

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

**Present: Shri S. C. Mahapatra, Chairperson
Shri G. Mohapatra, Member
Shri S. K. Ray Mohapatra, Member**

Case No. 36/2023

M/s. ABREL Solar Power Ltd. Petitioner
Vrs.
GRIDCO & others Respondents

In the matter of: **Application under Sections 86(1)(e) & 86(1)(f) of the Electricity Act, 2003 seeking to set-aside the Deviation Charges levied at unscheduled Interchange (UI) rate by GRIDCO Ltd as being illegal and without any authority of law.**

For Petitioner : Shri Matrugupta Mishra, Advocate

For Respondents : Shri Subasis Samantaray, AGM (Electrical) RT&C, OPTCL, Shri Ashok Mishra, Head Legal, GRIDCO Ltd. along with Shri B.K. Das, Sr. GM, GRIDCO Ltd., Ms. Mandakini Ghose, Advocate on behalf of M/s. Grasim Industries Ltd. and the representative of SLDC

ORDER

Date of Hearing: 25.07.2023

Date of Order: 05.08.2023

The Petitioner-M/s. ABREL Solar Power Ltd. (in short M/s. ABRELSPL) has filed the present petition under Section 86 (1) (e) and 86 (1) (f) of the Electricity Act, 2003, seeking to set aside the deviation charges levied by GRIDCO on its Solar CGP at Unscheduled Interchange (UI) rate for the period from July, 2022 to January, 2023.

2. The Petitioner-M/s. ABREL Solar Power Ltd. has submitted that:

- a) It has a captive solar generating plant with installed capacity of 18.75 MW near Saintala in Bolangir District of Odisha and supplying solar power to M/s. Grasim Industries Ltd. through Open Access. The Petitioner company is a subsidiary of M/s. Aditya Birla Renewable Ltd., which is a wholly owned subsidiary of M/s. Grasim Industries Ltd.

- b) The Petitioner, as a Long-Term Open Access (LTOA) customer, entered into a Transmission Capacity Access Agreement (TCAA) with OPTCL, the State Transmission Utility (STU) on 06.06.2022, for evacuation of 18.75 MW power from its Solar CGP for a period of 25 years. Thereafter, on 20.06.2022, the Executive Director, Central Zone, OPTCL granted LTOA to export 18.75 MW power from Petitioner's solar plant to M/s. Grasim Industries Ltd., Ganjam through 132 kV system of OPTCL with certain terms and conditions precedent for commencement of long-term access right qua evacuation of power through their 132 kV line. One of the condition precedents is that the Petitioner is to execute commercial agreement with GRIDCO and furnish required BG to GRIDCO in order to make request to SLDC for scheduling of power. Any power injected to the system in absence of accepted schedule by SLDC shall be treated as inadvertent power and GRIDCO is not liable to pay any price for this inadvertent power.
- c) On 22.06.2022, the Petitioner commissioned 6.25 MW capacity out of its total solar plant capacity of 18.75 MW. M/s. ABRELSPL as well as M/s. Grasim Industries Ltd., which happens to be its captive user, are both connected to the network of STU i.e. OPTCL and accordingly open access permission was obtained from OPTCL for utilisation of its transmission lines. The Petitioner is neither supplying any power to GRIDCO nor to any other distribution licensee in the State. The entire generation of the solar CGP of the Petitioner is exclusively consumed by M/s. Grasim Industries Ltd., being the 100% captive user. There was no occasion on the part of the Petitioner either in the facts or by virtue of the course of law, for executing an agreement with GRIDCO for Open Access. However, the Petitioner did not have any other choice but to execute an agreement with GRIDCO on 05.07.2022 for availing long term access for evacuation of power to its user from the subject 18.75 MW solar CGP. The Clause 2 of this agreement dated 05.07.2022 deals with the prices and charges for under injection by the Petitioner and over drawl by the Respondent-M/s. Grasim Industries Ltd., the relevant extract of which are as under:

“2. **PRICE & CHARGES:**

- (a) *ABRELSPL may inject more power than the scheduled quantum. For such condition, the power in excess or the scheduled quantum for wheeling shall be treated as inadvertent power, for which GRIDCO is not liable to pay any price in absence of any contract/Agreement for purchase of power from ABRELSPL.*
- (b) *ABRELSPL may inject less power than the scheduled quantum. For such condition, the LTOA customer shall compensate GRIDCO towards the under-injection quantum of power at the rate of average BSP for respective FY + Rs.1/ or deviation charges including additional deviation charges as per CERC norms + Rs.1/- whichever is higher. All calculation shall be made on 15 minutes block period.*
- (c) *M/s. Grasim Industries Limited may draw less power than the schedule quantum. For such condition, the difference between the scheduled quantum and actual drawl quantum shall be treated as inadvertent power, for which GRIDCO is not liable to pay any price.*
- (d) *M/s. Grasim Industries Limited may draw more power than the scheduled quantum. For such condition, the power drawl from the system \over and above the scheduled quantum shall be billed to M/s. Grasim Industries Limited by Discom (TPSODL) as per RST order of Hon'ble Commission and same energy shall be billed by GRIDCO to the concerned Discom as per BSP order of Hon'ble Commission for respective FY.*
- (e) *The necessary SLDC charges as applicable from time to time as per OERC (Terms and Condition of Open Access) Regulations, 2020 for Long Term Open Access Customer.*
- (f) *The OPTCL Transmission/ Wheeling losses shall be applicable from time to time as per OERC (Terms and Condition of Open Access) Regulations, 2020 for Long Term Open Access / Tariff order of OPTCL.”*

- d) GRIDCO is treating the scheduled deviation from solar plant of the Petitioner as per the deviation settlement rates applicable to thermal generating stations and not as per the DSM rate applicable to wind and solar generating stations under CERC (DSM) Regulations, 2022. In summary, the CERC (DSM) Regulations, 2022prescribed following rates for deviation settlement of captive wind and solar generating stations:

<u>For under-injections</u>		
Limit of Deviation Slab	Commercial Penalty for Settlement of Schedule Deviation	Commercial Deviation Settlement for Energy
0 to <=10%	NIL	Weighted average ACP of the DAM for that time block.
>10% to <=100%	10% of the (Higher of	

	<i>weighted average ACP in DAM / RTM for that time block)</i>	<i>Generating Station will receive PPA price from Buyer for this quantity.</i>
<i><u>Note for under-injection:</u> Generator will receive price for under-injected quantity from captive user/buyer as per private arrangement. There may be commercial impact due to energy deviation settlement if ACP of DAM for relevant time block is different from price in private arrangement.</i>		
<i><u>For over-injection</u></i>		
<i>0 to <=5%</i>	<i>NIL</i>	<i>Weighted average ACP of the DAM for that time block</i>
<i>>5% to <=10%</i>	<i>10% injection lapses</i>	<i>@90% of the weighted average ACP of DAM for that time block</i>
<i>>10% to <=100%</i>	<i>100% injection lapses</i>	<i>zero</i>
<i><u>Note for over injection:</u> Generator will not receive any price for over injected quantity from captive user/buyer as per private arrangement. There may be commercial impact due to energy deviation settlement if ACP of DAM for relevant time block is different from price in private arrangement.</i>		

- e) Further, the Commission had invited comments on the draft OERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022, wherein the Commission has waived the deviation charges for wind and solar generation upto 10% and allow only 10% of the normal rate to be paid in case the deviation exceeds 10%, in line with the CERC DSM Regulations, 2022. Further, as per OERC (Intra-State ABT) Regulations, 2007, the Nuclear, Wind and Solar Power Stations are not covered under Intra-State ABT.
- f) Under Clause 2.2 (3)(g) of the Odisha Grid Code Regulations, 2015, the Commission has provided for the SLDC to levy the charges regarding the deviation settlement in provision of the Act and not GRIDCO. Therefore, none other than SLDC is empowered to impose deviation settlement charges on the Petitioner at the rate as prescribed by the DSM Regulations amended from time to time.
- g) GRIDCO has issued monthly bills for payment of deviation charges towards under injection of power at UI rate for the period between July, 2022 to January, 2023. The Petitioner vide its letter dated 28.02.2023 has informed GRIDCO that it has made part payment of Rs.27,94,031/- on 10.02.2023 under protest towards impugned demand invoices and the payment is made without prejudice to rights and remedies under the law. But GRIDCO has neither responded to the above letter of the Petitioner nor cancelled the demand notices. Being aggrieved by the same the Petitioner has filed the present petition on basis of the foregoing grounds:

- (i) *The levy is illegal without any basis in law and against the provision of Odisha Grid Code Regulations, 2015.*
- (ii) *Deviation charges are to be levied as per the Regulations and not as per contractual arrangement.*
- (iii) *Agreement dated 05.07.2022 vis-à-vis Section 23 of the Contract Act, 1872:*

As per the Petitioner, the Commission is not bound to enforce the terms of the agreement dated 05.07.2022 inasmuch as the same is in express contravention of the Intra-State ABT, Regulations, 2007 which categorically exempts solar generating stations from the levy of deviation charges at UI rate. However, GRIDCO is levying UI charges for the deviation under the grab of the agreement dated 05.07.2022, which in teeth of Section 23 of the Indian Contract Act, 1872. In this context the Petitioner has relied upon the decision of the Hon'ble Supreme Court in case of G.T. Girish vrs. Y. Subba Raju, 2022 SCC OnLine SC 60, which held that firstly, 'law' under Section 23 of the Indian Contract Act, 1872 also includes 'subordinate legislation' and secondly, the Court is not to enforce a contract which is 'expressly' or 'impliedly' prohibited by a statute or subordinate legislation.

- (iv) *Abuse of dominant provision by GRIDCO:*

The levy of deviation charges by GRIDCO under the present facts and circumstances constitute abuse of dominant position by GRIDCO inasmuch as it has compelled the Petitioner to execute the agreement dated 05.07.2022 as a pre-condition, failing which the Petitioner would not be able to give effect for commissioning of its captive solar plant by allowing scheduling of power. The Commission has the power to grant appropriate direction to any licensee under the Act as it considers appropriate to prevent abuse of dominant position under Section 60 of the Act.

- (v) *Imposing deviation charges by GRIDCO at UI rates defeats the mandate under Section 86(1)(e) of the Electricity Act, 2003.*

- h) In view of the above, the Petitioner has prayed the Commission to:

- (i) Declare the levy of deviation charges on the Petitioner as arbitrary and illegal being without any authority of law;
- (ii) Set aside and quash the impugned demand invoices raised by GRIDCO for the period from July, 2002 to January, 2023;
- (iii) Direct refund of amount paid by the Petitioner for Rs.27,94,031/- as part payment towards impugned demand invoices, raised by GRIDCO;
- (iv) Hold and declare the Agreement dated 05.07.2022 executed between GRIDCO and the Petitioner, as illegal and arbitrary, being violative of the provisions of Electricity Act, 2003;
- (v) Pass an appropriate order or direction in the nature of stay of the operation of the impugned invoices raised by GRIDCO against the Petitioner for the period from July 2022 till January, 2023 till the final disposal of the present petition;
- (vi) Pass an appropriate order or direction, restraining GRIDCO from raising any invoices pertaining to payment of deviation charges to the Petitioner, till the final disposal of the present petition, and
- (vii) Pass such other and further order or orders as this Commission may deem fit and proper under the facts and circumstances of the present and in the interest of justice.

3. The Respondent-GRIDCO has submitted as given hereunder:

- (a) The Petitioner has wheeled power from its 18.75 MW solar power plant to M/s. Grasim Industries Ltd. under group captive mechanism through STU (OPTCL) transmission system. During under injection of power by the Petitioner in comparison to the schedule, M/s. Grasim Industries Ltd. has drawn power from the State Pool i.e. from the pool of GRIDCO.
- (b) Now the Petitioner has claimed its exemption under OERC (Intra-State ABT) Regulations, 2007. Under Regulation 3(I) of the said Regulation, such exemption is applicable to only those generators supplying power to the Licensee. The Petitioner being an open access user is not covered by this provision. The ABT Regulations, 2007 was formulated by the Commission when there are no solar power developers functioning in the State. At present

scenario, there are many solar generators supplying energy to the state entity i.e. GRIDCO's Pool and in such cases GRIDCO is not imposing either UI charges or DSM charges to such solar developers due to absence of Intra-State DSM Regulations. However, in the instant case, the present Petitioner being a CGP using open access and during under injection, the drawee utility draws scheduled power from GRIDCO pool, GRIDCO has to purchase the shortfall in power from the open market at higher price in order to meet the state requirement of power and maintain the grid discipline/security. Therefore, GRIDCO is bound to impose under injection charges on the Petitioner as an embedded user of power from GRIDCO's pool by deviating the schedule. The claim of under injection charges for the period from July, 2022 to April, 2023 amounts to Rs.1,02,63,635/- out of which the Petitioner has paid Rs.27,94,031/- only.

- (c) The Petitioner is having four solar generating stations in the State, out of which three units are supplying power to GRIDCO and in such cases GRIDCO has not imposed any under injection charges on these three solar plants. However, the subject fourth solar unit of 18.75 MW capacity is being scheduled to supply power to its drawee utility M/s. Grasim Industries Ltd. by using open access. The drawee utility is always drawing the scheduled power, even when the solar CGP of the Petitioner fails to inject the scheduled energy and in such a situation the drawee utility avails the residual energy from the GRIDCO's Pool. This situation requires GRIDCO to impose under injection charges as per the agreement dated 05.07.2022 made between the Petitioner and GRIDCO.
- (d) As per Regulation 4 (7)(i) of the OERC (Determination of Open Access Charges) Regulations, 2006, the mismatch between the scheduled and actual drawl may be met from the grid which shall be governed by the UI pricing mechanism. But the Commission has not specified such price for under injection in case of open access to meet the open access schedule. However, in case of under injection by Nava Bharat Ventures Ltd. (M/s. NBVL) in case No.54 of 2012 the Commission had observed that when the net injection of M/s. NBVL falls short of its open access schedule for supply to outside the state customers and it has not revised its schedule within allowable time block

period, GRIDCO shall charge the respective UI rate plus Rs.1/- as incentive or rate of emergency/back up power supply to CGPs as determined by the Commission whichever is lower to the quantum of GRIDCO's power utilized for open access transaction. On enforcement of CERC DSM Regulations, 2014 replacing the UI mechanism w.e.f. 17.02.2014; GRIDCO formulated a methodology to recover the under-injection shortfall charges from the CGPs at a rate of average BSP plus Rs.1/- or deviation charges including additional deviation charges as per CERC norms plus Rs.1/- whichever is higher for the time block period. This was accepted by all CGPs and accordingly, they are paying such charges to GRIDCO.

- (e) Further, the OERC (Terms and Conditions of Open Access) Regulations, 2020 does not also specify any tariff for under-injection by open access customers. In absence of such tariff for imbalance charges, the Petitioner entered into an agreement with GRIDCO on 05.07.2022. The Commission, in its order dated 16.01.2023 in case of M/s. BEL (a Solar Developer using Open Access) and GRIDCO, has observed that GRIDCO must be compensated for similar transaction and even if GRIDCO adopted rates of DSM of CERC for the purpose of lesser or higher injection into the grid, the same cannot be held illegal or unconscionable and BEL cannot be exonerated from paying under-injection charges to GRIDCO when its generation from the CGP is less than the scheduled injection.
- (f) The Petitioner has challenged the agreement dated 05.07.2022 made with GRIDCO which is against the doctrine of "promissory estoppel" i.e. when the promisor has made a promise to the promisee, the promisee must have relied on the promise and suffer a loss due to non-performance of the contract. The doctrine prevents the promiser or enterprise from going back on their word or promise. In the present case, the Petitioner agreed with GRIDCO that when its CGP injected less power than the scheduled quantum, the Petitioner (Long Term Open Access Customer) shall compensate GRIDCO towards the under-injection of quantum of power at the rate of average BSP for respective financial year plus Rs.1/- or deviation charges including additional deviation charges as per CERC norms plus Rs.1/- whichever is higher and calculations have been made on 15 minutes block period. The Petitioner, being a party to

the said contract and agreed to the above provisions, has liability to compensate to GRIDCO as per the terms and conditions of the contract. The said contract is neither illegal nor arbitrary and also not against public policy.

(g) The Section 23 of the Contract Act has no application to the present case.

Under the provisions of Section 23 of the Contract Act, an argument is void,

- If its purpose is the commission of an illegal act.
- If it is expressly or impliedly prohibited by any law.
- If its performance is not possible without disobedience of any law.

There is no iota of any fact on record in the present case which shows to be in conformity with the provision of Section 23 of the Contract Act to be called the agreement as void ab initio.

(h) As there is no prevailing DSM Regulations of OERC, charges made on the Petitioner (Open Access Customer) for under-injection at mutually agreed rate which is based on CERC DSM Regulations, 2014 is maintainable and be allowed to prevail.

4. The Respondent-OPTCL has submitted that:

(a) GRIDCO is a deemed trading licensee of the State and carries out the business of bulk supply of electricity to the DISCOMs through the transmission network of OPTCL. GRIDCO procures power from various sources for supply of the same to the DISCOMs and also supplies emergency power to the CGPs and also trades surplus power, if available. Any open access customer including the Petitioner is required to submit its day ahead injection schedule of 15 minutes time block to SLDC. In practice, there is always a mismatch between the actual injection and scheduled injection to the state grid, the consequences of which is to be borne by GRIDCO from the regional pool. In case of huge mismatch, GRIDCO has to put additional effort towards matching the load-generation in real time basis. In some instances when the actual injection is less than the open access schedule, GRIDCO's pool power may be utilized by the Petitioner to the extent of shortfall of open access quantum. Such matter has also been observed by the Commission at para 12 of its order dated 23.04.2013 in Case No.54 of 2012.

- (b) As the CGP of the Petitioner is considered to be embedded in the State Grid, GRIDCO may be liable to pay the corresponding UI charges to the regional UI pool account for any mismatch between its schedule vrs. actual drawal. For sale of surplus power, if any, to GRIDCO, the Petitioner will have to enter into a commercial agreement with GRIDCO. Therefore, OPTCL has requested the Petitioner to execute commercial agreement with GRIDCO which is fully justified. If the Petitioner was aggrieved with the suggestion of OPTCL to execute commercial agreement with GRIDCO, then the Petitioner may have approached OPTCL for clarification if any; however, the same was not resorted by the Petitioner. Instead, the Petitioner is now submitting the same through the present petition after availing uninterrupted open access for about 11 months.
- (c) Out of the open access transmission charges bills of Rs.3,77,59,318 (including applicable LPS on unpaid amount) as on 31.05.2023, the Petitioner has paid only Rs.56.90 lakh on 16.03.2023 and thereafter it has stopped paying anything towards transmission charges though the Petitioner enjoying its open access status.
- (d) Deviation charges levied by GRIDCO on the Petitioner for under injection is completely legal and justified in view of the observations and directions of this Commission in similar matter vide para 7 (ii) of order dated 16.01.2023 passed in case No.47 of 2022 in the matter of the solar CGP of M/s. Bharat Electronics Ltd. (BEL), wherein the Commission has observed that *“In the instant case, M/s. BEL cannot be exonerated from paying under-injection charges to GRIDCO in case the injection from its CGP is less than the scheduled injection. However, any ambiguity/mistake in computation of such charges must be clarified/rectified by GRIDCO.”*
- (e) The Odisha Renewable Energy Policy, 2022 of the Government of Odisha is not applicable to the Petitioner as per the Clause 5(C) of this policy, which says that *“The benefits under this Policy shall not be applicable to projects sanctioned prior to the date of notification of this Policy or which is commissioned post the Policy period. This Policy is also does not cover the projects for which PPAs have already been signed.”*

- (f) In view of the above, the present petition is devoid of any merit and liable to be rejected summarily. The Petitioner may attempt to furnish the realistic schedule so that deviation between schedule injection vrs. actual injection can be minimized, resulting in better grid security/discipline.
5. In response, the Petitioner-M/s. ABRELSPL, in its rejoinder has submitted that:
- (a) Reliance made by the respondent on the Commission's order dated 23.04.2013 passed in Case No.14 of 2012 is misplaced and incorrect inasmuch as the said order was not passed in respect of a renewable CGP, but in respect of a thermal based CGP.
- (b) The submission of OPTCL that they have requested to execute commercial agreement with GRIDCO is not correct. But OPTCL vide its letter dated 20.06.2022 has directed the Petitioner to execute the agreement with GRIDCO as a pre-condition to obtain open access for evacuation of power to its user and regarding levy of transmission charges by OPTCL, the Petitioner has already approached the Hon'ble APTEL and the same is pending for adjudication before the Hon'ble APTEL. Therefore, it is not proper for OPTCL to contest issues which is already sub-judice.
- (c) Applicability of the order passed by this Commission in Case No.36 & 47 of 2022 in the matter of M/s. BEL is not justified since in that case the legal contention was never placed for consideration before the Commission and hence cannot bind on the present Petitioner on account of settled principles of law of sub-silentio. In this regard, the Petitioner relied upon the decision of the Hon'ble Supreme Court of India in the case of *A-One Granites vrs. State of U.P.*, reported in (2001) 3 SCC 537.
6. Heard the parties through hybrid arrangement (both physical and virtual). The written notes of submission of the parties are taken into consideration and we observe that:
- (a) The Petitioner-M/s. ABREL Solar Power Ltd. is a subsidiary of M/s. Aditya Birla Renewable Ltd., which is a wholly owned subsidiary of M/s. Grasim Industries Ltd.
- (b) It is established from the harmonious reading of Regulation 3(I) & (III) of OERC (Intra-State ABT) Regulations, 2007 that any open access customer availing power from Nuclear, Wind and Solar power generating stations is

exempted from the applicability of Intra-State ABT Regulations in the State of Odisha. This is because once Nuclear, Wind and Solar Power Generating Stations are kept out of the applicability of the above Regulation, the open access transaction of power generated by them also does not come under the purview of the said Regulation. In the instant case, the Petitioner is an open access customer for supplying power from its solar CGP (18.75 MW) to its 100% open access user, i.e. M/s. Grasim Industries Ltd. through OPTCL's (STU) transmission network. Therefore, Intra-State ABT Regulations are not applicable to the Petitioner. The draft OERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2022 which is referred by the Petitioner is yet to be notified for its application inside the State.

- (c) During under-injection by the Petitioner-M/s. ABRELSPL, the drawee utility (M/s. Grasim Industries Ltd.) draws scheduled power from GRIDCO's pool and GRIDCO, being the State Designated Entity to purchase power on behalf of the DISCOMs for State consumption, has to manage the mismatch in drawl and injection of power to maintain grid discipline.
- (d) At present, many solar power plants are supplying power to the State Grid. At any point of time, if all the solar plants connected to the STU under-inject than their schedule, the cumulative effect will be disastrous from the grid operation point of view.
- (e) OPTCL has also stated that deviation charges levied by GRIDCO for under-injection by the Petitioner, is legal and justified.
- (f) The Petitioner has executed an agreement with GRIDCO on 05.07.2022 wherein it is devised as to how deviation charges shall be paid by the Petitioner to GRIDCO in case of under-injection and over-injection of power by the Petitioner to the State Grid. The Petitioner has committed for payment of such deviation charges in the said agreement.

7. Though the petitioner has raised a contention that promissory estoppel cannot be applied against it stating that the contract dated 05.07.2022 is basically against the Rules and Regulations and against the mandate of Law, the contention of the Petitioner is erroneous and fallacious since a party cannot be permitted to blow hot and cold before one adjudicatory body, inasmuch as the Petitioner has entered into the contract with the Respondent-GRIDCO on 05.07.2022 on its own volition and has

never raised any objection earlier before any forum. The Petitioner has also started paying deviation charges claimed by GRIDCO as per the said contract. Therefore, contract has already been made operational. Now, the Petitioner, at later stage, after lapse of about one year, in the instant petition, has questioned the enforceability of the contract dated 05.07.2022 with GRIDCO which is untenable under law. The judgment of the Hon'ble Supreme Court of India in the case of Ashima Securities Pvt. Ltd. Vrs. Municipal Corporation of Delhi, 2010 SCC OnLine Del 319, as relied by the Petitioner is found to be misplaced to the circumstances of the present case for the simple reason that the contract dated 05.07.2022 was a mutual and voluntary contract which fact was not at all disputed at the time of signing of contract and therefore the case law as cited by the Petitioner is not strictly applicable for adjudication of the dispute raised by it.

8. The contention of the Petitioner that the contract in question is hit with perversity of violation of Open Access Regulations, DSM Regulations and Grid Code of the CERC and OERC, is unsustainable as it is axiomatic that in case of under injection of power to the Grid and drawl of more than schedule power, the State Grid is likely to experience disturbances which will result in loss to all the stakeholders in terms of the Grid disturbances and the consumers of the State will suffer. As per Clause 6.1 (c) (Annexure-1) of Odisha Grid Code, 2015, the complementary commercial mechanism for wind and solar generator shall be according to IEGC, 2010 as amended from time to time. The Commission has consciously provided the above provision in OGC, 2015 to deal with the Inter-State transaction of wind and solar generation since at that time, the development of wind and solar sources inside the State were at nascent stage. Accordingly, the Commission had carved out the Inter-State transaction of solar and wind in OGC, 2015 as Intra-State transaction was being governed under OERC (Intra-State ABT) Regulations, 2007 at that time. The two Regulations i.e. OGC, 2015 and OERC (Intra-State ABT) Regulations, 2007 operate in different landscapes of open access transactions. It is not a matter of dispute that the solar open access transaction which is being undertaken by the Petitioner is Intra-State in nature. Therefore, it is not amenable to either the OERC (Intra-State ABT) Regulations, 2007 or the IEGC, 2010 for the reasons cited above. Subsequently, the Deviation Settlement Regulations for Inter-State transaction which were framed by the CERC and amended from time to time and which are applicable for Inter-State transaction have no relevancy to the Intra-State transaction undertaken by the Petitioner. The present contract between

the Petitioner and Respondent-GRIDCO has traversed far beyond the operation of the statutes those hold the field i.e. the OERC (Intra-State ABT) Regulations, 2007 and the CERC DSM Regulations for the reasons, we have already discussed in the preceding paragraphs.

9. It has been further contended on behalf of the Petitioner that GRIDCO shall suffer no loss in the event the CERC DSM Regulations, 2022 are implemented. This contention is also fallacious as in the foregoing discussions; it is well found that the CERC DSM Regulations, 2022 are applicable for Inter-State transaction of power and in the instant case, the power transaction of the Petitioner is Intra-State transaction. It is also evident that on account of lesser injection of power or over drawl of the power by most of the open access consumer in the State, the State Grid will suffer disastrous disturbances and it will also put the power procurement plan of GRIDCO into haywire forcing the Respondent-GRIDCO to purchase costly power from other sources to meet the State demand and for complying with its other contractual obligations. In that event, even if the Grid is managed through other balancing method, GRIDCO will suffer financial loss which in turn will adversely affect the State consumers. To insulate the State consumers from this type of uncertainty of power procurement cost, GRIDCO should be compensated in such cases. Loss or profit of the GRIDCO is hardly a pertinent matter for giving indulgence in favour of the Petitioner, which is found to have entered into the contract dated 05.07.2022 with eyes open. The contention of the Petitioner that GRIDCO will not suffer loss, thus fails.
10. In the above scenario, the contention of the Petitioner that the contract was hit by Section 23 of the Indian Contract Act, 1872 does not hold good. The decision of the Hon'ble Supreme Court of India in the case of G.T. Girish Vrs. Y. Subba Raju, reported in 2022 SCC OnLine SC 60 has relied by the Petitioner is not applicable to the scenario of the present case, inasmuch as the subject matter of the contract at hand does not come under any of the prohibitive situations contemplated under Section 23 of the Indian Contract Act, 1872. That apart, it is a mutual contract between the parties and the GRIDCO claims under-drawl charges as per the terms of the said contract and therefore no blame can be attributed to the Respondent-GRIDCO for advancing such claims since the same is within the ambit of contract dated 05.07.2022.

11. It is pertinent to mention at this juncture that, there is no gainsaying that it is the bounden duty of the parties to abide by the terms of the contract as they are sacrosanct in nature, in addition to, the agreement itself being a statement of commitment made by them at the time of signing the contract. The parties entered into the contract after knowing the full import of the clauses and hence they cannot be permitted to deviate therefrom.
12. The Hon'ble Supreme Court of India have observed in the case of Haryana Power Purchase Centre Vrs. Sasan Power Ltd. and Others reported in 2023 SCC OnLine SC 577 that in a case where the matter is governed by the express terms of the contract, the Regulatory Commission cannot, even donning the garb of a Regulatory Body, go beyond the express terms of the contract.
13. The Learned Counsel appearing on behalf of the Petitioner, for substantiating their stand of exemption of DSM charges, has relied upon the case laws in PTC India Limited Vrs. CERC & Others, reported in (2010) 4 SCC 603; Haryana Vidyut Prasaran Nigam Limited Vrs. Haryana Electricity Regulatory Commission, reported in 2019 SCC OnLine APTEL 89 and Rajasthan Rajya Vidyut Prasaran Nigam Ltd. Vrs. Power Grid Corporation of India Limited, reported in 2023 SCC OnLine APTEL 25. On going through the above case laws, the Commission does not find the same to be relevant to the facts and situation of the case of the Petitioner. The aforesaid case laws do not bolster up the stand of the Petitioner.
14. In view of the above discussions, we are not inclined to interfere in the contract entered between the parties and find it proper and judicious that the parties should abide by the provisions agreed upon in the contract dated 05.07.2022 in respect of payment of deviation charges in case of under-injection/over-injection by the Petitioner's captive solar power plant than its schedule.
15. Accordingly, the case is dispose of.

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

Sd/-
(G. Mohapatra)
Member

Sd/-
(S. C. Mahapatra)
Chairperson