 by GRIDCO. If principal repayment of Rs. 20/- per annum i.e. Rs. 100/- is charged to ARR during 2001-02 to 2005-06 along with interest on loan, it would result in GRIDCO recovering Rs. 200/-, i.e. Power Purchase cost of Rs. 100/- recovered in ARR of 2000-01 and repayment of principal of Rs. 100/- included in ARR of subsequent 5 years against the actual Power Purchase Cost of Rs. 100/-. Further, the outstanding of Rs. 100/- of Distribution Licensees will still remain in the books of accounts of Distribution Licensees as Liability and in the books of accounts of GRIDCO as Asset. Thus booking of principal repayment of loan to revenue requirement is wrong and against the fundamental accounting principles. Neither receipt of loan nor its principal repayment could be included in the ARR as cost or revenue.

(F) The State Commission in order to ensure that GRIDCO meets its obligation to pay the principal amount of loan has devised a methodology which is against the accounting principles. In our opinion, the correct remedy has to be found in the root of the problem i.e. the inability of the Distribution Licensees to make good the past arrears of power purchase dues due to their poor financial health. The Tribunal in its judgment dated 08.11.2010 in Appeals No. 52 to 54 of 2007 filed by the appellants Distribution Licenses have set aside. the order of the Commission in ARRs and retail supply tariff for FY 2007-08. It has been noted that the monies collected by the Distribution Licensees are escrowed to GRIDCO to service Bulk Supply Tariff Bills and loan repayment. Consequently the Distribution Licensees have no control over cash flows and have to approach the State Commission and GRIDCO for relaxation of escrow to meet essential expenses. The distribution system assets are also hypothecated to GRIDCO making it difficult for them

to raise loans from Financial Institutions for infusion of funds for improvement of distribution system. While the State Commission has set up distribution loss targets as per the Long Term Tariff Strategy order dated 18.06.2003 and Business Plan order dated 28.02.2005 but provisions for financial restructuring and targets of infusion of funds were not implemented. This Tribunal in the said judgment has directed the State Commission to revisit the issue of Truing up and amortization of regulatory assets.

(G) Though in normal circumstances we are not in favour of creating the regulatory assets under business as usual conditions, in the present circumstances where the principal payment of the loans taken by GRIDCO in the past have to be made by GRIDCO and the Distribution Companies are not in a position to pay, creation of regulatory assets in the ARR of the Distribution Licensees would be a viable option. These regulatory assets could be serviced through the Retail Supply Tariff in future so that payments could be made by the Distribution Licensees to GRIDCO for past dues as per the directions of the State Commission. This will ensure that the past arrears are wiped off in the books of accounts and balance sheet of GRIDCO and the Distribution Licensees. This point is accordingly decided in favour of the appellants. We direct the State Commission to take necessary action in the matter as per the above directions and directions given in the Tribunal's judgment dated 08.11.2010 in Appeal Nos. 52 to 54 of 2007".

17. *So, the above decision of the Tribunal would squarely apply to the present facts of the case as well. Accordingly, this point is answered in favour of the Appellant.*
 18. *The fifth issue is as to **whether the Commission was right in allowing Rs.311.56 Crores as pass through towards excess payment made by GRIDCO towards FPA for NTPC Stations?***
 19. *The learned counsel for the Appellant made few elaborate submissions to indicate that the FPA for NTPC stations should not have been allowed by the Commission. We are not inclined to accept the submissions of the Appellant. This Tribunal in catena of judgments has held that actual power purchase costs have to be allowed subject to prudence check. In this case the generator concerned is NTPC whose tariff is fixed by the Central Commission and also the formula for FPA has been specified in the Central Commissions Regulations. Under these circumstances, the Commission has rightly allowed the FPA charges. The issue is accordingly decided against the Appellant.*
 20. *In view of our above findings, the Appeal is partly allowed as indicated above. No order as to costs."*
15. So far as the Appeal No.116 of 2011 of the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) pertaining to ARR & BST order dated 18.03.2011 in respect of GRIDCO for FY 2011-12 passed in Case No. 144 of 2010 of this Commission is concerned, the Hon'ble APTEL, vide its order dated 29.11.2012, had confirmed the order of this Commission in respect of allowing Rs.311.56 Cr. as pass through towards excess payment made by GRIDCO towards FPA for NTPC Stations. Further, regarding quantum of power availability to GRIDCO & carrying the Truing Up exercise, the Hon'ble APTEL has also confirmed the

order dated 18.03.2011 of this Commission in line with their order dated 09.11.2010 passed in Appeal Nos. 58 & 59 of 2007. However, at para 10 of the order dated 29.11.2012, the Hon'ble APTEL had directed this Commission to consider the sale of surplus power outside the State by GRIDCO in favour of the Appellant-DISCOMs and Truing up of the financials of the Appellant for the FY 2009-10 and allow the actual costs with the carrying cost. Further, in respect of allowing the repayment of loan principal as pass through in the ARR of GRIDCO, the Hon'ble APTEL at Para 15 to 17 of their order dated 29.11.2012 has pronounced in favour of the DISCOMs. Considering the above directions of the Hon'ble APTEL, it is pertinent to mention here that during the pendency of Civil Appeal No. 2674 of 2013 before the Hon'ble Apex Court, this Commission had carried out the Truing up of accounts of GRIDCO for the FY 2011-12 along with ARR & BST order dated 20.03.2013 passed in Case No. 101 of 2012 for the FY 2013-14. As the truing up exercise was completed on actual basis, the estimation in the ARR & BST order for the FY 2011-12, which was the subject matter of challenge before the Hon'ble APTEL on the ground of passing on the benefits of sale of surplus power outside the State by GRIDCO and non-consideration of Repayment of principal Loan amount under certain items of ARR, has lost its relevance. This is so because, the Truing up of accounts has taken into consideration, the actual income and expenditure basing on the audited accounts of GRIDCO for the FY 2011-12 in Case No. 101 of 2012. This has no relationship with the estimation made by this Commission on the same head in the ARR & BST tariff order for the FY 2011-12. Further, the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) have not challenged the Truing -up order dated 20.03.2013 passed by this Commission in Case No. 101 of 2012 before any Forum till date. Further, GRIDCO has accepted the Truing -up order dated 20.03.2013 passed by this Commission as it was carried out basing on the actual income and expenditure as per the audited accounts of GRIDCO. Therefore, the Truing up order dated 20.03.2013 passed in Case No. 101 of 2012 has attained Finality. In the light of the above discussions, it is now concluded that the direction of the Hon'ble APTEL in Appeal No. 116 of 2011 relating to the ARR & BST order for the FY 2011-12 has been complied, which in turn establishes the compliance of the direction of the Hon'ble Supreme Court in Civil Appeal No. 2674 of 2013.

16. Further, the Commission observes that as the Truing-up exercises for the FY 2006-07, FY 2007-08 and FY 2011-12 have been completed, the directions of the Hon'ble APTEL & the Hon'ble Apex Court in their Judgments will have no impact on the ARR & BST Tariff order of GRIDCO for above financial years. Further, the Commission has also accepted the views of GRIDCO that the claims of erstwhile DISCOMs (WESCO, NESCO & SOUTHCO), vide their

submissions dated 09.04.2024, 29.08.2024 and 14.10.2024, do not survive as all the issues were considered by the Commission in the respective Truing-up exercise for the FY 2006-07, FY 2007-08 & FY 2011-12 of GRIDCO. Therefore, the claims raised by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) under different heads (i.e., Principal repayment of loan, Revenue from export sale of power & Excess revenue earned from SMD) along with carrying cost from FY 2006-07 to FY 2023-24 amounting of Rs.6,188.50 Cr are hereby disallowed by this Commission.

17. Further, GRIDCO in its submission dated 02.04.2024 (received on 03.04.2024) has claimed Rs.3039.41 Cr towards Finance cost for the period from FY 2015-16 to FY 2022-23 against the loan availed by GRIDCO. The Commission observes that, this claim of GRIDCO does not pertain to the common judgment dated 05.10.2023 of the Hon'ble Apex Court in Civil Appeal No. 414 of 2007, where the Hon'ble Apex Court has observed that the interest cannot be equated with the principal loan amount, as the interest will amount to the cost incurred by GRIDCO and the interest of loan (i.e. cost of loan) can be booked to Revenue Requirement or tariff as pass through in ARR & BST order, whereas the principal loan amount cannot form part of Revenue Requirement. It is fact that though loan incurred by GRIDCO was recognised by this Commission as a part of the Power purchase cost, interest on such loan was partly allowed as pass through in the ARR & BST order for FY 2006-07, on the ground that GRIDCO was to receive huge amount from the erstwhile DISCOMs towards BST outstanding along with principal amount of loan & interest thereof and receivable from other sources. However, the interest on loan paid by GRIDCO as per the audited accounts for the FY 2006-07 was considered later during truing up exercise. But this is not the case of loan incurred by GRIDCO from FY 2015-16 onwards which was dealt in the tariff order of respective year(s). Moreover, the aforesaid claim of Rs.3039.41 Crore by GRIDCO, towards finance cost for the period from FY 2015-16 to FY 2022-23, is not the part of the compliance of direction of the Hon'ble Apex Court in Civil Appeal No. 414 of 2007, which relates to the FY 2006-07 only. The present order is limited to the compliance of the direction of the Hon'ble Apex Court for the respective years i.e. FY 2006-07, FY 2007-08 and FY 2011-12.
18. The Commission had approved and allowed Principal Repayment of (a) Rs.480.12 Cr. in the ARR & BST order of GRIDCO for FY 2006-07 and (b) Rs.464.86 Cr. under "Carry forward of Previous Losses/Pass through of past losses and uncovered expenses" in the ARR & BST order of GRIDCO for FY 2007-08. But the same amount was not considered vide order dated 19.03.2012 during Truing up exercise in respect of GRIDCO for FY 2006-07 & FY 2007-08.

It is to mention here that the principal repayment of loan was not allowed in the ARR & BST order of GRIDCO for the FY 2011-12.

19. In view of the analysis in preceding paragraphs, it is concluded that all the claims raised by the erstwhile DISCOMs (WESCO, NESCO & SOUTHCO) namely Principal repayment of loan - Rs.944.98 Cr., Revenue earned from trading of surplus power outside the State - Rs.943 Cr. & Revenue earning from Simultaneous Maximum Demand (SMD) - Rs.43 Cr. had attained finality through Truing up exercise of GRIDCO for the period from FY 1996-97 to FY 2010-11, vide order dated 19.03.2012 of this Commission passed in Case No.06 of 2012 & in the Truing up exercise for the FY 2011-12, vide order dated 20.03.2018 of this Commission in Case No.101 of 2013, wherein the actual receipt & expenditure of GRIDCO have been taken into consideration and moreover, the said orders have not been challenged by the erstwhile DISCOMs.
20. In view of above observations and analysis, the order of the Hon'ble Supreme Court in Civil Appeal No. 414 of 2007, Civil Appeal Nos. 463 of 2011 & 572 of 2011, Civil Appeal Nos. 2942-43 of 2011 and Civil Appeal No. 2674 of 2013 are complied with and implemented. Therefore, the Case No. 42 of 2005 (ARR & BST order of the Commission for the FY 2006-07), Case No.55 of 2006 (ARR & BST order of the Commission for the FY 2007-08) and Case No.144 of 2010 (ARR & BST order of the Commission for the FY 2011-12) are hereby disposed of in so far as the matters pertaining to the ARR & BST Order of GRIDCO for the FY 2006-07, FY 2007-08 & FY 2011-12 are concerned.

Sd/-
(S. K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Member