BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

Review Petition No: 30 of 2025
Date of Institution: 09.01.2025
Arguments Heard on: 18.11.2025
Decided on: 02.01.2026

CORAM

Yashwant Singh Chogal
MEMBER (Law)-cum-CHAIRMAN

Shashi Kant Joshi
MEMBER

In the matter of:-

The Himachal Pradesh Power
Transmission Corporation Limited (HPPTCL)
Himfed Bhawan, Below Old MLA's Quarters,
Tutikandi (Panjiri), Shimla, HP-171005. **………Petitioner**

Versus

The Himachal Pradesh State Electricity Board Limited,
Vidyut Bhawan, Shimla, H.P-171004. **……….Respondent No. 1**

M/s Kanchanjunga Power Company Pvt. Ltd.
B-37, 3rd Floor Sector-1, Noida,
Gautam Budh Nagar, U.P-201301. **……….Respondent No. 2**

M/s Kestas Hydro Private Limited,
M-75, Greater Kailash,
New Delhi-110048. **……….Respondent No. 3**

M/s Fozal Power Private Limited,
1421-Ansal Tower, 38, Nehru Place,
New Delhi-110019. **……….Respondent No. 4**

Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 seeking review of order dated 10.09.2024 in Petition No. 02 of 2020.

Present:

Sh. Sanjeev Singh, Tariff Consultant for the Petitioner.
Sh. Sumit Dhiman, Authorised Representative for the Respondent No. 1 alongwith Sh. Mandeep Singh, Chief Engineer (System Operation).
Sh. Nishant Kumar, Ld. Counsel for the Respondent No. 2.
The Respondents No. 3 and 4 ex-parte

ORDER

This Petition has been filed by the Himachal Pradesh Power Transmission Corporation Limited (Petitioner/ HPPTCL for short) under Section 94 (1) (f) of the Electricity Act, 2003 (Act for short) read with Regulation 70 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2024 (HPERC CBR, 2024 for short) seeking review of the Order dated 10.09.2024 passed by the Commission in Petition No. 02 of 2020 for the approval of Capital cost and Determination of Tariff for 3rd and 4th Control Periods from the date of commissioning (CoD i.e. 05.06.2016) to FY2023-24 for 33/220kV, 80/100MVA GIS Sub-Station at Phojal (Asset-1) along with 220 kV D/C LILO Transmission Line (Asset-2) (hereinafter referred to as the 'Project') under Section 62, read with Section 86 of the Electricity Act, 2003 read with the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time, (HPERC Transmission Tariff Regulations, 2011 for short).

2. The Petitioner had filed Petition No. 02 of 2020 seeking approval of the Capital cost and Determination of Tariff for 3rd and 4th Control Periods from CoD i.e. 05.06.2016 to FY 2023-24 in respect of 33/220kV, 80/100 MVA, GIS Sub-Station at Phojal along with 220 kV D/C LILO Transmission Line. During the course of proceedings, the Petitioner also filed additional submissions and clarifications, as sought by the Commission from time to time. The Commission vide Order dated 10.09.2024 disposed off the Petition No. 02 of 2020. The summary of the capital cost as claimed vis-à-vis as approved by the Commission vide Order dated 10.09.2024 has been reproduced as under:-

S. No	Particulars	Claimed as per Auditor Certificate (Rs Cr)	Approved (Rs Cr)
Capital cost as on CoD: 05.06.2016			
Asset-1			
1	Supply	48.37	48.30
a	Supply Cost	45.61	45.54
b	Entry tax	1.83	1.83
c	Price Variation	0.93	0.93
2	Erection	9.72	8.21
a	Erection Cost	9.08	7.58
b	Price Variation	0.63	0.63
c	Provision for Staff Quarter	0.00	0.00
3	Preliminary Cost	3.82	1.93
4	Land, Afforestation and Forest Cost	2.14	2.14
5	Other Expenses	0.13	0.13
6	DC	1.39	1.39

S. No	Particulars	Claimed as per Auditor Certificate (Rs Cr)	Approved (Rs Cr)
7	IDC	5.49	4.63
A-Sub-Total (Asset-1)		71.05	66.72
Capital cost as on CoD: 05.06.2016			
Asset-2			
1	Supply	4.77	4.77
a	Supply Cost	4.71	4.71
b	Entry tax	0.06	0.06
2	Erection	5.51	5.51
a	Erection Cost	4.48	4.48
b	Price Variation	1.03	1.03
3	Preliminary Cost	0.04	0.04
4	Land, Afforestation and Forest Cost	5.22	5.22
5	Other Expenses	0.004	0.004
6	DC	0.25	0.25
7	IDC	0.91	0.89
B-Sub-Total (Asset-2)		16.70	16.69
Total Cost (A+B)		87.75	83.40

3. A summary of Additional Capitalisation as claimed during FY2018-19 to FY2020-21 vis-à-vis as approved by the Commission in the Order dated 10.09.2024 has been reproduced as under:-

	Financial Year	Claimed (Rs Cr)	Approved (Rs Cr)
Additional Capital Expenditure	FY 2018-19	2.85	0.00
	FY 2019-20	5.30	0.00
	FY 2020-21	4.00	0.00
Total Additional Capital Expenditure		12.15	0.00

4. According to the Review Petition, though the Commission has approved the Capital Cost and determined the transmission tariff in

respect of the Pooling Sub-station but has not fully allowed all the claims made in the Petition.

5. The Petitioner has sought review of order dated 10.09.2024 in Petition No. 2 of 2020 on the following issues:-

Issue 1: Disallowance of Preliminary Works amounting to Rs. 1.89 Crore and Hard cost of Rs. 1.57 Crore for Asset-1.

(i) The Commission while disallowing cost of Rs. 1.89 Crore incurred towards Preliminary expenses in case of Asset-1 in the Order dated 10.09.2024 has observed as under:

> *"3.6.4 Preliminary Cost: As per the revised DPR dated 29.03.2012, 'Preliminary Cost' was envisaged as Rs. 1.93 Cr. for Asset-1 and Rs. 0.07 Cr. for Asset-2. As against the DPR cost, the Petitioner has claimed an amount of Rs. 3.82 Cr. for Asset-1 and Rs. 0.05 Cr. for Asset-2 as on COD. Also, post COD, preliminary expenses were approved under the 38th BOD meeting as Rs. 3.79 Cr. and Rs. 0.07 Cr. respectively for Asset-1 and Asset-2.*
>
> ***3.6.5** It was observed that the Petitioner has neither provided any details nor justification for the increased cost towards preliminary expenses. In response to the query of the Commission, the Petitioner submitted the copy of the payment bills which included several invoices but did not justify the cost claimed towards preliminary expense and did not even add-up to the claimed amount. It was observed that most invoices were against land as well as stamp duty, etc. which were claimed separately. Further, the Petitioner has submitted copy of 38th BOD MoM in which a consolidate amount was booked towards preliminary expenses against both the assets.*
>
> ***3.6.6** While the Auditor certificate provided by the Petitioner included an amount of Rs. 3.82 Cr. and Rs. 0.04 Cr. towards preliminary expenses but due to lack of proper details regarding the break-up of expenditure as well as inadequate supporting documents, the Commission has restricted the amount approved for Asset-1 to the amount approved in the DPR i.e., Rs. 1.93 Cr. as against the claimed amount Rs. 3.82 Cr. Further, for*

Asset-2 the Commission has approved an amount of Rs. 0.04 Cr. as per the auditor certificate and supporting documents provided by the Petitioner."

(ii) Further, with regard to disallowance of Rs. 1.50 Crore towards erection cost and Rs. 0.07 Crore towards supply cost, the Commission in the Order dated 10.09.2024 has observed as under:

> "*3.5.13 The Commission has approved the hard cost for both the assets based on the available supporting documents, 38th BOD MoM and the auditor certificate. Further, the Commission noted that the erection work cost for asset-1 as per the 38th BOD MoM has been Rs. 7.58 Cr. However, as per the auditor certificate the cost is Rs. 9.08 Cr. and as per COD the cost claimed was Rs. 9.19 Cr. In view of the above, the Commission did not find any rationale from the Petitioner even in the fifth query raised by the Commission. Therefore, the Commission as per the 38th BOD MoM approved Rs. 7.58 Cr. against the erection work for Asset-1. Similarly, in the Supply cost for the Asset-1, the Petitioner has claimed Rs. 45.64 Cr. as on COD, Rs. 45.54 Cr. as per 38th BOD and Rs. 45.61 Cr. as per auditor certificate. The Commission is not able to find out the rationale for the cost deviations. The Commission based on the 38th BOD MoM has allowed Rs. 45.54 Cr. against the supply work. In absence of the adequate details and supporting documents, the Commission has limited the cost under various heads to the extent of cost approved or as per the auditor certificate."*

(iii) The Petitioner has submitted that the costs of preliminary works have been disallowed by the Commission by observing that justification for increase in the cost was not provided and that the bills were not totaling with the claimed amount. The Petitioner has submitted the bills totaling the claimed erection cost of Rs. 13.54 Cr (as on CoD) inclusive of preliminary works alongwith the present Petition as **Annexure-B**.

(iv) With regard to disallowance of Rs. 0.07 Crore incurred towards supply of materials, the Petitioner has submitted that the costs were disallowed for want of justification and that the enhanced cost was not approved by the BoD of the Petitioner. It is averred that the Petitioner had sought liberty to provide BoD approval for the total capital cost of the project in due course of time.

(v) According to the Petitioner, as on COD, the actual cost of Rs. 46.54 Crore has been incurred towards supply cost against the supply cost Rs. 43.56 Crore envisaged in the DPR. Copy of supply bills amounting to Rs. 46.54 Cr have been enclosed by the Petitioner alongwith the present Petition as Annexure-C.

<u>Issue 2: Disallowance of Actual Debt Equity Ratio as on COD for Asset-1 and Asset-2.</u>

(i) According to the Petitioner, the Commission has observed the following regarding disallowance of debt: equity ratio as on COD for Assets No. 1 and 2 in the Order dated 10.09.2024 as under:

> *"3.9.7 Further, it is observed that the actual loan drawl by the Petitioner as on COD was only Rs. 23.52 Cr. against the sanctioned loan of Rs. 43.93 Cr. The Petitioner post the 38th BOD meeting dated 30.06.2018 had approached the REC vide letter dated 27.07.2018 and 19.06.2019 for obtaining revised sanction and additional loan amount against the Phojal project. It is observed that while the loan availability against the project was available to the extent of 90%, the Petitioner had not utilized the entire amount of debt and had relied on funds available from other sources. Therefore, the Commission feels that it would be incorrect to consider the submission of the Petitioner for allowing 70% as debt against the project and put higher burden of RoE on the users*

of the system when the Petitioner post the commissioning of the project had approached REC to avail additional loan corresponding to the enhanced cost as well as unutilized amount. This would also be contradictory to the claim of the Petitioner for allowing 70:30 debt:equity when the actual loan being availed is to the extent of 90%. Also, the Petitioner has been unable to provide any supporting document with respect to the equity portion of the transmission asset and the final audited certificate does not provide any details of debt and equity corresponding to the substation and transmission line."

(ii) As per the Petitioner, Regulation 18 of the HPERC Transmission Tariff Regulations, 2011 provides about the consideration of actual debt or equity deployed during the execution of the project. Since, the Petitioner has infused equity higher than the normative ceiling of 30%, the Petitioner had claimed transmission charges on the basis of normative debt equity ratio of 70:30 in the Petition. However, the Commission has not allowed the normative debt equity ratio claimed by the Petitioner by observing that higher loan was available and should have been utilised and also that the final audited certificate was not containing details of debt and equity corresponding to the Assets. With regard to infused equity, the Commission has observed that the HPPTCL could not provide the supporting documents with respect to the equity portion of the transmission asset.

(iii) The Petitioner has submitted that the HPERC Transmission Tariff Regulations, 2011 allow Equity infusion of up to 30% and the Petitioner has claimed RoE in accordance with the same. It is further submitted that during the tariff proceedings, the Petitioner had clarified that higher debt was not taken in order to minimize IDC component.

(iv) The Petitioner has further submitted that the beneficiaries have already benefited from the higher equity funding during the construction phase as the Petitioner has not claimed notional IDC as part of Capital Cost. However, restricting equity component to 10% will result in double blow to the Petitioner, as the Petitioner will neither get IDC on excess equity infusion nor it will be allowed RoE on the Equity infused.

(v) Further with respect to the proof of Equity Funding, the Petitioner has submitted that the Petitioner receives Equity as a whole from GoHP and the equity for a particular scheme is allocated internally on the basis of which tariff is claimed after these costs are duly certified by the Auditor.

<u>Issue 3: Disallowance of Carrying Cost on delayed recovery of Transmission Charges.</u>

(i) The Commission has observed the following on this issue in the Order dated 10.09.2024:-

> "*4.8.4 The Commission observes that the tariff petition was filed in August 2019, as against the COD of the asset as 05.06.2016, which is a delay of almost 03 years. Also, a significant delay was on account of the ongoing legal matters with the beneficiaries pending at the Hon'ble*

APTEL. Further, the Petitioner has also taken considerable time in responding to the various queries raised by the Commission resulting in further delays. Given the concerns regarding the status of transmission assets which led to the significant delays, the Commission feels it appropriate to allow recovery to the extent of ARR and corresponding tariff determined against the transmission assets."

(ii) The Petitioner has submitted that during the tariff proceedings, it had sought Interim tariff to the extent of 90% so that the impact of carrying cost could be minimized. However, the same has not been allowed by the Commission.

(iii) It is further submitted that the Commission has itself recognized that there was considerable delay on account of litigation going before Hon'ble APTEL which is entirely beyond the control of the Petitioner and hence, carrying cost may kindly be allowed as there is cost associated with the delayed recoveries.

<u>REPLY OF THE RESPONDENTS</u>

6. The Review Petition has been resisted by the HPSEBL and M/s Kanchanjunga Power Company Private Limited (KPCPL) by filing separate replies.

<u>REPLY OF THE RESPONDENT No. 1</u>

7. The Respondent No. 1 in its reply has averred that the Review Petition is not maintainable as none of the grounds raised by the Petitioner show any error apparent on record in the Order dated 10.09.2024. In fact, the review petition is purely an abuse of process

of law and has been filed by the Review Petitioner with an ulterior motive to agitate the same issues which have been duly been considered by the Commission while passing the order dated 10.09.2024. It is submitted that the review petition is ought to be dismissed at the outset with the imposition of heavy costs. The issue-wise submissions made by the Respondents are as under:

(i) <u>Disallowance of Preliminary Works amounting to Rs. 1.89Cr and Hard cost of Rs. 1.57Cr for Asset-1:-</u>

8. The HPSEBL has submitted that the Commission has dealt this aspect of Preliminary Cost and hard Cost in the Order dated 10.09.2024 at Paras 3.5.13, 3.6.4, 3.6.5 and 3.6.6 where the Commission has approved both costs on the basis of documentary proofs produced by the Petitioner during various queries raised by the Commission. The bills submitted by the Petitioner with the Review Petition are not as per Regulation 70 of HPERC CBR, 2024 and may not be considered by the Commission. It is averred that the submissions of the invoices at this stage is an afterthought and since, there is no error apparent in the Tariff Order dated 10.09.2024, the review petition is liable to be dismissed.

(ii) <u>Disallowance of Actual Debt Equity Ratio as on COD for of Asset-1 & Asset-2:-</u>

9. The HPSEBL has submitted that the Commission has dealt this aspect in the Order dated 10.09.2024 at Para No. 3.9.7 in detail where the Commission has stated that the Petitioner was not able to provide the supporting documents with respect to the Equity portion and actual loan availed to the extent of 90% of the project cost. It is submitted that petitioner has chosen for capital structure heavily towards equity rather than debt and there were various discrepancies in the utilisation of the long term loan, resulting in the higher transmission tariff to compensate for the increased return on equity. As per the HPSEBL, the observations of the Commission are perfectly legal and justified leaving no scope for the review. The Commission has rightly held that the petitioner has failed to utilise the amount of the loan which was available to the extent of 90% as per the loan agreement.

(iii) <u>Disallowance of Carrying cost on delayed recovery of Transmission charges:-</u>

10. The HPSEBL has submitted that the Commission has dealt this aspect in the Order dated 10.09.2024 at Para 4.8.4 wherein the Commission has observed that the petitioner took significant time to respond to the queries raised by the Commission which led to the delays, hence, the Commission allowed recovery to the extent of ARR. According to the Replying Respondent, significant time was

taken by the Petitioner for answering the queries which has led to the delay and accordingly, the Commission has allowed recovery to the extent of ARR.

11. According to the HPSEBL, the review petition against the Tariff Order dated 10.09.2024 is devoid of merits as there are no errors apparent in the Order and the Petition is liable to be dismissed in the interest of justice, fairness, and regulatory certainty.

REPLY OF THE RESPONDENT No. 2

12. The Respondent No. 2 has filed two replies firstly on 25.06.2025 and subsequently on 25.08.2025. Therefore, the reply filed on 25.08.2025 is being considered. In its reply filed on 25.08.2025, the Respondent No. 2 has averred that the contents of the Review Petition are wrong as there are no errors apparent on the face of record and the Review Petition is abuse of the process of law and has been filed with an ulterior motive to agitate the issues which have been disposed off by the Commission.

13. Further, the Commission has considered all the issues raised by way of Review Petition. Also that no additional and fresh grounds have been made by the Review Petitioner and mere non-consideration of claims raised by the Petitioner and disallowance of certain claims would not constitute as an error apparent on the face

of record. Further, the Petition itself shows that all the issues were duly considered by the Commission.

14. In so far as, discovery of material evidence as mentioned, the Commission has observed under para 3.5.14 of the impugned order dated 10.09.2024 that despite sufficient time, the material documents could not be placed on record and that the documents Annexure B and C submitted with the Review Petition do not amount to discovery of new and material evidence as said documents were well within the knowledge of the Petitioner and could have been produced during pendency in Petition No. 2 of 2020.

15. Regarding Debt: Equity ratio, it is averred that the Commission has rightly decided the issue in accordance with the Regulations and has reproduced paras 3.9.4 to 3.9.8. According to the Replying Respondent, the Debt: Equity ratio has rightly been decided by the Commission. Further, the Regulation 18 nowhere restricts the proportion of debt more than 70% and clearly prescribes that equity portion cannot be higher than 30% and considering that loan facility of more than 70% was available to the Petitioner, the Commission has rightly allowed the same.

16. Regarding carrying cost, the Replying Respondent inviting attention to para 4.8.4 of the Impugned Order has averred that the

Commission has rejected the claim for the carrying cost after duly considering the same.

17. M/s KPCPL has further submitted that the review petition neither relates to discovery of any new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the review petitioner or could not be produced by it at the time when the order was passed nor any mistake or error apparent on the face of the order has specifically been pointed out nor any other sufficient reason or ground has been made out by the Review Petitioner for reviewing the order.

REJOINDERS

18. In separate rejoinders, the contents of the replies have been denied and those of the Petition have been reaffirmed.

SUBMISSIONS OF THE PARTIES

19. We have heard Sh. Sanjeev Singh, Tariff Consultant for the Petitioner, Sh. Sumit Dhiman, Authorised Representative for the Respondent No. 1 and Sh. Nishant Kumar, Ld. Counsel for the Respondent No. 2.

20. Sh. Sanjeev Singh, Tariff Consultant for the Petitioner has submitted that the material on record has not been looked into by the Commission and thus, the order suffers from errors apparent on the face of record. Sh. Sumit Dhiman, Authorised Representative for the

Respondent No. 1 and Sh. Nishant Kumar, Ld. Counsel for the Respondent No. 2 on the other hand have submitted that the Commission has considered each and every aspect of the matter and has passed a reasoned order and there are no errors apparent on the face of record as claimed.

POINTS FOR DETERMINATION

21. We have gone through the submissions of Ld. Counsel and Authorised Representative of the parties and perused the entire record carefully. On the basis of pleadings and record, the following points arise for determination in the present Petition:

Point No. 1: Whether the Order dated 10.09.2024 in Petition No. 02 of 2020 regarding disallowance of costs of Preliminary Works amounting to Rs. 1.89 Crore and Hard cost of Rs. 1.57 Crore for Asset-1 suffers from errors apparent on record and is liable to be reviewed?

Point No. 2: Whether the Order dated 10.09.2024 in Petition No. 02 of 2020 regarding disallowance of actual Debt-Equity ratio as on COD for Asset-1 and Asset-2 suffers from errors apparent on record and is liable to be reviewed ?

Point No. 3: Whether the Order dated 10.09.2024 in Petition No. 02 of 2020 regarding disallowance of Carrying Cost on delayed recovery of Transmission Charges suffers from errors apparent on record and is liable to be reviewed?

<u>Point No. 4</u>: **Final Order**

22. For the reasons to be recorded hereinafter in writing, our point wise findings are as under.

Point No. 1: No.

Point No. 2: No.

Point No. 3: Yes.

<u>Point No. 4:</u> **(Final Order)** The Petition partly allowed per operative part of the Order.

REASONS FOR FINDINGS

<u>Points No. 1 and 2</u>

23. Both these points are being taken up together for adjudication.

24. It is well settled law that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced at the time when the order was made. It may also be exercised where some mistake or error apparent on the face of the record is found but may not be exercised

on the ground that the decision was erroneous on merits which is the domain of a court of appeal. While exercising the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. In this regard, reliance may be placed in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 wherein it is held as under:-

> *“**9.** Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”*

25. Similarly in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 it has been held by the Hon’ble Supreme Court that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. Para 8 of the aforesaid law is reproduced as under:-

> *“**8.** It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam*

Tuleshwar Sharma v. Aribam Pishak Sharma [(1979) 4 SCC 389 : AIR 1979 SC 1047] , speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909], there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

26. A similar view has been taken by the Hon'ble Supreme Court in Ram Sahu v. Vinod Kumar Rawat, (2021) 13 SCC 1.

27. It is simple case of the Petitioner that the Impugned order suffers from errors apparent on the face of record as the Commission has disallowed cost of preliminary works amounting to Rs. 1.89 Crore and hard cost of Rs. 1.57 Crore for Asset-I, debt: equity as on the COD for Assets I and II.

28. Coming to the disallowance of costs of Preliminary Works amounting to Rs. 1.89 Crore and Hard cost of Rs. 1.57 Crore for

Asset-1, the Commission, in the Order dated 10.09.2024, has observed as under:-

"3.6.4 ***Preliminary Cost:*** *As per the revised DPR dated 29.03.2012, 'Preliminary Cost' was envisaged as Rs. 1.93 Cr. for Asset-1 and Rs. 0.07 Cr. for Asset-2. As against the DPR cost, the Petitioner has claimed an amount of Rs. 3.82 Cr. for Asset-1 and Rs. 0.05 Cr. for Asset-2 as on COD. Also, post COD, preliminary expenses were approved under the 38th BOD meeting as Rs. 3.79 Cr. and Rs. 0.07 Cr. Respectively for Asset-1 and Asset-2.*

3.6.5 It was observed that the Petitioner has neither provided any details nor justification for the increased cost towards preliminary expenses. In response to the query of the Commission, the Petitioner submitted the copy of the payment bills which included several invoices but did not justify the cost claimed towards preliminary expense and did not even add-up to the claimed amount. It was observed that most invoices were against land as well as stamp duty, etc. which were claimed separately. Further, the Petitioner has submitted copy of38th BOD MoM in which a consolidate amount was booked towards preliminary expenses against both the assets.

3.6.6 While the Auditor certificate provided by the Petitioner included an amount of Rs. 3.82 Cr. and Rs. 0.04 Cr. towards preliminary expenses but due to lack of proper details regarding the break-up of expenditure as well as inadequate supporting documents, the Commission has restricted the amount approved for Asset-1 to the amount approved in the DPR i.e., Rs. 1.93 Cr. as against the claimed amount Rs. 3.82 Cr. Further, for Asset-2 the Commission has approved an amount of Rs. 0.04 Cr. as per the auditor certificate and supporting documents provided by the Petitioner. ……………………….."

29. Further, on the issue of approval of Hard Cost, the Commission, in its Order dated 10.09.2024, has observed as under:

"3.5.13 In the table no. 12 below, the Commission has approved the hard cost for both the assets based on the available supporting documents, 38th BOD MoM and the auditor certificate. Further, the Commission noted that the erection work cost for asset-1 as per the 38th BOD MoM has been Rs. 7.58 Cr. However, as per the auditor certificate the cost is Rs. 9.08 Cr. and as per COD the cost claimed was Rs. 9.19 Cr. In view of the above, the Commission did not find any rationale from the Petitioner even in the fifth query raised by the Commission. Therefore, the Commission as per the 38th BOD MoM approved Rs. 7.58 Cr. against the erection work for Asset-1. Similarly, in the Supply cost for the Asset-1, the Petitioner has claimed Rs. 45.64 Cr. as on COD, Rs. 45.54 Cr. as per 38th BOD and Rs. 45.61 Cr. as per auditor certificate. The Commission is not able to find out the rationale for the cost deviations. The Commission based on the 38th BOD MoM has allowed Rs. 45.54 Cr. against the supply work. In absence of the adequate details and supporting documents, the Commission has limited the cost under various heads to the extent of cost approved or as per the auditor certificate. "

30. In this regard, it is relevant to refer to Regulation 14 of the HPERC Transmission Tariff Regulations, 2011, as amended from time to time, which provides as under:

*"**14. Capital cost of project.-**(1)…………………………………………*

(2) The capital cost admitted by the Commission, after prudence check, shall form the basis for determination of tariff:

Provided that prudence check of capital cost may be carried out based on the benchmark norms to be laid down by the Commission from time to time; and

> *Provided further that in case where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:*
> *…………………………………………………………..."*

31. The Commission has clearly observed in the Impugned Order that in the absence of adequate details and supporting documents in the Petition despite queries, the Petitioner was not able to establish that the Petitioner was entitled for the claimed amount and accordingly, the Commission disallowed the costs of preliminary works amount to Rs. 1.89 Crore and Hard Cost of Rs. 1.57 Crore of Asset-I. In fact, before disallowing said costs, the Commission had carried out a detailed prudence check and has considered each and every aspect of the matter which find mention in paras 3.6.4, 3.6.5, 3.6.6 and 3.5.13 which have been reproduced by the Petitioner in the Review Petition. The documents which are sought to be introduced by way of Review Petition were certainly within the knowledge of the Petitioner and could have been produced. It is settled law that the review has a limited purpose and cannot be allowed to be an appeal in disguise. No explanation has come forward of the belated filing of such documents. Hence, such documents cannot be entertained at this stage in a Review Petition. Thus, the claim of the Petitioner regarding disallowance of costs of Preliminary Works amounting to

Rs. 1.89 Crore and Hard cost of Rs. 1.57 Crore for Asset-1 is devoid of any merits. However, the true up of the above said asset is yet to be done. Thus, the Review Petitioner may at the time of true-up of the asset may take up the issue of disallowance of the above costs with proper justification and appropriate documentary evidence including BOD approvals during truing up exercise to substantiate its claim.

32. On the issue of disallowance of actual Debt Equity Ratio as on COD, for Asset-1 and Asset-2, Regulation 18 of the HPERC Transmission Tariff Regulations, 2011 provides as under:

> *"18. Debt-equity ratio.- For the purpose of determination of the tariff, the equity and outstanding debt as determined for the base year by the Commission shall be considered as given. However, for any fresh capitalization of assets, the Commission shall apply a debt-equity ratio of 70:30 on the capitalised amount as approved by the Commission for each year of the control period:*
>
> *Provided that where equity employed is in excess of 30%, the amount of equity for the purpose of tariff shall be limited to 30% and the balance amount shall be considered as loan. The interest rate applicable on the equity in excess of 30% treated as loan has been specified in regulation 20. Where actual equity employed is less than 30%, the actual equity shall be considered."*

33. It is quite clear from Regulation 18 that there is no limit on the proportion of debt more than 70%. The said Regulation clearly prescribes that the equity proportion cannot be higher than 30% which means that the Debt portion can be above 70%. The Commission has clearly observed in para 3.9.7 of the Impugned

Order that the actual loan drawl by the Petitioner as on COD was only Rs. 23.52 Cr. against the sanctioned loan of Rs. 43.93 Cr. It has also been observed by the Commission in para 3.9.7 that the Petitioner post the 38th BoD meeting held on 30.06.2018 approached the REC vide letters dated 27.07.2018 and 19.06.2019 for obtaining revised sanction and additional loan amount against the Phojhal project and while the loan availability against the project was available to the extent of 90%, the Petitioner had not utilized the entire amount of debt and had relied upon the funds available from other sources. Therefore, the Commission did not deem it proper to consider the submission of the Petitioner for allowing 70% as debt against the project and put higher burden of RoE on the users of the system when the Petitioner post the commissioning of the project had approached REC to avail additional loan corresponding to the enhanced cost as well as unutilized amount. Not only this, allowing the claim of the Petitioner would have been contradictory to the Regulation 18 ibid which clearly provides that the Commission shall apply a debt: equity of 70: 30 on the capitalized amount as approved by the Commission for each year of the controlled period. Also, the Petitioner had not been able to provide any supporting document with respect to the equity portion of the transmission asset and the final audited certificate was also not containing any details of debt and equity corresponding to the substation and transmission line. Thus, the Commission has considered the debt equity corresponding to the loan as 90% (debt):10% (equity) as per the loan amount sanctioned by the bank for the purpose of funding of the project. Also, the amount of Rs. 1.00 Cr. received as consumer contribution has been deducted for arriving the debt:equity.

34. In the circumstances, the claim of the Petitioner regarding disallowance of actual Debt-Equity ratio as on COD for Asset-1 and Asset-2 is devoid of any merits and there is no error apparent on the face of record to this extent. Further, the Commission finds no merit in the claim of the Petitioner that restricting equity component to 10% will result in double blow to the Petitioner, as the Petitioner will neither get IDC on excess equity infusion nor will be allowed RoE on the equity infused. The Petitioner was required to put forth its claim for the same with adequate proof. However, the Petitioner will be at liberty to put forth its claim during truing up exercise with sufficient justification and supporting documents enabling the Commission to consider the same at the time of truing up exercise.

35. In the circumstances, the Petitioner has not been able to substantiate on record that there are errors apparent on record in not considering the costs of Preliminary Works amounting to Rs. 1.89 Crore and Hard cost of Rs. 1.57 Crore for Asset-1 or that

disallowance of actual Debt-Equity ratio as on COD for Asset-1 and Asset-2. Points No. 1 and 2 are accordingly decided against the Petitioner.

36. However, it is made clear that the Petitioner shall be at liberty to raise these points at the time of truing up exercise with all supporting documents.

Point No. 3

37. Regarding disallowance of Carrying Cost on delayed recovery of Transmission Charges, the Commission has observed as under in para 4.8.4 of the Impugned order:-

> *"4.8.4 The Commission observes that the tariff petition was filed in August 2019, as against the COD of the asset as 05.06.2016, which is a delay of almost 03 years. Also, a significant delay was on account of the ongoing legal matters with the beneficiaries pending at the Hon'ble APTEL. Further, the Petitioner has also taken considerable time in responding to the various queries raised by the Commission resulting in further delays. Given the concerns regarding the status of transmission assets which led to the significant delays, the Commission feels it appropriate to allow recovery to the extent of ARR and corresponding tariff determined against the transmission assets."*

38. As evident from above, significant delay was on account of the ongoing legal matter with the beneficiaries pending at the Hon'ble APTEL.

39. The Hon'ble APTEL in Appeal No. 111 of 2020 vide order dated 20.07.2020 had stayed the tariff proceedings in Petition No. 02 of 2020 before this Commission which was vacated vide order dated 29.01.2024. Significantly, the Hon'ble APTEL in its order dated 20.07.2020 had allowed the payment of the interim transmission charges in terms of back to back agreements between HPPTCL, AD Hydro and Kanchanjunga. The Petition was disposed off by the Commission vide order dated 10.09.2024 without any significant delay. Since, the delay in the disposal of the Petition has occasioned without any lapses on the part of the Petitioner, the Commission based upon the submissions of the Petitioner is of the considered opinion that this aspect needs to be reviewed and, therefore, decides to allow the carrying cost for the period of pendency of the Petition before this Commission due to stay imposed in the matter by the Hon'ble APTEL on an appeal filed by the Respondent No. 2 as the non recovery of the transmission charges for the period when the tariff determination process could not be carried out would adversely affect the Petitioner. Hence, there is an error apparent on the face of record to this extent.

40. Accordingly, the amount of carrying cost is ordered to be worked out by the Petitioner from 20.07.2020 onwards on the amount outstanding due to the difference between ARR approved vis-à-vis

the amount already recovered as per the interim transmission agreements entered with the beneficiaries, and at the rate as provided in the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time. However, the Commission after doing the required prudence check shall true up the difference amount, if any, subsequently.

41. Thus, the Petitioner has established on record that the order of the Commission dated 10.09.2024 suffers from errors apparent on record to the extent of carrying cost and needs to be reviewed. Point No. 3 is accordingly decided in favour of the Petitioner.

42. However, the Petitioner has not been able to substantiate that there are errors apparent on the face of the record in respect of disallowing the costs of preliminary works amounting to Rs. 1.89 Crore, Hard Costs amounting to Rs. 1.57 Crore and debt-equity ratio as on COD, as claimed by the Petitioner.

Final Order

43. In view of the above discussions and findings, the Petition partly succeeds and allowed partly.

44. The review pertaining to the costs of preliminary works amounting to Rs. 1.89 Crore, Hard Costs amounting to Rs. 1.57

Crore and debt-equity ratio as on COD, as claimed in respect of Assets No. 1 and 2 is declined.

45. However, the review in respect of the carrying cost is allowed. It is ordered that the amount of carrying cost shall be worked out by the Petitioner from 20.07.2020 onwards on the amount outstanding due to the difference between ARR approved vis-à-vis the amount already recovered as per the interim transmission agreements entered with the beneficiaries, and at the rate as provided in the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Determination of Transmission Tariff) Regulations, 2011, as amended from time to time which will be recovered from the beneficiaries. However, the Commission shall carry out the required prudence check at the time of true up exercise of the assets and the amount shall accordingly be adjusted in the ARR.

46. The Review Petition disposed off, accordingly.

47. The pending applications, if any, are also deemed to have been disposed off.

48. Let a copy of this order be supplied to the parties.

The file after needful be consigned to records.

<u>Announced</u>
02.01.2026

-Sd-	**-Sd-**
(Shashi Kant Joshi)	**(Yashwant Singh Chogal)**
Member	**Member (Law)-cum- Chairman**