
Case No. 17/2022

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Vrs.

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For Respondents: Shri B.B. Mehta, CLD, SLDC, Shri K. C. Nanda, GM (Fin.) of TPWODL, Shri Bijay Das, GM (RT&C), OPTCL, Shri Lakshya Bagdwal, Advocate & Shri Sanjay Sen, Sr. Advocate on behalf of M/s. Vedanta Limited and Ms. Sonali Patnaik, ALO I/C., DoE, GoO.

ORDER

Date of Order: 10.10.2022

- a) Initiate action under Section 142 and Section 146 of the Electricity Act, 2003 against M/s. Vedanta Limited for gross, wilful and flagrant violation of Order dated 19.02.2022 of the Commission in Case No.02 of 2022;
- b) Issue directions to M/s. Vedanta Limited to forthwith submit Day Ahead Declared Capacity (DC) in favour of GRIDCO in terms of Para 30 (b) of Commission's Order dated 05.10.2021 to meet State demand in the larger interest of Consumers of the State;
- c) Issue necessary directions to M/s. Vedanta Limited to ensure procurement of Linkage Coal from MCL under the Fuel Supply agreement dated 28.08.2013

and subsequent FSA signed for Auction Linkage Coal without fail, if not already done;”

2. The grounds taken by the Petitioner-GRIDCO vide its petition in support of its case, may be stated as under:-

A. The Commission vide its Order dated 05.10.2021 permitted M/s. Vedanta Ltd. to operate its State Dedicated Unit # 2 (600 MW) normally as a CGP. However, the commission allowed GRIDCO to operate its PPA and laid down the procedure to be followed by GRIDCO to avail its entitlement of Power under the PPA from the said Unit # 2 (600 MW). The operative portion of the Order dated 05.10.2021 in Case No.34 of 2018 is quoted below :-

“30. Accordingly, considering the submission of parties and basing on the above analysis we allow GRIDCO to operate its PPA without losing its entitlement under the same.

- (a) *The Unit-II of M/s. Vedanta shall normally operate as CGP. If in any quarter, GRIDCO requires power from M/s. Vedanta for State consumption they can avail the same giving three months prior notice to M/s. Vedanta and avail the same for a period of at least three months. During that period the CGP will operate as IPP and GRIDCO will be required to pay fixed cost for the said period in addition to energy charge and other charges.*
- (b) *During IPP mode of operation, Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- (c) *During IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- (d) *If M/s. Vedanta fails to supply power after requisition by GRIDCO within the stipulated period, M/s. Vedanta will compensate GRIDCO by paying the differential cost incurred by GRIDCO for such drawal at margin over and above the cost of normal power purchase from M/s. Vedanta IPP Unit-II.*
- (e) *If at any time it is found that M/s. Vedanta has failed to supply IPP power after requisition by GRIDCO and is trading the same, M/s. Vedanta will have to pay, in compensation, two times the differential cost incurred by GRIDCO at margin over and above the IPP power cost from M/s. Vedanta.*

- (f) *In order to prevent dislocation in the current supply of power, the Unit-II will continue as IPP for the current quarter. GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta for the next quarter within one month of this order failing which the IPP Unit –II of M/s. Vedanta shall operate as CGP with effect from the 1st of January, 2022. Thereafter, as stated in sub-para (a) above, GRIDCO will have to give three months prior notice for availing power in any quarter.*
- (g) *The option of GRIDCO to avail IPP power shall be prudently exercised in order to minimise the total power purchase cost and shall be scrutinised by the Commission at any time.”*

- B. As per the above order of the Commission, GRIDCO vide letter dated 05.11.2021, exercised the option to avail Vedanta-IPP power w.e.f. 01.01.2022 to 31.03.2022. Since Vedanta failed to submit any Day Ahead Declared Capacity (DC) to SLDC in favour of GRIDCO, it filed a petition registered as Case No.02 of 2022 under Section 142 and Section 146 of the Electricity Act, 2003 for initiating action against M/s. Vedanta Ltd. for violation/non-compliance of the Order dated 05.10.2021. The Commission vide its order dated 25.01.2022 while disposing of the Case No.02 of 2022 held that there was delay of one day on the part of petitioner-GRIDCO in issuance of the requisition dated 05.11.2021 for which the said requisition was ineffectual. At the same time, the Commission had directed that pursuant to the requisition dated 31.12.2021 of GRIDCO, M/s. Vedanta will supply power in terms of the Order dated 05.10.2021 for the Quarter commencing from 1st April, 2022 to 30th June, 2022.
- C. Thereafter, GRIDCO filed an application registered as Case No.06/2022 to Recall/ Modify / Review of the direction contained in Para 12 and 15 (i) of the Order dated 25.01.2022 passed in Case No.02 of 2022 and also sought for a direction to M/s. Vedanta Ltd. to comply with the Order dated 05.10.2021 forthwith by commencing power supply to GRIDCO. As the Commission expressed its reluctance to fix an early date for hearing the Case No.06/2022, on the ground of urgency of the matter, GRIDCO filed a writ petition before the Hon’ble High Court of Orissa challenging the aforesaid order dated 25.01.2022, and the Hon’ble High Court disposed of the said writ petition with a direction to GRIDCO to pursue the remedy of review before the Competent Authority, and if any application for supply of power by M/s. Vedanta Ltd. to GRIDCO is filed before the OERC, interim order be passed in accordance with law within two weeks from the date of filing the interim application. Accordingly, GRIDCO filed an interim application before this Commission seeking for an interim

direction to M/s. Vedanta Limited for resumption of the power supply to GRIDCO in terms of the requisition dated 05.11.2021 as per the Commission's order dated 05.10.2021 in Case No.34 of 2018. Keeping in view the order of the Hon'ble High Court, the Commission reopened the Case No.02 of 2022 and vide Order dated 19.02.2022 in Case No.02 of 2022 directed M/s. Vedanta Ltd. to supply State Share of Power to GRIDCO with immediate effect.

- D. In pursuance of the above order dated 19.02.2022, GRIDCO requested M/s. Vedanta Limited to commence supply of State share of power. But M/s. Vedanta Limited on 20.02.2022 informed GRIDCO regarding outage of its generating Unit-II w.e.f. 00:00 hours from 21.02.2022 due to low coal stock. At the same time M/s. Vedanta Limited filed an Appeal No.38 of 2022 before the Hon'ble APTEL challenging the Commission's order dated 19.02.2022. In the meantime GRIDCO requested MCL to extend all kinds of cooperation to M/s. Vedanta Limited for supply of linkage coal. But M/s. Vedanta Limited informed MCL that OERC order dated 19.02.2022 was sub-judice before the Hon'ble APTEL. The Hon'ble APTEL, vide their order dated 11.03.2022, dismissed the Appeal No. 38 of 2022 of M/s. Vedanta Limited and also the DFR No.45 of 2022 filed by M/s. Vedanta Limited challenging the Commission's notice dated 14.02.2022 regarding reopening of Case No.02 of 2022 as infructuous. Thereafter, GRIDCO requested M/s. Vedanta Limited for establishing necessary payment security mechanism for payment of compensation for non-supply of power and at the same time GRIDCO informed MCL regarding dismissal of Appeal No. 38 of 2022 by Hon'ble APTEL.
- E. Thereafter, since M/s. Vedanta Limited did not commence supply of power, GRIDCO vide its letter dated 15.03.2022, again requested M/s. Vedanta Limited to commence supply of IPP power to GRIDCO forthwith as per Commission's order dated 19.02.2022 for meeting the State demand during March 2022 in view of ensuing summer. In spite of that M/s. Vedanta Limited did not resume power supply to GRIDCO in terms of Commission's order. Such action/inaction of M/s. Vedanta Limited is a gross, wilful and flagrant violation of the Commission's Order dated 19.02.2022 and amounts to contempt. It be mentioned here that in the mean time M/s. Vedanta Limited has approached the Hon'ble Supreme Court of India in Civil Appeal No. 2388 of 2022 challenging the order dated 11.03.2022 of the Hon'ble APTEL.

- F. Payment of compensation alone does not suffice the remedy for wilful non-supply of power by M/s. Vedanta Ltd to GRIDCO, when power deficit situation persisted in the State. The need of the hour was supply of power and not the payment of differential cost as compensation only. Therefore, the present petition is filed by GRIDCO for initiation of action under Section 142 and Section 146 of the Electricity Act, 2003 against M/s. Vedanta Ltd. for utter violation of order dated 19.02.2022 of the Commission passed in Case No.02 of 2022 and also for issue of directions to it for due compliance with the order dated 19.02.2022 passed in Case No. 02 of 2022 by resuming power supply to GRIDCO forthwith. The present petition is being filed without prejudice to the rights and contentions of GRIDCO in the review petition already filed by it for review of the order dated 05.10.2021.
3. The Respondent No.1-M/s. Vedanta Ltd. has submitted that no case is made out for non-compliance of the Commission's order dated 19.02.2022 on the part of M/s. Vedanta Ltd. for the reasons as follows :-
- a. Vide Order dated 05.10.2021 passed in Case No. 34 of 2018, this Commission held that the Unit-II of M/s. Vedanta Ltd. would normally operate as a CGP. However, a liberty was given to GRIDCO to requisition power from M/s. Vedanta Ltd., by giving 3 months prior notice for supply of power in any quarter. With respect to the quarter January, 2022 to March, 2022, the OERC directed that GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta within one month from the date of order.
 - b. GRIDCO issued a requisition letter dated 05.11.2021 for availing power from January, 2022 to March, 2022. However, the same was objected by Vedanta in terms of the aforesaid order dated 05.10.2021 on various grounds including the one that GRIDCO did not prudently exercise its option for availing power.
 - c. GRIDCO filed a petition in Case No.02 of 2022 seeking for a direction inter alia to M/s. Vedanta Ltd. to supply power in the aforesaid quarter. On the said petition, the Commission vide its order dated 25.01.2022 held that the requisition letter dated 05.11.2021 was 'in-effectual', and as a consequence thereof, M/s. Vedanta Ltd. was not required to supply power during the quarter from January, 2022 to March, 2022.

- d. The Commission re-opened the Case No.02 of 2022 and passed order dated 19.02.2022, directing the Respondent-M/s. Vedanta Ltd. to forthwith supply power. Since the power supply obligation arose only from 19.02.2022, there was no liability upon Vedanta on account of non-supply of power prior to 19.02.2022 inasmuch as there was no direction to that effect in the order dated 19.02.2022.
 - e. M/s. Vedanta Ltd. had filed an appeal before Hon'ble APTEL in Appeal No.38 of 2022 challenging the aforesaid order dated 19.02.2022 of this Commission, which was dismissed by the Hon'ble APTEL vide their judgment dated 11.03.2022. However, in the meantime, M/s. Vedanta Ltd. had issued a letter to MCL on 02.03.2022 seeking resumption of linkage coal, which vindicates the bonafide intention of M/s. Vedanta Ltd. for availing linkage coal so as to resume power supply to GRIDCO. Subsequently, M/s. Vedanta Ltd. had also issued a letter on 24.03.2022 to MCL seeking for resumption of linkage coal, with intimation to GRIDCO under letter dated 25.03.2022.
 - f. M/s. Vedanta Ltd. can supply power to GRIDCO only when linkage coal is available with it, in terms of the orders dated 27.01.2016, 22.06.2020 and 26.03.2021 passed by this Commission in Case No. 21 of 2015, Case No. 68 of 2018 and Case No. 72 of 2020 respectively.
4. M/s. Vedanta Ltd. pleads that in the facts and circumstances indicated above, it becomes evident that it has been diligent in its actions and further that there was no obligation upon it to supply power to GRIDCO upto 11.03.2022, i.e. the date of the judgement of the Hon'ble APTEL.
5. It is further submitted by M/s. Vedanta Ltd. that even otherwise, it cannot be compelled to supply power to GRIDCO in the face of huge pendency of outstanding dues towards monthly power supply bills. GRIDCO has wilfully defaulted in making legitimate tariff payments to M/s. Vedanta Ltd., the total outstanding liability of GRIDCO as on date being Rs.1742.42 crores on different accounts including an amount of Rs.503.00 crores towards the monthly tariff payments. GRIDCO is under a contractual obligation to make the legitimate tariff payment of monthly supply bills of M/s. Vedanta Ltd. qua supply of power under the PPA and that even in case GRIDCO disputes the amount due, still then it is contractually bound to make 75% payment of the invoice/amounts so disputed. As per the provisions under Section 51 to Section 54 of the Indian Contract Act, 1872, where a contract contains a reciprocal promise to be performed by a

promisee, then the promisor cannot at all be asked to perform its part of the contract, unless the promisee performs its reciprocal promise.

6. M/s. Vedanta has further submitted that the Commission vide its order dated 05.10.2021 passed in Case No.34 of 2018, while holding that Unit-II of M/s. Vedanta Ltd. would normally operate as CGP, have passed in Para 30(d) that in case M/s. Vedanta Ltd. does not supply power in terms of a requisition, then it has the option of compensating GRIDCO by paying the differential cost incurred by it for arranging alternate power. The above order of the Commission stands as a governing principle in the matter of supply of power by M/s. Vedanta Ltd. from its Unit-II. Therefore, as long as M/s. Vedanta Ltd. is ready and willing to pay compensation (which would be governed by the principles of compensation contained under Section 73 & Section 74 of the Indian Contract Act, 1872), there cannot be any obligation upon M/s. Vedanta Ltd. for mandatory power supply. On account of the above direction contained in the order dated 05.10.2021, the present application of GRIDCO under Section 142 and under Section 146 of Electricity Act, 2003, is bereft of any merit and deserves to be dismissed by the Commission. Further, M/s. Vedanta Ltd. has filed a Civil Appeal No.2388 of 2022 before the Hon'ble Supreme Court of India under Section 125 of the Electricity Act, 2003 praying for reversal of the impugned judgement dated 11.03.2022 passed by the Hon'ble APTEL and for setting aside the order dated 19.02.2022 passed by this Commission. In view of the above, M/s. Vedanta submits that no case is made out against it regarding non-compliance with the order of the Commission, inasmuch as the matter is still sub-judice before the Hon'ble Apex Court.
7. The Respondent SLDC has submitted that M/s. Vedanta Limited was furnishing the declared capacity of 50 MW of its generating Units-II from 23:00 hours of 03.01.2022 which was scheduled by SLDC. M/s. Vedanta Limited continued to furnish declared capacity of Unit-II till 24:00 hours of 02.02.2022 and there was no declaration of capacity by it from 03.02.2022 to 19.02.2022. Thereafter, when the Commission in its order dated 19.02.2022 passed in the Case No.02 of 2022, directed M/s. Vedanta Limited to supply full quantum of power from 19.02.2022 till 31.03.2022 by procuring and utilizing linkage/concessional coal available under long term FSA for Unit-II (600 MW), M/s. Vedanta Limited declared forced outage of Unit-II from 23:54 hours of 20.02.2022. M/s. Vedanta Limited resumed furnishing declared capacity from 01:05 hours of 01.04.2022 which was scheduled by SLDC. The average declared capacity of Unit-II of M/s. Vedanta Limited was 295.34 MW for the month of April, 2022.

8. The Respondent TPWODL has submitted that GRIDCO is the state designated entity to procure power from various generating sources and as per the vesting order TPWODL is obliged to purchase power from GRIDCO. However, keeping the larger interest of the consumers of the state TPWODL has the obligation to make cheaper power available to them. The power made available to the state from the Unit-II (600 MW) of M/s. Vedanta Ltd. is the cheaper power. Hence M/s. Vedanta Ltd. should resume power supply to GRIDCO for the interest of the consumers of the state.
9. The respondent OPTCL in its written submission has supported the stand taken by the petitioner-GRIDCO.
10. In reply to the Respondent M/s. Vedanta Limited, the petitioner-GRIDCO in its rejoinder has further submitted that;
 - a. The payment of compensation for non-supply of power does not and cannot override the statutory power of the Commission under Section 142 and 146 of the Electricity Act, 2003. The provision of compensation applies only when M/s. Vedanta Limited is unable to supply power for the reasons beyond its control. In case of wilful non-supply of power in gross and flagrant violation of the order dated 19.02.2022 and the order dated 05.10.2021, the provision for compensation as well as provisions of Section 142 and 146 of the Electricity Act, 2003 are applicable. Any other interpretation would render the said orders completely redundant and nugatory.
 - b. The malafide conduct of M/s. Vedanta Limited in the present case is clearly evident from the generation of power from its Unit-II during the period from 01.01.2022 to 19.02.2022. During the month of January, the average generation of Unit-II was 439.46 MW (varies from 331.27 MW to 509.65 MW), whereas supply to GRIDCO was as low as 50 MW and balance quantum was utilized by M/s. Vedanta Limited for its captive purpose. Similarly, during the period from 01.02.2022 to 20.02.2022, the average generation was 262.62 MW (varies from 324.31 MW to 449.20 MW) and no power was supplied to GRIDCO except 1st and 2nd February, 2022 (when 50 MW power per day was supplied to GRIDCO). When the Commission vide its order dated 19.02.2022 in Case No. 02 of 2022 directed M/s. Vedanta Limited to supply State share of power to GRIDCO with immediate effect, M/s. Vedanta Limited on 20.02.2022 informed GRIDCO that Unit-II will be out of operation w.e.f. 00:00 hours of 21.02.2022 due to low coal stock. But, from the aforesaid generation pattern of Unit-II prior

to the order dated 19.02.2022, it is clearly evident that M/s. Vedanta Limited has no constraints to generate power from Unit-II on account of any unavoidable/uncontrollable reasons such as non-supply of coal by MCL or break down of Unit-II due to technical reason. Thus, it has been a clear and wilful violation of the Commission's order resulting in contempt. Resumption of power supply by M/s. Vedanta Limited w.e.f. 1st April, 2022 has no relevance to the present petition.

- c. The order dated 19.02.2022 of the Commission supersedes the order dated 25.01.2022 pertaining to the quarter of January to March, 2022. In the order dated 19.02.2022, the Commission has directed to M/s. Vedanta Limited to commence supply of power to GRIDCO forthwith, which shows that the requisition dated 05.11.2021 did not suffer any delay. The period from 19.02.2022 to 31.03.2022 falls within the said quarter. The non-supply of power by M/s. Vedanta Limited during said quarter was, therefore, in complete violation of order dated 05.10.2021 read with order dated 19.02.2022 of the Commission.
- d. Immediately after pronouncement of order dated 19.02.2022 by the Commission, GRIDCO requested MCL to supply linkage coal to M/s. Vedanta Limited under the FSA. Therefore, GRIDCO is not in any manner responsible for insufficient stock of linkage coal, if any. Neither M/s. Vedanta Limited complied with the requisition dated 05.11.2021 of GRIDCO till 25.01.2022 nor it complied with the Commission's order dated 19.02.2022 for supply of State entitlement of power to GRIDCO. Thus, M/s. Vedanta Limited deliberately did not requisition monthly quota of linkage coal.
- e. M/s. Vedanta Limited is unnecessarily mixing up the issue of non-supply of power to GRIDCO with that of pending dues (if any). GRIDCO has already duly replied to the alleged default notices of M/s. Vedanta Limited regarding payment. Further, M/s. Vedanta Limited cannot be permitted to raise extraneous issues of alleged of non-payment of dues by GRIDCO in the present petition. Since the resumption of power supply by M/s. Vedanta Limited in January, 2020, after a long gap of almost more than one and half years, GRIDCO has been making payment of monthly energy dues in time and as such there is no default. However, regarding recasting of cost of power for the past period, though the reconciliation of quantum of power has been completed, the

reconciliation of cost has not been completed due to want of some information/data from M/s. Vedanta Ltd. The other alleged claims of M/s. Vedanta Ltd. are unilateral claims pertaining to the matters which are sub-judice before different Forums/ Courts. In view of the above, the provisions contained in Section 51 to Section 54 of the Indian Contract Act, 1872 are not applicable to the present case

- f. As per Para 30(d) of the Order dated 05.10.2021 of the Commission in Case No.34 of 2018, if M/s. Vedanta Ltd. fails to supply power after requisition by GRIDCO within stipulated period, Vedanta will compensate GRIDCO by paying differential cost incurred by GRIDCO. In the present case, M/s. Vedanta Ltd. wilfully defaulted in supplying power to GRIDCO in spite of requisition made in time.
 - g. In view of the above facts and submissions, GRIDCO seeks for stringent action against M/s. Vedanta Ltd. for gross, wilful and flagrant violation of the Commission's order dated 05.10.2021 / 19.02.2022 and also for a direction to M/s. Vedanta Ltd. to compensate GRIDCO as per the order dated 05.10.2021 for non-supply of power.
- 11. Heard the parties with reference to their respective pleadings through virtual mode and considered their written notes of argument.
 - 12. The Commission, in pursuance of the Order dated 09.02.2022 of the Hon'ble High Court of Orissa, had reopened the Case No.02 of 2022 on an interim application of Petitioner-GRIDCO, and vide its order dated 19.02.2022 in Case No.2 of 2022 at Para 14 had directed as follows:

“14. Hence, the interim application is allowed with the following direction-
M/s. Vedanta Ltd. Respondent No.1 is directed to supply full quantum of power with effect from date of this order i.e. 19.02.2022 forthwith as per para 30 (b), (c) and (f) of the OERC order dated 05.10.2021 in Case No. 34 of 2018 till end of 31st March, 2022 by procuring and utilising linkage/concessional coal available under Unit-II (600 MW) under the valid long term FSA pending disposal of Case No. 06 of 2022.
The interim application stands disposed of.”
 - 13. For the purpose of addressing the controversy involved in the case at hand, the relevant findings and directions of the Commission at paragraph 30 of its order dated 05.10.2021 passed in Case No.34 of 2018 are reproduced below:

“30. Accordingly, considering the submission of parties and basing on the above analysis we allow GRIDCO to operate its PPA without losing its entitlement under the same.

- (a) The Unit-II of M/s. Vedanta shall normally operate as CGP. If in any quarter, GRIDCO requires power from M/s. Vedanta for State consumption they can avail the same giving three months prior notice to M/s. Vedanta and avail the same for a period of at least three months. During that period the CGP will operate as IPP and GRIDCO will be required to pay fixed cost for the said period in addition to energy charge and other charges.*
- (b) During IPP mode of operation, Quantum of power supply to GRIDCO towards State entitlement should be 25% (at full cost) and 7% / 5% (at variable cost) of total energy sent out from the power station (4 x 600 MW) as per the PPA in force. The Unit-II must remain connected to STU as State dedicated unit and accordingly supply to GRIDCO must be 25%+7%/5% of total energy sent out from the power station or total ex-bus generation from Unit-II whichever is higher. Such quantum of power supply should not be disturbed at any point of time.*
- (c) During IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.*
- (d) If M/s. Vedanta fails to supply power after requisition by GRIDCO within the stipulated period, M/s. Vedanta will compensate GRIDCO by paying the differential cost incurred by GRIDCO for such drawal at margin over and above the cost of normal power purchase from M/s. Vedanta IPP Unit-II.*
- (e) If at any time it is found that M/s. Vedanta has failed to supply IPP power after requisition by GRIDCO and is trading the same, M/s. Vedanta will have to pay, in compensation, two times the differential cost incurred by GRIDCO at margin over and above the IPP power cost from M/s. Vedanta.*
- (f) In order to prevent dislocation in the current supply of power, the Unit-II will continue as IPP for the current quarter. GRIDCO has to exercise its option to avail IPP power from M/s. Vedanta for the next quarter within one month of this order failing which the IPP Unit –II of M/s. Vedanta shall operate as CGP with effect from the 1st of January, 2022. Thereafter, as stated in sub-para (a) above, GRIDCO will have to give three months prior notice for availing power in any quarter.*
- (g) The option of GRIDCO to avail IPP power shall be prudently exercised in order to minimise the total power purchase cost and shall be scrutinised by the Commission at any time.”*

14. From the aforesaid orders as well as the submissions made by the parties, it transpires that:

- (a) Vide order dated 19.02.2022 M/s. Vedanta Ltd. was directed to supply full quantum of power with effect from date of that order i.e. 19.02.2022 forthwith as per para 30 (b), (c) and (f) of the Commission's order dated 05.10.2021 in Case No. 34 of 2018 till end of 31st March, 2022 by procuring and utilising

linkage/concessional coal available under Unit-II (600 MW) under the valid long term FSA.

- (b) At Para 30(c) of the order dated 05.10.2021, it was directed that during IPP mode of operation, the coal used for generating power for State entitlement shall be linkage coal / captive mines allocated to the Petitioner for State use.
 - (c) On 20.02.2022 i.e. the date succeeding the day of issue of the order dated 19.02.2022, M/s. Vedanta Ltd. informed GRIDCO about outage of Unit-II from 00:00 hours of 21.02.2022 due to low coal stock and on 21.02.2022, M/s. Vedanta Ltd. filed an appeal before the Hon'ble APTEL challenging the said order dated 19.02.2022.
 - (d) From the generation pattern of Unit-II, as submitted by GRIDCO, it is found that during the period from 01.02.2022 to 20.02.2022, the generation was varying from 324.31 MW to 449.20 MW. Further, the generation on 19.02.2022 was 408.69 MW and on 20.02.2022 it was 385.18 MW and no power was supplied to GRIDCO. As per the Commission's order dated 19.02.2022 in Case No.02 of 2022, M/s. Vedanta Ltd. was directed to supply full quantum of power with effect from the date of order i.e. 19.02.2022 forthwith, but M/s. Vedanta Ltd. though generated power on 19.02.2022 and 20.02.2022, failed to supply the state share of power to GRIDCO.
15. It is observed that on 20.02.2022 i.e. the day next succeeding issue of the Commission's order dated 19.02.2022, M/s. Vedanta Ltd. informed GRIDCO about outage of Unit-II from 00:00 hours of 21.02.2022 due to low coal stock and at the same time, it filed an appeal before the Hon'ble APTEL on 21.02.2022 challenging the order dated 19.02.2022 of this Commission. Viewing from the above circumstances, the plea taken by M/s. Vedanta Ltd. that outage of Unit-II was occasioned due to shortage of coal is found to be unreliable, especially when the factum of shortage of linkage coal was not brought to the notice of this Commission. M/s. Vedanta Ltd. could have supplied power to GRIDCO at least on 19th & 20th of February, 2022, when admittedly there was generation from its Unit-II and then it could have brought to the notice of the Commission, the fact of so called shortage of coal stock for operation of the Unit-II. Even assuming that there was low coal stock for operation of the Unit-II, it appears to have made no endeavour for procurement of linkage coal from MCL as directed by the Commission in its order dated 19.02.2022 in Case No.2 of 2022. Even after dismissal of its Appeal on 11.03.2022 by the Hon'ble APTEL, it neither supplied the State share of

power to GRIDCO nor tried with due diligence to procure linkage coal from MCL. Though it claims to have written two letters to MCL on 02.03.2022 and 24.03.2022, but the same was not brought to the notice of this Commission. In the facts and circumstances indicated above, M/s. Vedanta Ltd. cannot claim to have acted bonafidely in compliance with the order dated 05.10.2021 and the specific order dated 19.02.2022 passed by the Commission as referred to above.

16. To reiterate, the Appeal No.38 of 2022 filed by M/s. Vedanta Ltd. before the Hon'ble APTEL challenging the order dated 19.02.2022 of this Commission, has been dismissed on 11.03.2022 and although Civil Appeal No.2388 of 2022 has been preferred by it before the Hon'ble Supreme Court of India, no order of stay has been passed therein. Hence, M/s. Vedanta Ltd. cannot avoid its liability arising out of the non-compliance with the specific order dated 19.02.2022 of this Commission which essentially is traced to the Commission's order dated 05.10.2021 passed in Case No.34 of 2018 which, as it stands, has not been challenged by M/s. Vedanta Ltd.. At the same time, on taking note of the intervening circumstances and mitigating factors as depicted from record, especially the fact that M/s. Vedanta Ltd. has already filed a Civil Appeal before the Hon'ble Apex Court concerning the issue, which is sub-judice, the Commission does not feel it appropriate to warrant any penal action against M/s. Vedanta Ltd. for the inaction and non-compliance stated above. It, however, cannot deny or dispute its liability to pay compensation to GRIDCO for its failure to supply the power in terms of the order dated 05.10.2021.

The plea taken by M/s. Vedanta Ltd. that since it has huge outstanding dues on the Petitioner-GRIDCO, non-supply of power to GRIDCO cannot be treated as a default or failure, is not tenable, inasmuch as such a plea is extraneous to the present proceeding where the question of payment of outstanding dues, if any, is not in issue.

17. Although vide the application at hand GRIDCO sought for relief specifically for the non-compliance of the order dated 19.02.2022 passed in Case No.02/2022, in course of the argument, the Learned Counsel sought for action against M/s. Vedanta Ltd. for non-supply of power by the latter for the period from 01.01.2022 to 31.03.2022, when there was shortage of power to meet the demand of the state, in terms of the order dated 05.10.2021 passed in Case No.34 of 2018. In the context, a reference may be made to the order passed by this Commission in Case No.6/2022 (Review Petition).

The requisition dated 05.11.2021 made by the Petitioner-GRIDCO as per Commission's order dated 05.10.2021 for drawal of power from Unit-II of M/s.

Vedanta Ltd. has been rejected by this Commission vide its order dated 25.01.2022 on the ground of one day delay. The said order had been occasioned under an erroneous assumption that the date 04.11.2021 was a working day, and it was later brought to the notice of the Commission through a Review Application by GRIDCO that the date 04.11.2021 was a public holiday. Accordingly, the Review Application registered as Case No.6/2022 was allowed on 14.09.2022 validating the requisition dated 05.11.2021 issued by the GRIDCO to the M/s. Vedanta Ltd. for supply of power from 01.01.2022 to 31.03.2022. As a natural consequence of the said order in Case No.6/2022, the petitioner-GRIDCO could not be denied its right and entitlement arising out of the order dated 05.10.2021. At the same time, the Commission is conscious that in the present proceeding M/s. Vedanta Ltd. was called upon to face and contest the claim made by GRIDCO on the specific issue of the default for the period from 19.02.2022 to 31.03.2022, with reference to the order dated 19.02.2022 passed by this Commission. It is true that since by the date of filing of the present application, the review petition (Case No.6/2022) was sub-judice, there was no occasion for GRIDCO to put forth any claim for any period beyond the terms of the order dated 19.02.2022. But this Commission while deciding a case cannot travel beyond the pleading of the petitioner or grant any relief not sought for by him vide the application.

18. In the light of the discussion made herein before, the Commission hereby directs M/s. Vedanta Ltd. to pay compensation to the Petitioner-GRIDCO on account of non-supply of the State share of power to GRIDCO for the period from 19.02.2022 to 31.03.2022, in terms of the stipulation made vide paragraph 30(d) of the order dated 05.10.2021 passed by this Commission in Case No. 34 of 2018, within three months of the date of receipt of this order. Liberty is hereby given to GRIDCO to take further course of action, if any, pursuant to the order dated 14.09.2022 of this Commission passed in Case No. 6/2022 (Review Petition), through separate application.
19. With the findings and directions as above, the case is disposed of.

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

Sd/-
(G. Mohapatra)
Officiating Chairperson