Meghalaya State Electricity Regulatory Commission
Shillong

Case No.30A, 31 A, 32 A, 34 A, 35 A and 36 A OF 2024

In the Matter of

Petition for True Up for 2022-23, MYT ARR for 2024-25, 2025-26, 2026-27 and Tariff for 2024-25

AND

Meghalaya Power Generation Corporation Limited (MePGCL)

Meghalaya Power Distribution Corporation Limited (MePDCL)

Meghalaya Power Transmission Corporation Limited (MePTCL)

…Petitioners

-VERSUS-

Byrnihat Industries Association (BIA)

…Objector/Respondent

Appearance:

Shri Aditya Kumar Singh, Advocate **for Petitioners**

Shri K Paul, Sr Advocate **for Respondent (BIA)**

Coram

Shri Chandan Kumar Mondol (Chairman)

Shri R K Soni (Member Law)

Order

Dated: 23.08.2024

1. The utilities of Meghalaya, namely, Meghalaya Power Distribution Corporation Limited (referred to MePDCL herein), Meghalaya Power Transmission Corporation Limited (referred to MePTCL herein) & Meghalaya Power Generation Corporation Limited (referred to MePGCL herein) filed True-up Petition for FY 2022-23 and Multi Year Tariff ARR for the Fourth Control Period for the FY 2024-25, 2025-26 & 2026-27 and approval of Distribution, Transmission and Generation Tariff for FY 2024-25 respectively.

The Meghalaya Electricity Regulatory Commission (referred to Commission herein) after calling for objections and suggestions from the stakeholders and issuing public notice in the newspaper, conducted the public hearings on 18.03.2024, 19.03.2024 and 20.03.2024. The matter was heard by the Chairman and Member Law. However, due to the ongoing Model Code of Conduct, the order in the matter could not be issued and on 11.05.2024, the Chairman demitted the office due to superannuation. The order was finally issued on 05.06.2024 for True Up of 2022-23 and 06.06.2024 for Approval of MYT ARR for Fourth Control Period FY 2024-25 to FY 2026-27 and determination of Tariff for FY 2024-25. Since, the Chairman had demitted the office by then, the order was signed by Mr. R.K. Soni (Member Law).

2. Aggrieved by the order of the Commission, the MePGCL, MePTCL and MePDCL approached the Hon'ble High Court of Meghalaya vide Writ Petition No 216, 217 and 218 of 2024 challenging the jurisdiction of single Member who signed the order when both the Chairman and Member (Law) heard the matter. It was also pointed out that Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007 under section 18 (3) provides for signing of all the members who hear the matters.
3. Hon'ble High Court of Meghalaya vide order dated 25.06.2024 while issuing notice to the Commission, observed that prima facie matter deserves consideration and interim stay granted on the impugned orders of the Commission dated 05.06.2024 and 06.06.2024, until next date. The relevant extract of the interim order is reproduced below.

> *"The learned Senior counsel has drawn the attention of this Court to the orders dated 05.06.2024 and 06.06.2024, which he contends have been passed in violation of the Section 10 of The Meghalaya State Electricity Regulatory Commission (Conduct of Business) Regulations, 2007, which prescribes that the quorum for the Commission should be at least two, including the Chairperson, and also Section 18 (3), which specifically provides that all orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error.*
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> *It is further submitted that the impugned orders herein have been passed by a sole Member one Shri R.K. Soni, Principal District & Session Judge (Retd.), sitting singly, inasmuch as, the Chairperson had retired on 12.05.2024.*

On hearing the learned Senior counsel for the petitioner, prima facie it appears that the matter deserves further consideration, and at that this stage interim orders are called for. Accordingly, in the interim the impugned orders 05.06.2024 and 06.06.2024 shall remain stayed, until the next date."

4. The Commission made a statement verbally on 16th July, 2024 that in case the Hon'ble High Court of Meghalaya allows, the Commission is ready to re-examine the cases. The utilities of Meghalaya meanwhile, prayed for withdrawal of Writ Petition WP (C) No 216, 217 and 218 of 2024 on 23.07.2024. The Hon'ble High Court of Meghalaya on 23rd July, 2024 permitted the utilities to withdraw and re-agitate the matter afresh before the Commission. The relevant extract of the order is reproduced below.

"1. Mr. A. Kumar, learned Senior counsel assisted by Mr. A.S. Pandey, learned counsel for the petitioner prays that he may be allowed to withdraw the instant writ petition, as a statement has been made by the learned counsel for the respondent No. 1, that the matter will be taken up for reconsideration afresh, by the Regulatory Commission.

2. Mr. S. Jindal, learned counsel for the respondent No. 1 concurs to the submission made by the learned Senior counsel for the petitioner.

3. Prayer is allowed, it is made clear that this Court has not gone into the merits of the case.

4. Accordingly, the matter stands closed on withdrawal, with liberty to the petitioner to re-agitate the matter afresh, before the respondent No. 1."

7. The Utilities of the Meghalaya filed 6 No IA based on the orders of the Hon'ble High Court, with the prayer to re-hear the petition for True Up for 2022-23, MYT ARR for 2024-25 to 2026-27, Tariff for 2024-25, recall earlier orders issued by the Commission and pending recall of order and also suspend operation of the order.
8. Based on the application filed by the utilities, the Commission issued notice for hearing on 12th August, 2024. The industries namely, Byrnihat Industries Association(referred to as BIA herein) approached the Hon'ble High Court of Meghalaya for stay of the Notice issued by the Commission stating that the Commission do not have jurisdiction for hearing on suo-motu basis. The Commission informed the Hon'ble High Court of Meghalaya that, it is not Suo Motu but the Commission has issued Notice on Applications filed by the utilities. After hearing, the Hon'ble High Court of Meghalaya has dismissed the

Application on 08.08.2024 giving liberty to BIA to raise their objections with the Commission. The relevant extract of the order is reproduced below.

> "*1. Mr. S. Jindal, learned counsel for the respondents today has come with instructions and submits that the notice dated 02.08.2024, issued by the Secretary, Meghalaya State Electricity Regulatory Commission is not a Suo Motu action, but has been made on the basis of the applications by 3(three) Companies i.e. MePDCL, MePGCL and MePTCL.*
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> *2. Mr. K. Paul, learned Senior counsel assisted by Mr. S. Chanda, learned counsel for the petitioner submits that in this event, the matter can be disposed of, giving liberty to the writ petitioner to raise whatever objections as deemed necessary before the Regulatory Commission, on the next date.*
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> *3. In view of the situation as it pertains, the matter stands closed, however giving liberty to the writ petitioner to raise whatever objections as may be advised, which will be looked into and disposed of by the Regulatory Commission.*
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> *4. The matter stands disposed of."*

9. The matter was taken up for hearing through video conferencing on 12.08.2024. During the hearing both the parties were heard at length.
10. The learned senior counsel of the BIA submitted during the hearing that they had challenged the notice issued by the Commission against the applications filed by the Utilities of Meghalaya for hearing before the Hon'ble High Court of Meghalaya and liberty was granted by the Hon'ble High Court for the objections on recalling the orders issued on 05th and 06th June of 2024 and conducting a fresh hearing of the matter.
11. The learned senior counsel further submitted that this Commission post exercise of powers under Section 62 and 64 of the Electricity Act 2003 becomes functus officio and does not have any jurisdiction to rehear on a subject matter which had already been exercised and decided by it and as such the application of MePDCL, MePGCL and MePTCL is not maintainable in law.
12. That Regulation 26 of the MSREC (Multi Year Tariff) Regulations 2014 provides that

> *"26.1 …the Commission shall determine the tariff of a generating company or transmission licensee or distribution licensee covered under a multi-year framework for each financial year during the control period, at the*

commencement of such financial year…", as such once tariff has been determined and fixed by this Commission, even its own regulations do not permit for rehearing or re-exercise of its powers for determination and fixation of tariff for a financial year.

13. That the order passed by this Commission is essentially an appealable order under section 111 of the Electricity Act 2003 and as such there cannot be any recall of the same. Inspite of the said remedy being available to the Petitioners no such appeal has been preferred.

14. The Application filed by MePDCL, MePGCL and MePTCL is under 62 and 64 of the Act which powers admittedly have already been exercised by this Commission. There is no provision under the Electricity Act or the Conduct of Business Regulations that enable this Commission to rehear a tariff petition once the same is subsisting. In this connection reliance is placed on the Constitution bench decision (7 judges) of Hon'ble Supreme Court of India rendered in the case of Keshav Singh Vrs State of Uttar Pradesh reported in (1965) 1 SCR 413: 1964 SCC On Line SC 21 wherein it was held "…We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, *"no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court."*

In the absence of any demonstrable source of power either under the Electricity Act or the Regulations, this Commission does not have the power to rehear or re-decide any function already discharged by it.

15. That the affidavit which had been filed in support of the application by MePDCL, MePGCL and MePTCL is defective and not verified as per law and as such no valid application is present before this commission at the moment.

16. That the requisite fee under the Meghalaya State Electricity Regulatory Commission (Fees and Charges) Regulations 2017 have not been paid by the

Petitioners in support of the applications and as such the said applications cannot be taken up for hearing.

17. That the foundation of the application filed by the Petitioners is as per their own admission in para 7 of their application is a statement made by the counsel for this Commission before the Hon'ble High Court. It is submitted that this Hon'ble Commission in the instant proceedings is discharging an adjudicatory function and as such, this statement casts serious aspersions on the independence/fairness of this Commission. In this connection the judgment of the Hon'ble Supreme Court in the case of A.K Kripak v. Union of India reported in A. 1970 SC 150 is relied on wherein it has been categorically laid down that *"…justice must not only be done, it must manifestly appear to have been done".* By making such statements on oath, the Petitioners have attributed partisanship as against this Commission and in the face of such assertions, it is but not desirable for this Commission to decide the instant applications.

18. That otherwise also it is settled law that parties by consent cannot confer jurisdiction on an authority/court which otherwise lacks inherent jurisdiction to perform a function. Reliance is place in the 3 Judge; judgment of the Hon'ble Supreme Court tendered in the case of Balai Chandra Hazra v. ShewdhariJhadav reported in (1978) 2 SCC 559. In the face of such settled law, merely because this Hon'ble Commission at some point of time was of the tentative view that it could re-consider the tariff applications would not parse invest any jurisdiction on this Commission to rehear the tariff applications especially since no such power or its source is to be found in the Electricity Act or the Regulations. Any such exercise would therefore be bereft of any lawful authority under law and would therefore be void ab initio.

19. The concept of functus officio essentially emanates from the doctrine of Stare decisis which is a doctrine not formulated perse on law but rather a matter of public policy wherein any court or authority invested with adjudicatory functions must after exercise of that function be declared functus officio to bring an end to proceedings before it or else there would be no end to exercise of powers over and over by the same authority in respect of the same subject matter. As a necessary corollary thereof, appellate forums are provided under statutes so that aggrieved parties may appeal against any

order they are aggrieved from rather than re-agitate the matter before the same forum.

20. On the specific query of the Commission pertaining to the order and the guidance of Hon'ble APTEL in Appeal No 297 of 2019 in Jindal India Power Limited Vs Odisha State Electricity Regulatory Commission (referred as OERC herein), the learned senior counsel submitted that the order in OP 01 of 2011 dated 02.12.2013 was issued by a larger bench comprising of 3 members and the directions were issued under Section 121 of Electricity Act 2003 in comparison to order issued under section 111 which is against specific appeal. The directions contained therein prevail over and above the guidance issued by Hon'ble APTEL in appeal No. 297 of 2019. Relevant Paras of the order is reproduced below:

> *"On the basis of this report, we deem it appropriate to give the following directions to these Commissions: (a) It is settled law that the Regulations with regard to quorum cannot be framed as against the substantive sections of the Electricity Act, 2003. The functions of the State Commission u/s 86 and 181 of the Act, 2003 would, in terms of the Conduct of Business Regulations have to be discharged through the proceedings for which no quorum have been specified under the Act.*
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> *(b) Of course, there were Regulations framed by some other Commissions relating to the quorum. Those Regulations also would refer to the quorum only for the meeting of the Commission and not for the proceedings before the Commission.*
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> *(c) These Regulations provide that the Commission may hold such proceedings as deemed considered appropriate in discharge of its functions under the applicable legal framework. It also provides that all other matters may be decided by the Commission administratively through the meeting of the Chairmen, Members and Secretary or other Officers of the Commission.*
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> *7. Thus, it is clear, the conduct of the business Regulations framed by the Commission specifically differentiate between the proceedings before the State Commission and meetings of the Commissions.*
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> *8. In this context, it is to be pointed out that this Tribunal has already rendered judgments while interpreting Section 93 of the Electricity Act, 2003 that any*

decision taken by the Commission should not be invalidated by a mere fact that there is some vacancy either of the Chairman or Member.

9. In view of the above decision, we are to direct all the Commissions to conduct the proceedings irrespective of the quorum since the proceedings before the Commission could be conducted even by a single Member.

10. Of course, Section 82 (4) of the Act, 2003 provides that the State Commission shall consist of not more than three Members including Chairperson. However, Section 93 of the Act, 2203 provides that no Act or proceedings of the appropriate Commission shall be questioned or shall be invalidated merely on the ground of any vacancy or defect in the constitution of the appropriate Commission."

21. The learned senior counsel of BIA further submitted that this being essentially a direction issued under section 121 of the Electricity Act, 2003 would be binding on this Commission and cannot be obviated. What naturally follows from these directions is that even a single member irrespective of the Regulations of the Commission can hear and pass orders in all matters postulated under the Electricity Act 2003 within the jurisdiction of the State Commission and as such it can be reasonably construed that the hearing for tariff could even have been taken by a single member thereby dispensing with the requirement of quorum as no quorum had been set forth by the Act itself. As a necessary corollary thereof irrespective of the fact that 2 members of this Commission had held the tariff hearings, any one member is therefore competent to sign the tariff order as is in the instant case. Such being the situation coupled with the fact that this order passed in OP No. 1 of 2011 has not been set aside, withdrawn or interfered with till date and is still holding the field there seems to be no legal infirmity or illegality with the orders passed by this Commission.

22. Learned Counsel further submitted that the order dated 07.02.2024 by the APTEL for Electricity in Appeal No. 297 of 2019 captioned Jindal India Thermal Power Limited V. Odisha Electricity Regulatory Commission and Ors was passed by a bench consisting of 2 Hon'ble members (smaller bench) wherein the orders passed on 02.12.2013 in OP No. 1 of 2011 has not been taken note of or considered thereby rendering the said judgment per incurium

and therefore the same is bad law and is not a valid precedent for this Hon'ble Commission.

23. It is also submitted that even otherwise the decision rendered by APTEL in the Jindals case (supra) was in exercise of Appellate Jurisdiction under Section 111 of the Electricity Act 2003 and therefore is essentially an order in personem between the parties, governing their respective rights and interests interse between them only as juxtaposed to order dated 02.12.2013 passed in OP No. 1 of 2011 which is in exercise of powers under Section 121 of the Electricity Act concerning supervisory jurisdiction of APTEL over all State Commissions thereby making it an order in rem and binding on all State Commissions.

24. It is further submitted that judicial discipline requires subordinate forums to follow directions issued by larger or full benches of authorities constituted under a statute and not be rendered gullible under orders passed by smaller benches especially when the law laid down by a larger bench is not considered by the smaller bench rendering the order. In such circumstance it is obligatory on the part of this Commission to adhere and comply with the directions issued by the full bench of the APTEL. Such assertion is further buttressed by the fact that the observation in the full bench judgment are directory in nature and there are specific directions to all Commissions to such end as against circulations of the Jindal judgment by the smaller bench for guidance of commissions. This itself proves that the APTEL was conscious of the fact that the directions in Jindal were not directory in nature.

25. That in the face of the two decisions by APTEL it would not be competent for this Hon'ble Commission to decide on the applications of the Petitioners and they have to be relegated to the remedy of appeal as it is only APTEL which can decide as to the validity of its orders.

26. The leaned counsel of the Meghalaya Utilities submitted that the orders issued by the Commission is without jurisdiction, is nonest, void-ab-initio, suffers from manifest procedural impropriety and is in blatant violation of its own Regulation. He has submitted that as per the Clause 18(3) of MSERC (Conduct of Business) Regulations, 2007, all orders of the Commission shall be signed by the Chairperson and Members who heard the matter. Relevant sections of the Regulation is reproduced below:

"18. Decision and orders of the Commission (1) On completion of a hearing or consideration of a matter the Commission shall give its decision with reasons therefor and shall pass orders, including orders with regard to costs.

(2) The Commission may also pass interim orders as may be necessary from time to time.

(3) All orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error.

(4) In any proceeding the decision taken by the majority shall be the decision of the Commission and in case of dissent the dissenting Member shall give his views separately."

27. In accordance with the above extract of the Regulations, the orders on a particular matter have to be signed by the Chairperson and Member hearing the matter. However, in the current case since the Chairperson demitted the office during the proceeding of the Petition filed by the Utilities of Meghalaya, the matter should have been heard afresh and then the order should have been issued.

28. He further, submitted that Hon'ble APTEL in judgement dated 07th February 2024 in ***Appeal No. 297 of 2019*** in the matter of ***Jindal India Thermal Power Limited Vs Odisha State Electricity Regulatory Commission*** decided the following:

"24. We clarify and reiterate the legal principle that where one of the Members of the Commission who hear a matter, demits office by reason of superannuation, death etc. before passing of the final order, ***it is not permissible for the remaining Member/Members of the Commission to sign the order****. In such a situation, the matter shall be heard* ***de novo and final order be passed / signed accordingly****.*

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26. The Registry of this Tribunal is directed to transmit a copy of this judgment to the Electricity Regulatory Commissions in all the States/UTs for their information and guidance."

29. It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. In B. Shama Rao vs. Union Territory of Pondicherry,

AIR 1967 SC 1480, it has been observed that a decision is binding not because of its conclusion but with regard to its ratio and the principle laid down therein. In this context, reference could also be made to Quinn vs. Leathem, 1901 AC 495 (HL), wherein it was observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found. In other words, a case is only an authority for what it actually decides.

In Jindal India, APTEL was dealing with the issue for validity of an order wherein one member who heard had thereafter retired. In the instant case, as well, Chairman who had attended the hearing, has been retired.

30. In the leading case of Qualcast (Wolverhampton) Ltd. vs. Haynes, 1959 AC 743, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based.

Legal proposition in the matter filed by the Applicant is similar to the legal proposition of APTEL judgment in Jindal case.

31. On the issue related to the jurisdiction of the Commission pertaining to recall its own order, the learned council relied on the judgements of the Hon'ble Supreme Court of India in ***Budhia Swain -v- Gopinath Deb, (1999) 4 SCC 396***

> *"6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550] Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order*
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> *(i) obtained by fraud practised upon the court,*
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> *(ii) when the court is misled by a party, or*
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> *(iii)* ***when the court itself commits a mistake which prejudices a party****.*

In A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531, para 130] (vide para 130), this Court has noticed motions to set aside judgments being permitted where

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented,

(ii) a judgment was obtained by fraud,

(iii) a party has had no notice and a decree was made against him and such party approaches the court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party, or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented."

32. He further relied on the Judgement of Hon'ble Supreme Court of India in ***Greater Noida Industrial Development Authority -v- Prabhjit Singh Soni, (2024) 243 Comp Cas 452, 2024 SCC On Line SC 122***

47. In Budhia Swain v. Gopinath Deb [(1999) 4 SCC 396.], after considering a number of decisions, a two-Judge Bench of this court observed [See page 401 of (1999) 4 SCC.]

"8. In our opinion a Tribunal or a court may recall an order earlier made by it if—

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party, or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

….

48. The law which emerges from the decisions above is that a Tribunal or a court is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an

appropriate case, it can recall its order in exercise of such ancillary or incidental powers.

*50. In light of the discussion above, what emerges is, a court or a Tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the court. Neither the Insolvency and Bankruptcy Code nor the Regulations framed there under, in any way, prohibit, exercise of such inherent power. Rather, section 60(5)(c) of the Insolvency and Bankruptcy Code, which opens with a non obstante clause, empowers the National Company Law Tribunal (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the Insolvency and Bankruptcy Code. Further, rule 11 of the National Company Law Tribunal Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to re-hear the matter. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) **the order is without jurisdiction**; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/Tribunal resulting in gross failure of justice.*

33. He further relied on the Judgement of Hon'ble Supreme Court in ***"SREI Infrastructure Finance Limited Vs. Tuff Drilling Private Limited" (Civil Appeal No. 15036 of 2017)*** which has dealt both issues of the recall and Functus Officio in following words:

"1. This appeal has been filed against the judgment dated 13.02.2015 of the Calcutta High Court by which the High Court in exercise of jurisdiction under Article 227 of the Constitution of India has set aside the Order passed by the arbitral tribunal by which the arbitral tribunal had refused to recall its Order dated 12.12.2011 terminating the arbitration proceedings on account of non-filing of the claim by the claimant.

7. Learned Counsel for the appellant submits that the arbitral tribunal had terminated the proceedings on 12.12.2011 due to non-filing of claim by the claimant in spite of opportunities having been granted to it. The arbitral

tribunal had become functus officio and had no jurisdiction to recall the order dated 12.12.2011 on the application filed by the respondent claimant to recall the said order.

24. In Kapra Mazdoor Ekta Union Vs. Birla Cotton Spinning and Weaving Mills Ltd. &Anr., (2005) 13 SCC 777, this Court again held that a quasijudicial authority is vested with the power to invoke procedural review. In Paragraph 19 of the judgment, following was laid down: -

"19. Applying these principles, it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. ***In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without*** *notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing,* ***are some illustrative cases*** *in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasijudicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. V. Central Govt. Industrial Tribunal5 it was held that once it is established that the respondents were prevented from*

appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

32. We endorse the views of Patna High Court, Delhi High Court and Madras High Court as noted above, in so far as they have held that the arbitral tribunal after termination of proceedings under Section 25(a) on sufficient cause being shown can recall the order and recommence the proceedings"

34. Applying the principles emerged from afore-quoted judgments, it can be safely submitted that an order can be recalled if it is proved that it has been passed without jurisdiction. The Applicant is humbly submitting that the order which has been passed in violation of the Quorum and by the bench which has not heard the matter **is without jurisdiction (or completely lack jurisdiction).**

35. He further cited the view of judicial/quasi-judicial Forums wherein orders passed in violation of Coram.

36. It is further settled principle of law that even right decision by a wrong forum is no decision as held by Hon'ble Supreme Court in ***"Pandurang &Ors Vs. State of Maharashtra" [(1986)4 SCC 436].*** In the instant case, matter was heard by single bench when it was required to be heard by division bench, Supreme Court in very specific word stated that such judgment would be nullity and it being a matter of total lack of jurisdiction. Therefore, conjoint reading of afore quoted principles with Pandurang (Supra), it is humbly submitted that this Commission should recall the Impugned Tariff Order.

37. Hon'ble Supreme Court reiterated the afore-quoted principle in a recent judgment delivered in ***Bhargav Krishna Patil Vs. State of Maharashtra*** on 30.04.2002 (Criminal Appeal No. 31 of 1996). Relevant paras are reproduced hereinafter below:

"1. The appellant was tried for the commission of offences punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act and upon conviction was sentenced to undergo six months' R.I. besides paying the fine of Rs. 1000/. The appeal filed by the accused was allowed by the appellate court vide its judgment dated 27th December, 1985.

2. Feeling aggrieved, the state filed crl. appeal No. 249/1986 which was heard and allowed by a learned single judge of the High Court. The conviction and sentence awarded by the trial court was upheld vide the judgment impugned in this appeal.

3. Shri D.T. Karmate, learned counsel appearing for the appellant has submitted that the impugned judgment is liable to be set aside in view of the Bombay High Court (appellate side) rules, 1960. Rule 1 of the rules provides that the civil and criminal jurisdiction of the court on the appellate side shall, except in cases where it is otherwise provided for by these rules, be exercised by division court consisting of two or more judges. If the appeal against acquittal wherein the accused was charged relates to an offence which is punishable with a conviction and fine or with a sentence of imprisonment not exceeding two years, such an appeal may be heard and disposed of by a single judge. Similarly, an appeal for leave under Section 378(4) of the Code of Criminal Procedure against acquittal, wherein the accused was charged is the one, punishable with conviction with a sentence of fine only or with a sentence of imprisonment not exceeding 2 years or with such imprisonment and fine, such appeal can also be heard by a single judge. In a case, where an appeal is filed against an order of acquittal and the offence with which the accused was charged is punishable with an imprisonment for more than two years, the appeal has to be heard by a division bench of the High Court. It is contended that in view of the mandatory provisions of the rules, the impugned judgment having been passed by a learned single judge is without jurisdiction and thus liable to be set aside.

4. Dealing with the Bombay High Court (appellate side) rules 1960, this Court in Pandurang and Ors. v. State of Maharashtra : 1986CriLJ1975 has held:

"When a matter required to be decided by a division bench of the High Court is decided by a learned single judge, the judgment would be a nullity, the matter having been heard by a court which has no competence to hear the matter, it being a matter of total lack of jurisdiction. The accused was entitles to be heard by at least two learned judges constituting a division bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done by at least two learned judges cannot be done by one learned judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a

wrong' forum is no decision. It is nonexistent in the eye of law, and hence a nullity. The judgment under appeal is, therefore, no judgment in the eye of law. This Court in State of M.P. v. Dewadas MANU/SC/0116/1982 : 1982CriLJ614 , has taken a view which reinforces our view we therefore, allow the appeal, set aside the order passed by the learned single judge, and send the matter back to the High Court for being placed before a division bench, of the High Court, which will afford reasonable opportunity of hearing to both the sides and dispose it of in accordance with law, expeditiously."

5. The learned counsel appearing for the state could not refer to any rule which authorises a learned single judge to hear and decide the appeal filed by the state against the order of acquittal with respect to an offence the punishment provided for which was admittedly more than two years. Under the circumstances, the appeal is allowed by setting aside the order of the learned single judge.

6. The criminal appeal No. 249/86 filed in the High Court is sent back for disposal afresh in accordance with law by a division bench of that court."

38. The Hon'ble High Court of Rajasthan in its order dated 14.03.2018 passed in ***Kamal Travels Kokk International vs. State of Rajasthan and Ors***. (SB. Civil Writ Petition 18 of 2012) has set aside the order passed by the State Consumer Commission on the ground that it was passed without meeting the quorum requirement and hence, is without jurisdiction. The relevant paras of the order are extracted below:

"*Shri Yashwant Mehta learned counsel representing the contesting respondents candidly concedes that the order passed by the State Consumer Commission is without jurisdiction because the quorum thereof was not complete. At least, the Chairman and one member were required to hear the matter so as to constitute the quorum for passing a valid decision as per Section 16 (1) (b) (ii) of the Consumer Protection Act, 1986.*

In this view of the matter, the writ petition deserves to be and is hereby allowed. The Impugned Order dated 07.12.2011 passed by the State Consumer Commission is quashed and set aside. The matter is remanded to the Consumer Commission, who shall rehear the matter and pass a fresh judgment thereupon preferably within a period of three months from the date of receipt of copy of this order."

39. **Court Fee**

Respondent has submitted that the application for recall has to be dismissed because requisite court fee has not been paid. It is humbly submitted that Section 149 of the Civil Procedure Code empowers the court to allow parties to pay requisite court at any stage. Relevant provisions are being reproduced hereinafter:

> ***"149. Power to make up deficiency of court-fees—***
> ***Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."***

40. Affidavit has been filed ensuring verification of all paras and by disclosing source of the verification.
41. In line with the above discussions, the leaned counsel of Meghalaya Utilities prayed the Commission to recall the orders dated 05.06.2024 and 06.06.2024 and allow fresh hearing on the Petitions filed by Meghalaya Utilities before issuance of the new orders.

Commission's Analysis and Decision

42. We have heard the learned Senior Counsel/Counsels of the parties and also gone through the submission made by the Counsels of the respondents and the Petitioner. The Hon'ble High Court while disposing of the matter in Writ Petition No WP(C) No 216,217 and 218 of 2024 granted liberty to the Utilities of Meghalaya to reagitate the matter afresh. Hon'ble High Court of Meghalaya also allowed BIA to raise their objection with the Commission vide its order dated 08.08.2024.
43. We have considered the rival submissions of the Counsels and find two relevant questions which need to be addressed:
    a. Did the Commission have jurisdiction while issuing orders dated 5th and 6th June 2024 regarding True up for the period 2022-23 and MYT for 2024-25 to 2026-27 and tariff for 2024-25 period?

b. Whether the Commission can recall the orders issued as above and rehear the petitions afresh?

Jurisdiction of the Commission at the time of pronouncing the orders dated 5th and 6th June 2024

44. Before going into the above issue and submissions made by the learned counsels of both the parties, let's go through the relevant provisions of the Conduct of Business Regulations of the Commission and Electricity Act 2003.

45. The relevant extracts of Electricity Act 2003 are reproduced below:

> *"92. **Proceedings of Appropriate Commission**. – (1) The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.*
>
> *(2) The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.*
>
> *(3) All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*
>
> *(4) Save as otherwise provided in sub-section (3), every Member shall have one vote.*
>
> *(5) All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of*
>
> *the Commission duly authorised by the Chairperson in this behalf.*
>
> *93. **Vacancies**, etc., not to invalidate proceedings. –No act or proceedings of the Appropriate Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Appropriate Commission."*

46. Pursuant to its powers under Section 92(1) of the Act, the Commission has issued the Conduct of Business Regulations, 2007 (referred to as COB herein). Relevant paras of COB of the Commission is reproduced as under:

> *"8. **Proceedings of the Commission***

(1) All hearings, examination, enquiries or consultations held or conducted in a meeting shall be deemed to be the proceedings of the Commission.

(2) A matter shall be heard or considered by the Commission in a meeting:

(3) The Commission while hearing or considering a matter may, if it considers it necessary to do so, co-opt an officer or any person possessing knowledge or adequate experience in a particular field to be present and take part in the meeting but such officer or person shall not have the right to vote.

(4) All proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure."

"9. ***Conduct of meetings***

(1) The Chairperson shall preside over meetings of the Commission.

(2) ***All questions in a meeting shall be decided by the majority of votes of the Members present and voting and in the event of equality of votes, the Chairperson, or in his absence, the person presiding, shall have a second casting vote.***

(3) Save as otherwise provided in sub-regulation (2) every Member shall have one vote.

(4) Where a matter is required to be decided urgently, the Chairperson may, instead of convening a meeting, direct that it be circulated to the Members for their consideration and the collective decision taken shall be the decision of the Commission."

[***Emphasis Supplied***]

"10. ***Quorum****.*

Where the Commission has also one Member or more the quorum of any meeting shall be two including the Chairperson"

*18****. Decision and orders of the Commission***

(1) On completion of a hearing or consideration of a matter the Commission shall give its decision with reasons therefor and shall pass orders, including orders with regard to costs.

(2) The Commission may also pass interim orders as may be necessary from time to time.

(3) ***All orders of the Commission shall be signed and dated by the Chairperson and Members hearing the matter and shall not be altered except to correct any apparent error****.*

(4) In any proceeding the decision taken by the majority shall be the decision of the Commission and in case of dissent the dissenting Member shall give his views separately."

[***Emphasis Supplied***]

47. In view of Regulation 18(3) of the COB Regulations, it is evident that all the orders have to be signed by Chairperson and Members hearing the matter. It must also be borne in mind that as per Regulation 18(3) underscores the importance that Members who heard the matter are required to sign the Order.

48. The Regulations framed by the Commission are in consonance with the governing law on the subject and this is borne out of the following:-

    i. The Hon'ble Appellate Tribunal for Electricity ("**Hon'ble APTEL**") rendered a Judgment dated 10.01.2019 passed in Appeal No. 901 of 2018 titled as '*Damodar Valley Corporation v CERC &Ors*' ("**DVC Case**") [reported as 2019 SCC OnLine APTEL 40] has dealt with the procedure of issuing orders.

    ii. In this case, it was argued that the order in question passed by the Central Electricity Regulatory Commission ("**CERC**") cannot be sustained since the matter was presided by four Members while the Order was passed by three members. (*Relevant Para 10, 11, 28, 31*) Notably, Regulation 62 of the CERC (Conduct of Business) Regulations, 1999 stated as follows: -

    "*62. The Commission shall pass the orders on the Petition and the Chairperson and the Members of the Commission who hear the matter and vote on the decision shall sign the orders*."

    iii. After considering the relevant regulations, the Hon'ble APTEL set aside the order in question passed by the CERC in view of the following reasons:

    "*28. The learned senior counsel appearing for the Appellant vehemently submitted that Section 93 of the Electricity Act, 2003 is not applicable to the facts and circumstances of the case on the ground that no act or proceeding of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission. In the instant case the question is not for consideration on the ground of existing of any*

vacancy or defect in the constitution of Appropriate Commission ***what is emerged in the instant facts of the circumstances is that the matter has been heard by the bench consisting of four Members and out of which one Member has retired*** *and the order has been passed after lapse of more than three years two months signed by only three Members. Such order cannot be sustainable in the eye of law.* ***Therefore, we find there is no force in the submissions of the learned counsel appearing for the Respondent No. 2 that Section 93 will be applicable to the facts and circumstances of the case****. It is well settled law laid down by the Hon'ble Supreme Court and this Tribunal in catena of decisions that any order or judgment after hearing reserved have to be pronounced within reasonable time will be justifiable but in the instant case the order has been passed after lapse of more than three years and two months that too* ***contrary to their own Regulation 62 and is signed only by three Members whereas the matter has been heard by the bench of four Members. The Central Commission ought to have heard the matter afresh and passed the appropriate order in letter and spirit*** *in accordance with law after giving reasonable opportunity of hearing to the parties to the proceedings. But in the instant case no opportunity as such has been offered to the parties to the proceedings…*"

[***Emphasis Supplied***]

iv. Subsequently, the Hon'ble APTEL in Jindal Case has followed the earlier decision in the DVC Case and has held as follows: -

"*24. We clarify and reiterate the legal principle that where one of the Members of the Commission who hear a matter, demits office by reason of superannuation, death etc. before passing of the final order,* ***it is not permissible for the remaining Member/Members of the Commission to sign the order. In such a situation, the matter shall be heard de novo and final order be passed / signed accordingly***."

[***Emphasis Supplied***]

v. It is noteworthy that the Jindal Case was passed by the Hon'ble APTEL on the strength of the decisions of the Hon'ble Supreme Court in '*Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh*

State Road Transport Corporation and Anr.', 1958 SCC OnLine 49 and '*Rasid Javed v. State of U.P.*', 2010 (7) SCC 781 that a person who hears must decide and the divided responsibility is destructive of the concept of judicial hearing.

vi. Further, the Hon'ble APTEL in '*Global Energy Pvt. Ltd. v KERC*', Appeal No. 233 of 2016 passed a Judgment dated 04.10.2016 (*Relevant Para 10-11*) and held that all members who have heard the matter have to sign the order.

vii. The Hon'ble Supreme Court in '*Pandurang &Ors v State of Maharashtra*', (1986) 4 SCC 436 (*Relevant Para 4*) has observed that an order passed by the Single Judge Bench which was to be decided by the Division Bench of the High Court was a nullity. Similar observations were also made in '*Bhargav Krishna Patil Vs. State of Maharashtra*', Criminal Appeal No. 31 of 1996, Order dated 30.04.2002. (reported as MANU/SC/0756/2002) (*Relevant Para 4 & 5*)

viii. In addition to the afore-mentioned, strength can also be drawn from the judgment of the Hon'ble Supreme Court in '*United Commercial Bank Ltd. v. Workmen*', 1951 SCC OnLine SC 29 (*Relevant Para 8*). The Hon'ble Supreme Court in this case took note of the Section 16 of the Industrial Development Act, 1949 (*Relevant Para 7*) which required that the award had to be signed by all members and held that if the award is not signed by all members, it will be invalid as it will not be the award of the Tribunal.

ix. Similarly, reliance is also placed on the judgment of the Hon'ble Supreme Court in '*Karnal Improvement Trust v. Parkash Wanti*', (1995) 5 SCC 159 (*Relevant Para 11*) wherein it has been held that when a public duty is imposed and statute requires that it shall be performed in a certain manner or within a certain time or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements are not essential and imperative. Clearly, therefore, in the present case, Regulation 18(3) has to be adhered to and each member who has heard the matter has to sign the Order.

49. It can be seen that Conduct of Business Regulation 31(2) of KERC, Regulation 20(1) of OERC and Regulation 18(3) of MSERC are akin and require that the Members of the Commission who heard the matter shall sign the order. In view of the afore-mentioned, it is clear that the members who hear the matters, must pass the order.

50. We have gone through the submissions made in case of OP1 of 2011 order dated 02.12.2013. BIA in its Applications has relied on the Order dated 02.12.2013 passed in O.P. No. 01 of 2011 wherein, inter-alia, following has been held: -

> "*11. In our view, since the quorum depends upon the number of Members in the office, even single Member of the Commission including the Chairperson of such a Commission can conduct the proceedings of the appropriate Commission.*
>
> ***12. Therefore, we direct that all the Commissions concerned irrespective of the Regulations with regard to the quorum for a meeting, that Commission, even with a single Member despite that there are vacancies of other Members or Chairperson, can continue to hold the proceedings and pass the orders in accordance with the law****"*
>
> ***XXX***
>
> *17. We also deem it fit to direct the Commissions to amend the Regulations if any, to the effect that if there is only one Member of the Commission available, the quorum of the proceedings of the Commission also shall be one*
>
> [***Emphasis Supplied***]

51. It is observed that the directions issued by the Hon'ble APTEL in its Judgement dated 02.12.2023 in OP 1 of 2011 pertains to the issue of proceeding of the Commission in case of vacancy. Proceedings have been defined in the Regulation 8 of the Conduct of Business Regulations issued by the Commission as under:

> *"8. Proceedings of the Commission*
>
> *(1) All hearings, examination, enquiries or consultations held or conducted in a meeting shall be deemed to be the proceedings of the Commission.*
>
> *(2) A matter shall be heard or considered by the Commission in a meeting:*
>
> *……."*

Bare perusal of Judgement dated 02.12.2013 in OP1 of 2011 would clearly reveal that merely because of vacancy in the Commission, it should not stop hearing the cases. Section 93 of the Electricity Act 2003 also provide that if there had been any vacancy in the Commission at the time of hearing the matter or there had been any other defect in the constitution of the Commission to hear the matter, the same cannot be made ground to question the order passed by the Commission. However, the issue as detailed in Paragraphs [•] above were not the subject matter of decision in OP No. 1 of 2011. In the present case at the time of hearing the matter on the true up petitions and MYT petitions, the quorum of the Commission was complete and the proceedings were continued and hearing was concluded by the Chairman and Member (Law). Problem arose only when the Commission pronounced the order wherein, one Member only signed the order, as the Chairman demitted his office by this time. Therefore, the Judgment of the Hon'ble Tribunal is not applicable to the facts of the present case. The Hon'ble Supreme Court in '*Punjab National Bank v. R.L. Vaid'*, (2004) 7 SCC 698 (*Relevant para 5*) has held that there is always peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

52. We would also like to refer to the Judgement dated 11.11.2011 of the Appellate Tribunal in OP1 of 2011. This Judgement was passed by the Appellate Tribunal on a Suo Moto Petition taken up by the Appellate Tribunal based on a letter sent by Power Ministry "complaining that most of the State distribution utilities have failed to file annual tariff revision petitions in time and as a result in a number of States, tariff revision has not taken place for a number of years and that State Commissions constituted all over India have also failed to make periodical tariff revisions suo-moto resulting in the poor financial health of the State distribution utilities. Due to this fact situation, the Power Ministry requested this Tribunal to take appropriate action by issuing necessary directions to all the State Commissions to revise the tariff periodically, if required by suo moto action, in the interest of improving the financial health and long-term viability of the electricity sector in general and

distribution utilities in particular." Appellate Tribunal has directed State Electricity Regulatory Commissions to follow their own Regulations. Relevant paras are reproduced below:

> *"31. There is no answer to these questions either in their affidavits or in the written submissions filed by these State Commissions.* ***We are really surprised over the conduct of these State Commissions who now plead as against their own Regulations approved by the legislature. Another surprising feature is that these Commissions, have failed to take note of the findings given by this Tribunal in the several judgments indicating the necessity to follow their Regulations, which are binding on them****."*
>
> "41. **As a matter of fact, the Hon'ble Supreme Court has held that the Regulations framed by the Commissions are binding as a delegated legislation on the Commissions and as such the Regulatory Commissions are obliged to determine tariff in exercise of the powers in accordance with these Regulations**. The relevant observations made by the Hon'ble Supreme Court in the matter of Power Trading Corporation Vs CERC is as follows:"
>
> **"42. The above mandate issued by the Hon'ble Supreme Court would reveal the following factors.**
>
> **(a) Making of a Regulation under section 178 is not a pre-condition to passing of an order levying a regulatory fee under section 79 (1) (g). However, if there is a Regulation under Section 178 in that regard, then the order levying fees under Section 79 (1) (g) has to be in consonance with the Regulation.**
>
> (b) Similarly, while exercising the power to frame the terms and conditions for determination of tariff under section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of Tariff even in the absence of Regulations.
>
> (c) If a Regulation is made under Section 178, then in that event framing of terms and condition for determination of tariff under Section 61 has to be in consonance with the Regulation under Section 178.
>
> **(d) All these observations which relate to the Central Commission, would apply to the State Commissions as well, as the State**

Commissions have got the powers to frame Regulations under Section 181 of the Act, 2003

"*47. This is a preposterous proposition. As referred to in the earlier paragraphs, we have held that the suo-moto jurisdiction is vested in the hands of the State Commissions by way of Regulations.* ***According to Hon'ble Supreme Court, these Regulations are statutory and binding delegated legislations which have to be mandatorily followed by the Commissions****……..."*

"49. Let us now see the other judgments. The next decision is in the case of Uttar Pradesh Power Corporation Ltd Vs NTPC reported as (2009) 6 SCC 235 dated 03 March, 2009 which is as under:

> *"46. The Concept of regulatory jurisdiction provides for revisit of the tariff.* ***It is now a well-settled principle of law that a subordinate legislation validly made becomes a part of the Act*** *and should be read as such".*

It is clear from the above observations and directions of the Judgement on OP 1 dated 11.11.2011of Appellate Tribunal, Regulations framed by the State Electricity Regulatory Commission are binding on them.

53. In view of above, we find that the Commission did not have Jurisdiction while pronouncing the Orders dated 05.06. 2024 and 06.06.2024. Right procedure should have been hearing the matter afresh by the single Member arising due to vacancy for the position of the Chairman before pronouncing the orders. Now we will discuss on our second question.

Whether the Commission can recall the orders issued as above and rehear the petitions afresh?

54. It is necessary to note that the issue of power/jurisdiction of courts or tribunal to recall their orders is no more res integra and that the law has been settled by a catena of judgments passed by the Hon'ble Supreme Court.

55. It is now settled that a court or tribunal is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an appropriate case, i**t can recall its order in exercise of such ancillary or incidental powers.** In this regard, reliance is

placed on the '*Greater Noida Industrial Development Authority v Prabhjit Singh Soni &Anr.*', (2024) 6 SCC 767 ("**Greater Noida Case**").

56. In the Greater Noida case, the issue before the Hon'ble Supreme Court was whether National Company Law Tribunal's ("**NCLT**") order whereby the NCLT had refused to recall its order was correct. One of the issues framed by the Hon'ble Supreme Court was whether the NCLT had the powers to recall its orders. (*Relevant Para 39*)

57. While deciding the issue and holding that the NCLT had powers to recall its orders, the Hon'ble Supreme Court dealt with Rule 11 of the National Company Law Tribunal, 2011 ("**NCLT Rules**") which is reproduced below: -

> "*Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal*."

58. After noting various judgments passed on the issue, the Hon'ble Supreme Court concluded as follows: -

> *"48. The law which emerges from the decisions above is that a tribunal or a court is invested with such ancillary or incidental powers as may be necessary to discharge its functions effectively for the purpose of doing justice between the parties and, in absence of a statutory prohibition, in an appropriate case, it can recall its order in exercise of such ancillary or incidental powers.*
>
> *49. In a recent decision (i.e. Union Bank of India v. Dinkar T. Venkatasubramanian [Union Bank of India v. Dinkar T. Venkatasubramanian, (2024) 248 Comp Cas 108 : 2023 SCC OnLine NCLAT 283]), a five-member Full Bench of Nclat held that though the power to review is not conferred upon the Tribunal but power to recall its judgment is inherent in the Tribunal and is preserved by Rule 11 of the NCLT Rules, 2016. It was held that power of recall of a judgment can be exercised when any procedural error is committed in delivering the earlier judgment; for example, necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. It was observed that there may be other grounds for recall of a judgment one of them being where fraud is played on the court in obtaining a judgment. This decision of Nclat was upheld by a two-Judge Bench of this Court vide order dated 31-7-2023 in Union Bank of India v. AmtekAuto Ltd. (Financial Creditors) [Union Bank of India v. Amtek Auto Ltd.*

(Financial Creditors), (2024) 248 Comp Cas 126 : 2023 SCC OnLine SC 1918 : (2024) 248 Comp Cas 126 (SC)]

50. ***In light of the discussion above, what emerges is, a court or a tribunal, in absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the court.*** *Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) IBC, which opens with a non obstante clause, empowers NCLT (the adjudicating authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has power to recall its order. However, such power is to be exercised sparingly, and not as a tool to rehear the matter.* ***Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where:***

(a) the order is without jurisdiction;

(b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and

(c) the order has been obtained by misrepresentation of facts or by playing fraud upon the court/tribunal resulting in gross failure of justice.

[***Emphasis Supplied***]

59. Therefore, it emerges that the Hon'ble Supreme Court upheld the powers of NCLT to recall its orders, inter-alia, on the basis of following factors: -

x. Ordinarily, courts/tribunals have power to recall their orders.

xi. NCLT's powers to recall is preserved in view of Rule 11 of NCLT Rules.

xii. Order of recall can be passed, *inter-alia*, if the order is without jurisdiction.

60. On a juxtaposition of findings of the Hon'ble Supreme Court with the present set of facts, following crystallizes: -

xiii. The Commission has inherent powers under COB Regulations wherein Regulation 26 states as follows: -

"(1) Nothing in these regulations shall be construed as barring the Commission from exercising its power under the Act for which

provisions have not been made or have been made inadequately, in order to sub serve the spirit of the Act."

xiv. In addition, it must also be noted that the tariff proceedings were undertaken in pursuance of the MSERC (Multi Year Tariff) Regulations, 2014 ("MYT Regulations"). Notably, Regulation 111 also grants inherent powers to the Commission and it is reproduced below for ease of reference: -

"*111.1 Nothing in these regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice to meet or to prevent abuses of the process of the Commission*.

111.2 Nothing in these regulations shall bar the Commission from adopting, in conformity with the provisions of the Act, a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters.

111.3 Nothing in these regulations shall, expressly or impliedly, bar the Commission dealing with any matter or exercising any power under the Act for which no regulations or codes have been framed, and the Commission may deal with such matters, powers and functions in a manner it thinks fit in the public interest."

xv. In view of the COB Regulations and the MYT Regulations, it becomes evident that the Commission has inherent powers akin to the NCLT. In the present case, the earlier order passed by the Commission was without jurisdiction.

xvi. Notably, there is no statutory bar under the COB Regulations, MYT Regulations or the Act which prohibit the Commission from recalling its order.

xvii. Therefore, in such circumstances, it is evident that the Commission can exercise its inherent powers to recall its earlier order.

xviii. Moreover, reliance can also be placed on the settled law that in

absence of a specific provision in the statute, the inherent powers of the court can come to its aid to act *ex debito justitiae* for doing real and substantial justice between the parties. In this regard, reliance is placed on '*Jet Ply Wood (P) Ltd. v. Madhukar Nowlakha*', (2006) 3 SCC 699 (*Relevant Para 25*). Considering that there is no express provision under the COB Regulations that allow the Commission to recall its order, the Commission can resort to its inherent powers considering that the earlier orders are *non est*.

61. Further, the power/jurisdiction of the Commission to recall its orders can also be traced to the inherent powers of the court to undertake procedural review when the order suffers from procedural illegality which goes to the root of the matter. This position has been settled by the Hon'ble Supreme Court in '*Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*', (2018) 11 SCC 470 wherein it has been held as follows: -

> **"***24. It is true that power of review has to be expressly conferred by a statute. This Court in para 13 has also stated that the word "review" is used in two distinct senses.* ***This Court further held that when a review is sought due to a procedural defect, such power inheres in every tribunal****. In para 13, the following was observed: (SCC p. 425)*
>
> > *"13. … The expression "review" is used in the two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel NarshiThakershi case [Patel Narshi Thakershi v. Pradyuman singhjiArjunsinghji, (1971) 3 SCC 844] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."*
>
> *25. In Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd. [Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd., (2005) 13 SCC 777 : 2006 SCC (L&S) 1635] , this Court again held that a quasi-*

judicial authority is vested with the power to invoke procedural review. In para 19 of the judgment, the following was laid down: (SCC p. 787)

> *"19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication.* ***The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein.*** *Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his.* ***In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.*** *In Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal [Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, 1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was*

held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

[***Emphasis Supplied***]

In the present case, considering that the earlier orders suffered from fundamental procedural error, i.e., non-signing by Members, which goes to the root of the matter and conclusion of the Commission that the Orders dated 05.06.2024 and 06.06.2024 were passed in contravention to the Regulations as well as the law settled by the Hon'ble Supreme Court as well as the Hon'ble APTEL, therefore the Commission holds that the said orders can be recalled and reheard by the Commission by invoking its inherent powers.

62. Based on the submissions made by the parties, the Judgements of Hon'ble APTEL, various other Judgements of High Courts and Supreme Court as quoted above in regard to the question in matter, and in line with the provisions of the COB, the Commission pronounce that
    a) A patent error had transpired in issuing the orders dated 05.06.2024 and 06.06.2024.
    b) it is appropriate to withdraw the order dated 05.06.2024 and 06.06.2024 and hear the matter afresh.
    c) The dates of the rehearing shall be announced through separate notification.
63. The Commission makes it clear that the present Order only deals with the preliminary objection on maintainability of the proceedings. The Tariff proceedings would be then concluded in terms of the Act and the various Regulations framed by the Commission in this regard.

The IA No. 30A, 31 A, 32 A, 34 A, 35 A and 36 A OF 2024 are disposed of accordingly.

Sd/-
Shri R K Soni
Member (Law)

Sd/-
Shri Chandan Kumar Mondol
Chairman