
had requested GRIDCO to make an advance payment of Rs.100 crore which would enable them to avail consistent coal supply from MCL. Further, vide its letter dated 30.12.2019, M/s. Vedanta Ltd. had informed GRIDCO that M/s. MCL had agreed to resume coal supply from 1st week of January, 2020. Accordingly, the maximum possible generation of Unit-II to the extent of linkage coal would be supplied to GRIDCO in terms of the PPA dated 19.12.2012. Further, M/s. Vedanta Ltd. vide its letter dated 01.01.2020 had informed SLDC that the supply of linkage coal has been resumed by M/s. MCL and Unit-II is expected to be synchronised to the grid with scheduling of power from 00:00 hours of 06.01.2020.

2. M/s. Vedanta Ltd. has submitted that as per the notification dated 28.06.2019 of Ministry of Power, GoI, the distribution licensees have to establish payment security mechanism by opening and maintaining adequate Letter of Credit (LC) under power purchase agreement or alternatively making day-ahead advance payment for the scheduled quantum of power. The NLDC and RLDC shall despatch power only after it is intimated by the generating company and distribution companies that an LC for desired quantum of power has been opened and copies are made available to the concerned generating company. RLDC shall despatch electricity only upto the quantity equivalent of the value of LC and the despatch shall stop once the quantum of electricity under LC is supplied. The above MoP notification further clarifies that in the event power is not despatched inter alia due to non-establishment of payment security mechanism, the distribution company shall continue to pay the fixed charge to the generating company. In view of the above, M/s. Vedanta Ltd. vide its letter dated 07.01.2020 has informed GRIDCO Ltd. that IPP Unit-II is fully available for supply of power to the state and requested to establish payment security mechanism as per the MoP notification dated 28.06.2019 for scheduling of power from this generating unit.
3. M/s. Vedanta Ltd. has submitted that despite aforementioned reminders, M/s. GRIDCO Ltd. did not establish the LC in terms of the PPA and did not off take power from the IPP Unit-II being available at the declared capacity. However, GRIDCO Ltd. vide its letter dated 10.01.2020 sought guidance of the DoE, GoO as to whether GRIDCO should avail low cost power by opening LC or making day ahead advance payment to M/s. Vedanta Ltd. when a huge outstanding penalty bill is pending with M/s. Vedanta Ltd. In the said letter GRIDCO has indicated that “Xxxxxxx. In the

above scenario if GRIDCO will not requisition the power and neither open the LC nor make any day ahead advance payment to M/s. Vedanta, then M/s. Vedanta will claim only capacity charges and GRIDCO will have to pay the same by opening LC or advance payment on day ahead basis. XXXXXX.”

4. Further, taking into cognisance the aforementioned facts, the Commission vide its interim order dated 14.01.2020 in Case No. 62/2019, has directed GRIDCO Ltd. that “XXXXXX. GRIDCO is further directed to avail State share of power from IPP-Unit-II of M/s. Vedanta Limited as it is a low cost power. GRIDCO must follow the merit order dispatch principle while purchasing power as directed by the Commission earlier in various tariff orders. Pending earlier disputes, GRIDCO has to ensure payment security mechanism forthwith for purchase of such power from M/s. Vedanta Limited.”
5. M/s. Vedanta Ltd. has submitted that since GRIDCO did not establish the payment security mechanism and off take the power from IPP Unit-II, even after the above directions of the Commission and also did not reply to any of the aforementioned communications of the petitioner, M/s. Vedanta Ltd. vide its letter dated 22.01.2020 sought intervention of the Department of Energy for resolution of the issue. Further the petitioner vide its letter dated 24.01.2020 reminded GRIDCO that all costs incurred by the petitioner on account of non-scheduling of power including the liability of GRIDCO to make the payment of fixed cost shall be borne by GRIDCO and M/s. Vedanta Ltd, shall not be liable for the same. Further, the Commission vide its interim order dated 28.01.2020 in Case No. 62 of 2019 again directed GRIDCO to comply the Commission’s earlier interim order dated 14.01.2020 within 4 days without fail. Thereafter, GRIDCO scheduled to draw power from IPP Unit-II of M/s. Vedanta Ltd. from 30.01.2020.
6. M/s. Vedanta Ltd. has submitted that GRIDCO deliberately did not schedule its power till 29.01.2020, even though it was made available by the petitioner from 06.01.2020. Thus, its power from IPP Unit-II remained stranded during the period from 06.01.2020 to 29.01.2020 on account of the failure of GRIDCO to establish payment security mechanism in terms of MoP notification and aforesaid Commission’s order dated 14.01.2020, which was a pre-requisite for scheduling of power in terms of the PPA. Such action of GRIDCO caused a lot of financial stress on M/s. Vedanta Ltd., especially when it is coupled with non-payment of fixed

charges/capacity charges by GRIDCO. M/s. Vedanta Ltd. vide its letters dated 03.02.2020 and 05.02.2020 called upon GRIDCO to pay a sum of Rs.21.64 crore (on provisional basis) towards fixed charges for the above mentioned period i.e. from 06.01.2020 to 29.01.2020. M/s. Vedanta Ltd. also reminded GRIDCO about its obligation to establish a payment security mechanism in accordance with the PPA.

7. M/s. Vedanta Ltd. submitted that GRIDCO vide its letter dated 15.02.2020 did not accept the above claim of M/s. Vedanta Ltd. Hence, M/s. Vedanta Ltd. vide its letter dated 28.03.2020 re-emphasised its demand qua fixed charges under PPA and OERC Tariff Regulations and intimated GRIDCO for payment of fixed charges in accordance with the PAFM statement issued by SLDC for the month of January, 2020. Further M/s. Vedanta Ltd., vide its letter dated 31.03.2020, has raised the monthly bill for the month of January, 2020 based on the PAFM issued by SLDC as per the provisions of PPA. M/s. Vedanta Ltd. submitted that in terms of clause 5.3.3 of PPA, the energy account and PAFM statement issued by SLDC is binding on all the parties for billing and payment purpose. GRIDCO has never questioned the said PAFM statement of SLDC. However, SLDC vide its letter dated 07.04.2020 and 16.05.2020 has issued two revised PAFM statements for the month of January, 2020 wherein PAFM remained same as provided earlier i.e. 57%. M/s. Vedanta Ltd. again vide its letter dated 20.05.2020 requested GRIDCO for payment of the said fixed charges within the prescribed period as per PPA to avoid levy of late payment surcharge. But GRIDCO Ltd. vide its letter dated 27.05.2020 disputed the said fixed component of energy invoice with allegation of false declared capacity of IPP Unit-II, which is a complete after thought with malafied intention to harass the petitioner. However, M/s. Vedanta Ltd. vide its letter dated 30.05.2020 duly refuted the said allegations made by GRIDCO and requested them to make the payment of fixed charges. M/s. Vedanta Ltd. through various letters and communications has informed GRIDCO that the linkage coal supply has already been resumed by MCL and it would start supply of power from 06.01.2020 in terms of the PPA and GRIDCO should off take such power after creating adequate payment security mechanism. But GRIDCO deliberately not only did not avail power from the petitioner, but also in a malafied manner evaded from paying the claim of the petitioner qua the legal dues and payable fixed charges for the period from 06.01.2020 to 29.01.2020 under the terms of the PPA.

8. Replying to the objection of GRIDCO that the petitioner did not have sufficient linkage coal to generate the declared quantum of power and by mis-declaring the capacity, the petitioner indulged in gaming, M/s. Vedanta Ltd. has submitted that they have around 24843 MT of linkage coal as on 06.01.2020 which was sufficient to generate the capacity declared by it. Had there been any bona fide doubts of GRIDCO qua the veracity of the declared capacity of petitioner or the availability of sufficient stock of linkage coal, it could have approached M/s. Vedanta Ltd or the relevant authority citing its concerns. Even after passing of the interim order dated 14.01.2020 of the Commission, GRIDCO has not sought any such information from the petitioner or from any other authority. The plea of non-availability of sufficient linkage coal, alleged gaming and availability test of Unit-II of GRIDCO is an afterthought to wriggle out of its contractual and statutory obligations from making the payment of fixed charges.
9. Regarding GRIDCO's objection of non-availability of coal stock for one month as per OERC Tariff Regulations, 2014, M/s. Vedanta Ltd. has submitted that the aforesaid provision of one-month coal stock in OERC Tariff Regulation, 2014 is a normative parameter solely for the purpose of computation of working capital while determining tariff under Section 62 of the Electricity Act, 2003. Working capital is computed on normative basis and higher expenditure of working capital cost is to be borne by the generator. This does not mean that the above coal stock is mandatory for declaring availability. Further no generating station generally would have a coal storage space for accommodating coal for an entire month or more. Coal for generating power is availed and supplied on a running basis. The coal availed today can be utilised to generate power on any future date. Since GRIDCO did not schedule power from 06.01.2020 to 29.01.2020, there was no occasion to utilise the linkage coal stock of 24843 MT and to avail a fresh lot of the same. Had GRIDCO complied with the directives of MoP and this Commission and off taken power, the petitioner would have sourced the requisite quantum of linkage coal for supply of declared quantum of power. Hence the argument of GRIDCO that the petitioner did not have adequate coal for its declared capacity is not justified at all.
10. M/s. Vedanta Ltd. has submitted that several SERCs including this Commission and Hon'ble APTEL have clarified the position that fixed charges are to be borne by the beneficiary/procurer of power, irrespective of the fact, whether such contracted

capacity is availed by such beneficiary/procurer or not. M/s. Vedanta Ltd. have cited some orders as given below:

- (a) This Commission vide common order dated 29.03.2019 passed in Case Nos. 74, 75, 76 and 77 of 2018, at para-416 has empathetically held as under:

“To insulate the licensee from the risk of financial uncertainty due to non-utilisation of the contracted capacity by the consumer it is necessary that the consumer pays at least a certain amount of fixed cost to the licensee...”

- (b) The Hon’ble Appellate Tribunal for Electricity, vide its judgment dated 22.08.2016, passed in Jaiprakash Power Ventures Ltd. V. MPERC & Ors. (Appeal No.34 of 2016), has respectfully held as under:

“(h)(ii) While we agree that the provision under PPA regarding sale of Unrequisitioned power by the Generator is an enabling provision, the State Commission has not wrongly considered this fact in its Impugned Order while considering the payment of fixed charges for the contracted capacity by the Procurers irrespective of the level of scheduling”.

- (c) The Hon’ble Appellate Tribunal for Electricity vide its judgment dated 26.08.2019, in M/s Arya Energy Ltd. & Anr. V. Madhya Pradesh Power Management Company Ltd. & Anr. (Appeal No.396 of 2018), has held as under:

“8.6 Bare perusal of the aforestated paras of Settlement Code reflects that it is imperative for MPPMCL to procure electricity from the generation stations by putting them in ascending order of the cost of energy (i.e. Variable cost) and it is mandatory to make payment of capacity charges to generating stations corresponding to plant availability. It is immaterial whether electricity was actually procured by MPPMCL, or not for the payment of capacity charges. In view of these facts, it is evident that MOD principles have not been applied correctly by the Respondents for the plants of the Appellants.”

- (d) The Hon’ble Appellate Tribunal for Electricity, vide its judgment dated 22.04.2015, in MSEDCL V. CERC & Ors. (Appeal No.261 of 2013), has held as under:

“14.. Thus, the appellant/distribution licensee has rightly been held under the obligation to pay the capacity charges so long as the respondent No.2 generator has declared available capacity, irrespective of whether the distribution licensee schedules the capacity offered by generator or not. Since the generator had made upfront investment in establishing operating and maintaining the generating station, the capital cost incurred needs to be serviced during the life time of the generating station through the payment of annual fixed charges because such annual fixed charges are determined with respect to specific tariff elements provided therefore, namely tariff Regulations 2009 in the present case...”

11. M/s. Vedanta Ltd. has submitted that the aforesaid judgments make bare that the beneficiary/procurer i.e. GRIDCO in the present case, is required to pay the fixed charges in order to compensate the generating company/petitioner for making available the supply of power, despite the respondent not availing the same in terms of the PPA. In view of the above, the petitioner has prayed the Commission to direct GRIDCO to make time bound payment of the unpaid fixed charge bills amounting to Rs.21.64 crore (provisional amount) raised by the petitioner for the period from 06.01.2020 to 29.01.2020, in terms of the PPA and OERC Generation Tariff Regulations, 2014, along with the applicable late payment surcharge. The petitioner has further prayed the Commission to direct GRIDCO to set up an adequate and valid payment security mechanism in terms of the PPA in a time bound manner without further delay.
12. The respondent GRIDCO has submitted that in the present case the petitioner was not in a position to generate the quantum of power declared by it during the period from 06.01.2020 to 29.01.2020 and hence the declaration of availability was not bonafide. Therefore the petitioner is not entitled to get any fixed charges for the period in question. GRIDCO has submitted that M/s. Vedanta Ltd. vide its letter dated 07.12.2019 intimated GRIDCO that discussion with M/s. MCL for resumption of linkage coal supply for unit-2 is under finalisation and coal supply is expected in the first week of December 2019. Accordingly maximum possible generation of unit-2 to the extent of linkage coal supply would be supplied to the State. In this letter M/s. Vedanta Ltd. for the first time requested GRIDCO for opening of LC or advance payment on day-ahead basis for the schedule power from unit-2 as per the MoP notification dated 28.06.2019. M/s. Vedanta Ltd. vide its letter dated 30.12.2019 requested GRIDCO for procurement of power with establishment of payment security mechanism as per said MoP notification and on 01.01.2020 Vedanta informed SLDC that IPP-Unit-2 shall be lighted up on 05.01.2020 and would be expected to be synchronized on 06.01.2020. On 02.01.2020 SLDC asked GRIDCO to intimate the status of LC/advanced payment for preparation of despatch schedule of Vedanta power. On 05.01.2020 Vedanta started submitting declared capacity of 400 MW from IPP-Unit-2 to SLDC in favour of GRIDCO from 06.01.2020. Thereafter, on 07.01.2020 Vedanta informed GRIDCO that unit-2 is fully available for supply of power to GRIDCO and in absence of payment security mechanism the generator is

eligible for fixed charges as per said MoP notification. On 08.01.2020 SLDC again requested GRIDCO to convey consent for quantum of power to be scheduled from unit-2 of Vedanta in absence of payment security mechanism. On 09.01.2020 SLDC informed that until establishment of payment security mechanism by GRIDCO, SLDC shall prepare despatch schedule of IPP-Unit-2 as 'zero' against the declared capacity submitted by M/s. Vedanta Ltd. On 10.01.2020 GRIDCO moved to DoE, GoO regarding the proposal of M/s. Vedanta Ltd. on resumption of power supply subject to establishment of LC/day-ahead advance payment when a huge outstanding penalty bills was pending with it and sought necessary instruction for further action in view of the said MoP notification.

13. In the meantime, the Commission vide its order dated 14.01.2020 in Case No. 62 of 2019 directed GRIDCO to procure power from Vedanta following merit order despatch principle and to ensure payment security mechanism forthwith pending earlier disputes. This order was received by GRIDCO on 18.01.2020. The constraint of GRIDCO was limited to establishment of LC/day-ahead advance payment in view of the huge outstanding dues pending for payment by M/s. Vedanta Ltd. upto October 2019. Thereafter the Commission vide its order dated 28.01.2020 again directed GRIDCO to implement the interim order dated 14.01.2020 within four days. Therefore, GRIDCO again approached DoE, GoO seeking necessary instruction regarding procurement of low cost power from Vedanta pending earlier disputes. On 29.01.2020 GRIDCO made day-ahead advance payment to Vedanta for commencing power supply and requested SLDC to carry out scheduling of power and also to conduct availability test of the IPP-Unit-2. Power supply was commenced from Vedanta from 30.01.2020 with an average declared capacity of 129 MW and on 31.01.2020 the declared capacity was 366 MW. However, while submitting day-ahead declared capacity to SLDC through email from 03.02.2020 to 06.02.2020, Vedanta Ltd. has indicated that it had insufficient linkage coal to operate unit-2 though the generating unit is technically 100% available, for which their export schedule for 4th to 7th February 2020 will be 350/300 MW. Therefore, GRIDCO on 07.02.2020 requested SLDC to carry out necessary ex-bus availability test in view of the claim of M/s Vedanta Ltd. that the generating unit is technically 100% available, but the export schedule was less due to low coal stock. In the meantime M/s Vedanta Ltd. claimed fixed charges amounting to Rs.21.64 crore on the basis of declared capacity for the

period from 06.01.2020 to 29.01.2020, which was disputed by GRIDCO. Again on 19.02.2020 GRIDCO requested SLDC to provide 15 minutes SCADA data in respect of injection by other converted CGP units and to direct Vedanta to demonstrate availability and to issue instructions to Vedanta to submit separate DC in respect of converted CGP Units which are linked to the state entitlement power in terms of the order dated 27.01.2016 of the Commission. Further on 23.03.2020 GRIDCO requested SLDC to withdraw DSM charges, inter alia, on the ground of absence of Intra-State DSM Regulations.

14. GRIDCO has submitted that from the data provided by M/s Vedanta Ltd. regarding stock of linkage coal it is found that actual coal supply by MCL started from 30.12.2019 and there was no procurement of coal after 04.01.2020. The submission of day ahead declared capacity to SLDC in respect of IPP Unit-2 was commenced by M/s. Vedanta Ltd. w.e.f. 06.01.2020. At that time the total coal stock of 24843 MT including the coal required for carpeting, was not at all sufficient to generate power corresponding to its declared capacity for 23 days i.e. from 06.01.2020 to 29.01.2020. M/s. Vedanta Ltd. has not maintained the minimum coal stock of 30/60 days as required under Regulation 4.24(i) of OERC Generation Tariff Regulations, 2014. M/s. Vedanta Ltd. was making wrong declaration of capacity to SLDC during the period from 06.01.2020 to 29.01.2020 in absence of sufficient linkage coal supply. Such act of M/s. Vedanta Ltd. amounts to 'gaming' in submission of declared capacity to SLDC.
15. GRIDCO has submitted that as per the letter dated 22.02.2020 of MCL they had supplied 4 Rakes of coal in December 2019 and 3 Rakes in the month of January 2020. In the month of February 2020 total allocation of linkage coal to M/s. Vedanta Ltd. was 86 Rakes (58 Rakes for February 2020 plus 28 lapsed Rakes for previous months). Total 45 Rakes of coal was required to supply power as per the declared capacity of 400 MW submitted to SLDC for the period of 21 days i.e. from 06.01.2020 to 29.01.2020. But Vedanta had only 7 Rakes of linkage coal, from which it could have supplied total 34 MU of power i.e. roughly 10 MU (equivalent to 400 MW RTC) for 3 days only. M/s. Vedanta Ltd. has also admitted that they had only a total coal stock of 24843 MT during the period from 06.01.2020 to 29.01.2020. Hence, GRIDCO is of the view that Vedanta did not have sufficient coal stock for generation of the declared quantum of power in continuous basis during the period

from 06.01.2020 to 29.01.2020. Therefore the claim of fixed charges by M/s. Vedanta Ltd. on the basis of declared availability is not justified as declaration of availability by M/s. Vedanta Ltd. is not bonafide.

16. GRIDCO has submitted that the argument of M/s. Vedanta that in case GRIDCO had started availing power, they would have requisitioned more linkage coal, is without any foundation in the pleadings. It is settled position of law that a plea contrary to the pleadings cannot be allowed to be raised. Reliance in this regard is placed on the judgment of Hon'ble Supreme Court of India in the case of Canara Bank Vrs. Standard Chartered Bank (2002) 10 SCC 697.

“8. In our opinion, the decision of the Special Court calls for no interference....The Special Court was right in observing that no such plea has been raised in the written statement and we agree with the Special Court that permitting such a plea to be raised would be contrary to the plea already taken in the written statement, namely, of squaring up or of repayment.”

17. GRIDCO has submitted that the above submission of M/s. Vedanta Ltd. is in the teeth of Regulation 4.24 (a) (i) of OERC (Terms and Conditions of Determination for Tariff) Regulation, 2014, which provides that minimum one month/two month Coal Stock for Pit-Head/Non-Pit Head Generating Stations is required to be maintained as a basic constituent of Working Capital as interest on Working Capital is an integral part of Annual Fixed Charges, payable by the beneficiaries. Minimum coal stock of 30/60 days had not been maintained by M/s. Vedanta Ltd. as required under this Regulation. It is the settled position of law that when the statute provides for a thing to be done in a particular manner, it has to be done only in that manner and no other manner.

18. On the submission of the petitioner that in case GRIDCO had started availing power M/s. Vedanta Ltd. could have requisitioned/purchased more linkage coal from MCL, is also contrary to the terms of the FSA between MCL and M/s. Vedanta Ltd. Clauses 4.4 and 4.5 of the FSA which state as follows:

- (i) Clause 4.4 provides that Annual Contracted Quantities (ACQ) for the year shall be divided into Quarterly Quantities (QQ) expressed in Tonnes;
- (ii) Clause 4.5.1 provides that monthly Schedule Quantity (SQ) shall be 1/3rd of the QQ;

- (iii) Clause 4.5.2 provides that either the purchaser or seller may revise the SQ (Revision shall not be in excess of 5% of the SQ) to be supplied by the seller in that month by giving written notice at least 30 days prior to commencement of a month;
 - (iv) Clause 4.5.3 provides that seller shall have the right to make good the short supplies in a particular month in the succeeding three month(s) of the same quarter to the extent of 5% of the SQ. Similarly, purchaser shall have the right to make good the short lifting in a particular month in the succeeding months of the same Quarter to the extent of 5% of SQ.
19. Considering the above provisions of FSA, GRIDCO has stated that M/s. Vedanta Ltd. cannot procure coal from MCL on short notice. The submission of M/s. Vedanta is contrary to the provision of FSA. Moreover as per the MCL letter dated 22.02.2020, in the present case MCL could not supply requisite SQ for the month of January 2020, for which MCL had allocated additional 28 Rakes of coal during February 2020 against the lapsed Rakes of previous months. It is understood from the above letter of MCL that MCL was not in a position to supply the coal in these months.
20. In view of the above, GRIDCO has stated that the contention of the petitioner is entirely misplaced and misleading and therefore, its claim is wholly misconceived, devoid of merit and is liable to be rejected. The following conduct of Vedanta in the past clearly negates the submission of Vedanta that it could have supplied power as per DC of 400 MW submitted to SLDC in absence of sufficient Linkage Coal stock during the relevant period:
- (i) Consistent default by Vedanta in supply of power to the State by not adhering to Commission's order dated 27.01.2016 in Case No. 21 of 2015 thereby depriving the Consumers of the State from the benefit of cheapest State's share power.
 - (ii) Vedanta failed to supply state share of power to GRIDCO from alternate sources as agreed vide minutes of meeting dated 07.12.2017.
 - (iii) Non-payment of compensation claimed by GRIDCO for short/non-supply of power.
 - (iv) Surrendering of fuel supply agreement with MCL meant for Units- I and IV for procuring linkage coal in 2015 and 2016, without intimating either Govt. of

Odisha or GRIDCO. This fact was disclosed by Vedanta for the first time before Commission in March, 2020 in Case No. 62 of 2019. Consequently the consumers of the state were deprived of the benefit of 5% of energy sent out from the power plant at energy charge rate only.

- (v) Vedanta deliberately waited till resumption of linkage coal supply by MCL for supplying power to the State/GRIDCO which is in violation of Commission's order dated 27.01.2015 in case No.21 of 2015 which directs for supply from CGP Units (i.e. Unit I, III & IV) in case of low or no generation from State dedicated IPP-Unit 2 (600 MW).

GRIDCO stated that in view of the consistent breach of trust by Vedanta in the past, insufficient stock of linkage coal and trend of supply in subsequent months cannot be considered as a basis to arrive at a conclusion in respect of power supply during disputed period.

- 21. GRIDCO has submitted that M/s. Vedanta Ltd. has consistently defaulted in supplying state share of power in past and did not demonstrate ex-bus availability test prior to resumption of power supply to the state from unit-2 after a long period. The unit-2 was out of operation for a continuous period of May 2019 to December 2019. M/s. Vedanta Ltd. offered for resumption of power supply to the state in spite of the fact that it had no sufficient linkage coal stock for generation of declared quantum of power on continuous basis during the period from 06.01.2020 to 29.01.2020. GRIDCO, vide its letter dated 29.01.2020, 07.02.2020 and 19.02.2020, had requested SLDC to direct M/s Vedanta Ltd. to demonstrate ex-bus availability of unit-2. Had SLDC acted upon the request of GRIDCO, the actual availability of Unit-2 could have been assessed. The provisions in Regulation 6.4 (12) and 6.4 (13) of Odisha Grid Code Regulations, 2015 provides as under:

“(12) It shall be incumbent upon the SGS/IPP/ IPP selling power on merchant basis to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC may ask the SGS/IPP/ IPP selling power on merchant basis to explain the situation with necessary backup data.

(13) The SGS/IPP shall be required to demonstrate the declared capability of its generating station as and when asked by the SLDC. In the event of the SGS/IPP failing to demonstrate the declared capability, the capacity charges due to the

generator shall be reduced as a measure of penalty. In case of revision of schedule of a generating unit, the schedules of all transactions under the long term access, medium-term open access and short-term open access (except collective transactions through power exchange), shall be reduced on pro-rata basis.”

22. GRIDCO has submitted that in absence of intra-state DSM Regulation, the PAFM of M/s. Vedanta Ltd. is being calculated by SLDC based on the actual energy supply to GRIDCO from its IPP and CGP units. This has also been the practice for PAFM calculation in respect of OPGC Units 1 & 2. In the present case for the period from 1st to 5th January, 2020 and from 30th to 31st January 2020, SLDC has prepared the PAFM statement on the basis of actual energy injection, but for the period from 6th to 29th January, 2020 PAFM has been prepared as per declared capacity submitted by M/s. Vedanta Ltd. Since sufficient linkage coal was not available with M/s. Vedanta Ltd., GRIDCO vide its letter dated 23.03.2020 had requested SLDC to work out the PAFM considering the actual injection of power by M/s. Vedanta Ltd. for January 2020 and to revise the PAFM issued earlier on 03.03.2020. The Commission vide its order dated 22.06.2020 in Case No. 68 of 2018 had observed that PAFM of unit-2 of M/s. Vedanta Ltd. shall be calculated by SLDC based on the actual energy supplied by M/s. Vedanta Ltd. Accordingly capacity charge shall be computed. In view of the above, the claim of capacity charge by M/s. Vedanta Ltd. basing on the PAFM computed by SLDC in accordance with the declared capacity is misconceived since the situation in the present case is not normal due to non-availability of sufficient linkage coal stock for generating power equivalent to declare capacity during the disputed period.
23. Further provision for payment of fixed charges on the basis of declared availability cannot be interpreted in a manner which would result in absurdity and cause great injustice in as much as M/s Vedanta Ltd. would be entitled to claim fixed charges. Even though it did not have sufficient linkage coal in stock. In this regard, GRIDCO has relied on the judgment of the Hon’ble Supreme Court in case of Chandigarh Administration Vrs. Sumesh Kumar, (1997) 2 SCC 205 (para 6) which inter alia held as under:

“6... Such an interpretation of the Rule will not only cause great injustice but will create absurdity by giving unwarranted advantage to the incumbents of the lower post of PST teacher over the incumbents of the higher post of Classical teacher, and such an interpretation cannot be sustained in law...”

24. In view of the above premises GRIDCO has submitted that the judgement relied upon by M/s Vedanta Ltd. has no application to the present case. The claim of M/s Vedanta Ltd. for fixed charges for the period from 06.01.2020 to 29.01.2020 is based on wholly non-existent premises and devoid of any merit whatsoever and liable to be rejected with exemplary costs.
25. In its additional submission on 06.11.2020, GRIDCO has submitted that it had requested MCL vide its letter dated 27.10.2020 to clarify the meaning of 'Lapsed Rakes' for previous month in MCL letter dated 22.02.2020 and also to provide procedure of monthly coal supply to the procurer under FSA. MCL vide its letter dated 29.10.2020 has clarified as follows:

***"Lapsed rakes of previous month** – refers to the rakes that comes under monthly entitlement of the consumer (MSQ) and for which program is filed by the consumer but supply has not occurred in the same month. Supply may not occur on account of non-supply of rakes by Railways or non availability of coal with MCL. For power consumers the validity of offer remains till three of the subsequent month after which it is considered as lapsed. As per MOC and Railways guidelines these lapsed rakes can be carried forward after due certification from Railways to next three succeeding months until supply against the above program is done. One precondition of qualifying for supply of rakes under lapsed rake is pre-payment of coal value by the consumer.*

***Modality of monthly supply:** On the basis of ACQ (annual contracted quantity) the entire FSA commitment is further divided into QQ and MSQ for supply in different months as per clause 4.4 and 4.5 of FSA. Consumer is required to file a program for supply of rakes in a month and pay the coal value of the same. If the consumer does not file program for the entire quantity of the MSQ (or fails to make payment for the same) then the short quantity will be considered as deemed delivered quantity (DDQ). If consumer files program for the entire MSQ (and makes payment for the same) and supply of the entire MSQ does not happen; the shortfall quantity after being certified by Railways, is carried forward as lapsed rake for successive months until supplied (maximum 3 months)."*

26. GRIDCO has stated that a conjoint reading of clause 4.2 & 4.5 of FSA dated 27.08.2013 with the letters of MCL dated 22.02.2020 and 27.10.2020, establish the followings:
- a) Annual Contracted Quantities (ACQ) for the year shall be divided into Quarterly Quantities (QQ)
 - b) Monthly Scheduled Quantity (SQ) shall be $1/3^{\text{rd}}$ of the QQ

- c) The purchaser or seller can revise the SQ to be supplied by the seller in a month (not in excess of 5% of the SQ) by giving written notice of at least 30 days prior to the commencement of the month;
- d) Seller shall have the right to make good the short supplies of a particular month in the subsequent three months of the same quarter to the extent of 5% of the SQ.
- e) Program for SQ is filed by the consumer (herein Vedanta) along with payment of the coal value of the same.
- f) If the consumer does not file program for the entire SQ or fails to make payment for the same, the short quantity will be considered as deemed delivered quantity.
- g) In case consumer/Vedanta files program for the entire SQ (and makes payment for the same) and supply of the entire SQ does not happen, the shortfall quantity after being certified by railways is carried forward as Lapsed Rakes for successive months until supplied (maximum 3 months)
- h) Reasons for creation of lapsed rakes can be attributable to either Railways or MCL but not any request, action or non-payment of cost of coal by the procurer/Vedanta,
- i) Lapsed rakes in the letter dated 22.02.2020 of MCL, therefore, refers to rakes covered by the SQ filed by Vedanta for January, 2020 which could not be supplied by MCL on account of non-availability of coal with MCL or non supply of rakes by Railways,
- j) Lapsed rakes in the letter dated 22.02.2020 of MCL are only attributable to MCL or Railways and not to any request of Vedanta or non payment of cost of coal by the consumer
- k) In the present case, lapsed rakes of linkage coal against the month of January, 2020 of Vedanta were supplied by MCL in February, 2020.

From the above, GRIDCO has concluded that:

- i) Vedanta had submitted the program for SQ for January, 2020 with required payment to MCL ;
- ii) There were lapsed rakes against the month of January, 2020, since supply could not occur on account of non-supply of rakes by railways or non availability of coal with MCL;

27. In view of the above, GRIDCO has stated that M/s. Vedanta Ltd. neither had a requisite quantity of coal to supply power equivalent to the declared capacity for 23

days i.e. from 06.01.2020 to 29.01.2020 nor it could have requisitioned such quantity on short notice. Therefore, the submission of Vedanta Ltd. that in case GRIDCO had started procurement of power from its IPP unit-II, they would have requisitioned more coal from MCL, runs contrary to the provisions of FSA and is completely negated by the letters of MCL. In view of the above position, the trend of supply of power in subsequent months cannot be considered as the basis to arrive at a conclusion with regard to availability of required coal for supply of power by M/s. Vedanta Ltd. during the disputed period, since admittedly coal was supplied by MCL in February, 2020.

28. The respondent M/s SLDC has submitted that the Unit-2 of the petitioner was under shut down since 10th April 2019. The petitioner on 06.01.2020 sought clearance from SLDC through email to light up and synchronise unit. In absence of any communication regarding opening of LC either from the petitioner or from GRIDCO, SLDC on 08.01.2020 wrote a letter to the petitioner to convey their consent for scheduling of its power from Unit-2 to GRIDCO. On 09.01.2020 M/s Vedanta Ltd. expressed its inability to give consent for scheduling of power until establishment of payment security mechanism by GRIDCO as per the order of the MoP, GoI. On 09.01.2020 SLDC intimated GRIDCO that as per the said order of MoP, GoI, SLDC will prepare the despatched schedule of IPP-Unit 2 as 'Zero' against the declared capacity submitted by M/s Vedanta Ltd. until establishment of payment security mechanism. On 29.01.2020, M/s Vedanta Ltd. informed SLDC that they have received an amount of Rs.12.2 crore from GRIDCO towards advance payment for 5 days power supply to GRIDCO. Thereafter SLDC prepared the despatch schedule of M/s Vedanta Ltd. from 30.01.2020 as per the day ahead declared capacity submitted by them. For the period from 01.01.2020 to 05.01.2020 and from 30.01.2020 to 31.01.2020, SLDC has computed the PAFM of M/s Vedanta Ltd. based on actual energy supplied to GRIDCO from its IPP and CGP units. However, for the period from 06.01.2020 to 29.01.2020 the PAFM has been computed based on the declared capacity submitted by the petitioner for that period. AS per the direction of the Commission in its interim order dated 08.09.2020, SLDC had submitted the month wise day ahead capacity, despatch schedule in MU and actual injection by M/s Vedanta Ltd. for the period from January 2020 to August 2020 as given here under:

**Declared capacity, Despatch schedule and Actual Generation of M/s Vedanta Ltd.
from January to August, 2020**

Month	Date	Declared capacity submitted	Despatch schedule	Actual injection	Remarks
		MU	MU	MU	
	1 st to 5 th	0.000	0.000	0.000	
January-20	6 th to 29 th	227.553	0.000	0.000	Due to non-establishment of PSM by GRIDCO, Despatch Schedule for this period was prepared as Zero
	30 th to 31 st	11.878	11.878	11.415	
February-20		214.088	213.881	211.346	
March-20		267.200	254.821	252.737	
April-20		201.273	166.561	165.090	
May-20		289.429	275.062	270.083	
June-20		289.661	250.065	243.259	
July-20		333.938	314.546	301.548	
August-20		257.423	228.660	220.725	

29. In response to the additional submission of GRIDCO on 06.11.2020, the petitioner M/s Vedanta Ltd. has submitted that the reliance of GRIDCO on the MCL letter dated 29.10.2020 is completely erroneous. MCL has categorically clarified that lapsing of rakes for previous month refers to those rakes that come under the monthly entitlement of the consumer (SQ) and for which programme is filed by the consumer but supply has not occurred in the same month. MCL has further gone to clarify non-supply of coal can happen in either of the following cases i.e. (i) failure on part of railways to supply the rakes (ii) non-availability of coal with MCL. In the present case, post resumption of supply of linkage coal by MCL, the petitioner placed a programme for placing of rakes with railways for the month of January 2020 in anticipation and under a bona fide belief that GRIDCO shall honour its obligations under PPA and off-take power from the petitioner's plant. But GRIDCO did not establish the payment security mechanism and off-take power till 29.01.2020. It was due to this inaction of GRIDCO the petitioner did not direct the railways to place the rakes for procurement of coal from MCL. As such any lapsed rakes are on account of GRIDCO. M/s Vedanta has submitted that the aforesaid is further evident from the fact that in its letter dated 24.01.2020, the petitioner had categorically specified GRIDCO that on account of non-off take of power by GRIDCO the petitioner was

unable to lift the requisite quantum of coal under the FSA. Further in MCL letter dated 27.01.2020 it was specifically recorded that coal was available, but because of orders not placed by the petitioner for lifting of coal, upon railways, the said coal could not be delivered. This letter is evidence of the fact that coal was not lifted by the petitioner through railways, as GRIDCO was not scheduling power. This letter also clarifies that MCL was indeed in a position to supply the contracted quantum of coal during the month and there could not have been any case of lapsing of rakes due to non-supply of coal by MCL.

30. M/s Vedanta Ltd. has submitted that they have responded to the aforesaid letter of MCL on 29.01.2020 by stating all the facts and had categorically apprised MCL that the non-lifting of coal was on account of the reasons solely attributable to GRIDCO and further requested MCL for reprogramming of rakes for the month of January 2020 as the same could not be supplied on the account of the fact which was beyond the control of the petitioner. Further the petitioner vide another letter dated 01.02.2020 to MCL had intimated that GRIDCO has established the payment security by day ahead advance payment and after receipt of the advance payment the petitioner has already approached SLDC for scheduling of power to GRIDCO. M/s Vedanta Ltd. has submitted that from perusal of the above letters and the agreed position between the parties, it is completely wrong to assume that the petitioner did not have requisite quantum of coal to supply of power to GRIDCO. The said contention of GRIDCO is completely based on the erroneous interpretation of facts and documents, so as to justify its contraventions of the terms and conditions of the PPA.
31. Further on the reliance of GRIDCO on clause 4.5.2 of the FSA in order to aver that the petitioner or MCL can revise the scheduled quantity of coal by giving a written notice of at least 30 days, and as such the petitioner could not have issued orders for lifting of coal before 30 days, M/s Vedanta Ltd. has submitted that such reliance of GRIDCO is erroneous and fundamentally flawed, for the reasons that the above provision is not applicable to the present case as it is not a case of revision of scheduled quantity, but is a case where coal could not be lifted on account of non-offtake of power by GRIDCO. Therefore the petitioner M/s Vedanta Ltd. has submitted that it was on account of default of GRIDCO that the petitioner was unable to lift coal from MCL. It is a settled principle of law that no party can take benefit of its own default. M/s Vedanta Ltd. has further submitted that GRIDCO has contracted

with the petitioner for supply of power and not for supply of coal and hence in any event, it cannot base any argument on the quantum of coal when SLDC certified the declared availability. The petitioner has stated that in view of the above the additional submission filed by GRIDCO dated 06.11.2020 is ought to be rejected *in limine*.

32. Heard the parties and took their written notes of submissions into consideration. The Commission observed that as per the PPA dated 19.12.2012 between GRIDCO and Sterllite Energy Ltd. (presently Vedanta Ltd.), annual fixed charges as determined by the appropriate Commission in proportion to the capacity purchased by GRIDCO shall be paid on monthly basis. At para 2.1 & 2.2(a) of the said PPA, it is indicated that the installed capacity of the thermal power station is 2400 MW (4x600 MW). The capacity allocated to GRIDCO shall be upto 25% of the installed capacity of the thermal power station as requisitioned by GRIDCO once in each five years block period. Further the Commission in its order dated 27.01.2016 passed in case No.21 of 2015, while allowing conversion of Unit-I, III & IV of the power station as CGPs, have clarified that Unit-II of the power plant having 600 MW capacity will continue to remain as IPP and connected to the state grid.
33. The Commission further observed that as per Regulations 6.4 of the OERC Generation Tariff Regulations, 2014, payment of capacity charge for a thermal generation station shall be shared by the beneficiary of the generating station as per their percentage shares for the month in the installed capacity of the generating station. The Commission in its order dated 27.01.2016 has allowed the unit-II (600 MW) to remain as IPP and fully dedicated to the state. Hence GRIDCO has to pay for the capacity charge towards capacity of 600 MW of unit-II.
34. In the instant case the dispute between GRIDCO and M/s. Vedanta Ltd. is that the declared capacity of M/s. Vedanta Ltd. for the period from 06.01.2020 to 29.01.2020 has not been scheduled in favour of GRIDCO, as GRIDCO has not ensured payment security mechanism as per the PPA or has not made any day ahead advance payment as per the MoP, GoI notification. M/s. Vedanta Ltd. has claimed an amount of Rs.21.64 crore provisionally towards capacity charge for the aforesaid period which is disputed by GRIDCO with the allegation that the capacity declared by M/s. Vedanta Ltd. for the aforesaid period is not bonafide as Vedanta did not have sufficient coal stock for generation of the declared quantum of power for the aforesaid period.

35. In its submission GRIDCO has stated that on 07.02.2020 and 19.02.2020 GRIDCO has requested SLDC to carry out necessary availability test of the generating units of M/s. Vedanta Ltd. The Commission observed that the availability test beyond the disputed period i.e. from 06.01.2020 to 29.01.2020 will not help anyway in the present case.
36. The Commission observed that in its interim order dated 14.01.2020 in Case No.62 of 2019 the Commission had directed GRIDCO that “xxxxxx. GRIDCO is further directed to avail State share of power from IPP-Unit-II of M/s. Vedanta Limited as it is a low cost power. GRIDCO must follow the merit order dispatch principle while purchasing power as directed by the Commission earlier in various tariff orders. Pending earlier disputes, GRIDCO has to ensure payment security mechanism forthwith for purchase of such power from M/s. Vedanta Limited.”
- GRIDCO has stated that they have received the above interim order dated 14.01.2020 of the Commission on 18.01.2020. The Commission observed that after receipt of the aforesaid order, GRIDCO could have agreed for scheduling of the available power from M/s. Vedanta Ltd. from 19.01.2020 by making day ahead advance payment as it was done on 29.01.2020 after receipt of the Commission’s further order dated 28.01.2020 and power supply was resumed from 30.01.2020. All the dispute arose due to non-compliance of the order of the Commission dated 14.01.2020. But GRIDCO states that M/s. Vedanta could not have supplied the power in spite of GRIDCO scheduling the same due to unavailability of coal with M/s. Vedanta. To buttress up its arguments GRIDCO has also submitted the monthly drawal of power from M/s. Vedanta from February, 2020 to August, 2020 with us. From that submission it is observed that M/s. Vedanta has been able to supply on an average 325 MW of power daily for the said period. Therefore, in our considered opinion GRIDCO should pay the capacity charges to M/s. Vedanta Ltd. for the period 19.01.2020 to 29.01.2020 on the basis of daily drawal of 325 MW only. The capacity charge so determined shall be paid to M/s. Vedanta without any delayed payment surcharge.
37. With the above observations and directions the case is disposed of.

Sd/-

(G. Mohapatra)
Member

Sd/-

(S. K. Parhi)
Member

Sd/-

(U. N. Behera)
Chairperson