

**KERALA STATE ELECTRICITY REGULATORY COMMISSION  
THIRUVANANTHAPURAM**

**Present: Shri. R. Preman Dinaraj  
Adv. A.J. Wilson**

**Petition RP No.2/2021**

In the matter of : Review petition filed by M/s Edayar Zinc Limited against the Order dated 11-02-2021 in OP 40/2020 on the OTS Scheme 2021.

Petitioners : M/s. Edayar Zinc Limited, Binanipuram, Ernakulam-3  
(represented by Advocate Josheph Kodianthara  
Shri. Mohammed Bismith, Director, Shri. Mohammad Nawas, Shri.  
Sabu Mohan, Shri. Roy Kurien, Asst.Vice President).

Respondents : M/s. Kerala State Electricity Board Ltd. (KSEB Ltd)  
(represented by Shri. Suresh, Exe. Engineer, TRAC,  
Shri. Vydhyuthi Bhavan, Thiruvananthapuram).

Dates of hearing : 30-03-2021 (First hearing)  
07-07-2021 (Second hearing)

**ORDER DATED 07-09-2021**

1. M/s Edayar Zinc Ltd, (*Erstwhile M/s Binani Zinc Limited, EZL for short*) filed the instant review petition against the Order dated 11-02-2021 in OP 40/2020 on OTS Scheme 2021 of the Commission. The petitioner is a zinc smelter unit which started operations in 1966, had a capacity of 32000 tonnes of zinc metal annually and having sulphuric acid and cadmium as by products. The company changed the name from Binani Zinc Limited to Edayar Zinc limited in the year 2015. The petitioner draws power at 110 kV and had a contract demand of 24000kVA, which was reduced to 18000kVA in 2014. The company had to closedown in November 2014 and in spite of its best efforts could not be revived and accordingly they have applied for reduction in contract demand from 18000kVA to 1500kVA in February 2015 and then to 300kVA in October 2015. However, KSEB Ltd did not reduce the contract demand, but continued to bill every month at 18000kVA for the closed company for the minimum payable Maximum demand charges of about Rs.39,15,000/- per month. Due to non-payment KSEB Ltd disconnected supply at 110kV on 25-09-2017 and continued to bill for next six months at the same rate.

2. The petitioner also stated that the company was referred to BIFR in November 2014 and BIFR vide proceedings dated 01-09-2015 directed the company to pay electricity charges to the extent of actual consumption with effect from 01-04-2014. KSEB Ltd has charged Rs.20.13 crore as demand charges for the period from March 2014 to March 2018 and the actual demand charges based on the Order of BIFR and minutes of the meeting chaired by Hon. Chief Minister would be about Rs.3.24 crore only. The penal charges @18% for belated payment of electricity charges works out to be Rs.26.73 crore and if the MD charges are billed at the lower rates, the penal charges would be substantially lower.
3. Further to this, in order to revolve the issue, Order dated 09-10-2015 from the Office of CMD was issued wherein concerned authorities of KSEB Ltd was directed to apply a correction factor since the accuracy of metering will be low due to low contract demand of 300kVA sought by the petitioner. Accordingly, a committee was constituted for suggesting the correction factor. However, KSEB Ltd did not implement the correction factor as required in the Board Order.
4. The petitioner further states that since it is not feasible to revive the zinc smelter unit, a proposal for installing an industry cum logistic park utilising the land and other facilities of the company is being explored with an investment of Rs.1436 crore and an annual revenue of Rs.1658 crore. The project is proposed to provide avenues for re-employment for the retrenched workers of the Company and direct employment for 3285 persons and indirect employment for 5900 persons.
5. In order to settle the dues and to move forward on the new proposal, the petitioner stated that they have submitted an application before KSEB Ltd under OTS – 2021 for resolution of the disputes between KSEB Ltd and EZL regarding amounts payable by and receivable to EZL, which is under the consideration of KSEB Ltd. The petitioner submitted their intention to clear the dues payable to KSEB Ltd and mentioned that the main impediment is the huge interest burden and MD charges, which the petitioner expects as a relief in the OTS-21 scheme. Accordingly, the petitioner sought a review of the impugned Order and prays that the consumers who closed down their operations shall be charged at actual/recorded MD and interest for arrears payable by the consumers who closed down their operations may be reduced to 4%.

**Hearing on the petition and responses of the Parties:**

6. The matter was first heard through video conference mode on 30-03-2021. Adv. Joseph Kodianthara appearing for the petitioner M/s Edayar Zinc Limited initially sought time for furnishing additional documents before the Commission. Sr.Advocate stated that there were several cases pending before the Hon. High Court of Kerala and such details were not properly placed in the petition filed before the Commission. The Company had closed down in the year 2014 and the request for reduction in contract demand from 18000kVA to 300kV is pending

before KSEB Ltd. On approaching the High Court, and as per the directions of the Hon. High Court, KSEB Ltd has given two options for the petitioner. However, both these options did not materialise due to the huge cost involved.

7. In the mean time KSEB Ltd issued the bills based on the contracted demand for the closed down unit. Aggrieved by the issue of bills, the petitioner approached the Hon. High Court and as per the directions of the Hon. High Court deposited an amount of Rs.5.29 crore before 30-03-2021. The matter is pending before the Hon. High Court.
8. Shri. Kodyanthara requested for clarification that the directions given in the OTS scheme approved by the Commission in the impugned Order is not a general direction having universal applicability but instead pertains specifically to the OTS scheme Order only. Further, this Order will not in any way affect the ongoing settlement of the matter of the Company with KSEB Ltd on the basis of recorded maximum demand.
9. Shri. Bismith, Director, Edayar Zinc stated that they are trying to settle the matter amicably with KSEB Ltd so that once the issues are settled, new investment for an industrial park can move forward. If the fixed charges are based on the actual maximum demand, the matter can be settled amicably. Shri. Nawas, former Asst. Vice President and now the consultant to M/s Edayar Zinc, stated that the reduction in contract demand was delayed due to metering issues. Even though the metering system of company was changed in the year 2013 itself and conform to 0.2S class accuracy and is having error percentage within the tolerance limits even with current loading of 1%, KSEB Ltd is not willing to accept the request of the company to reduce the contract demand as per the provisions of the Kerala Electricity Supply Code, 2014 (*Supply Code 2014 for short*). Shri. Roy Kurien, representing the company also requested for an early settlement of the matter considering the recorded contract demand.
10. Shri. Suresh, Executive Engineer, TRAC representing KSEB Ltd stated that there was not sufficient time for preparing the detailed counter affidavit on the petition filed by M/s Edayar Zinc. According to him, the matter will not come under the purview of review and hence to be rejected. He sought time for furnishing detailed reply on the petition.
11. Based on the request of the parties, the Commission in its daily Order dated 31-03-2021 granted time for the petitioner to furnish the additional documents and KSEB Ltd for furnishing detailed reply. Accordingly, the Commission allowed the parties to furnish the details by 23-04-2021, with a copy to the other party. The Commission has also clarified that this shall not in anyway extend the period of the OTS Scheme 2021 or the conditions of the scheme approved in the Order dated 11-02-2021.
12. *The Commission further clarified that all conditions mentioned in the OTS 2021 Order dated 11-02-2021 shall be applicable only for that specific scheme and for*

*that duration and shall not apply either to any other OTS Scheme which shall be governed under conditions mentioned therein. It is also clarified that this Order does not have any bearing on the petitioner's plea before the Hon'ble High Court or to any other specific cases.*

13. In compliance of the daily Order dated 31-03-2021, for furnishing additional details, the petitioner vide letter dated 17-04-2021 furnished additional documents. A copy of the same was also given to KSEB Ltd vide letter dated 29-4-2021 of the Commission. In the said details, the petitioner stated that the petitioner's factory is an EHT consumer and the principal raw material for the manufacture of zinc is electricity. The monthly bill was about Rs.5 crore and in between 2012 and August 2014 electricity tariff was increased by about 57.5%. and coupled with operational issues, the factory operations become totally uneconomic and unviable resulting in temporary stoppage of operations from April 2014. and the factory was shut permanently on 27-11-2017. The factory was referred to BIFR as case No.67 of 2014 under Sick Industrial Companies (Special Provisions) Act 2015. The contract demand of the petitioner as per the agreement was 24000 kVA which was reduced to 18000kVA in April 2014.
14. Since the company was under shut down on 27-11-2014, limited power was required for treating and clearing storm water in plant area, maintaining environmental and safety equipment attached to intermediate chemical storage, computer office equipment and general plant area lighting. On account of limited requirement of power, petitioner requested for reduction of contract demand to 1500 kVA on 24-02-2015 and then 300kVA on 14-12-2015. However, the contract demand was not reduced and KSEB Ltd continued to charge contract demand at 18000kVA for power and finally the supply to the 110kV substation was disconnected on 25-09-2017, however the demand charges for contract demand of 18000kVA continued to be demanded.
15. The petitioner further stated that the respondents KSEB Ltd has raised a huge demands under various heads and major portion of the demand stood extinguished with two judgments passed by Division Bench of Hon. High Court dated 08-03-2019 and 25-03-2013. With these orders practically only issue which survives is one attributable to reducing the contract demand. Earlier, when the petitioner having referred to BIFR and orders passed by BIFR, when the bank guarantees executed by the petitioner sought to be enforced by the KSEB Ltd, the petitioner approached the Hon. High Court and the learned Single Bench vide Order dated 20-08-2015 directed that the application for revising the contract demand of the petitioner to be considered within a month. Based on this the respondent KSEB Ltd vide Order dated 09-10-2015 constituted a committee to arrive at a correction factor. The petitioner stated that the said constitution of the committee was illegal and KSEB Ltd was bound to reduce the contract demand as requested by the petitioner.

16. On 05-04-2016, in letter addressed to the petitioner in response to the representation submitted before the Hon. Minister for Electricity, KSEB Ltd observed that 'As per Regulation in Supply Code 2014, the licensee is bound to reduce the contract demand as requested by the consumer. The KSEB Ltd has already directed the agreement authority to reduce the contract demand and the compliance from the Agreement Authority in this regard is not received till date. Thereafter the bills issued will be revised and the excess payment made if any will be adjusted in the arrear.
17. According to the petitioner, based on this letter dated 05-04-2016, KSEB Ltd is estopped from stating that contract demand charges cannot be reduced as requested for by the petitioner company. Further citing the provisions of Supply Code 2014 (Regulation 100, 104, 57, 105) and CEA Regulation 6(2), the petitioner stated that the responsibility of procurement and installation of the meter rests with the licensee KSEB Ltd. The respondent KSEB Ltd was fully aware that the factory had stopped working from November 2014, and to cover up their own fault, KSEB Ltd continued to raise contract demand charges on the petitioner for the period upto March 2018. According to the petitioner, the contract demand charges now illegally, arbitrarily and improperly raised by the respondents reached a staggering sum of Rs.46,62,64,591/- (principal Rs.28,30,67,357/- and interest Rs.18,31,97,596/-). The respondents have also threatened to initiate revenue recovery measures. Aggrieved by the conduct of the respondents, the petitioner approached the Hon. High Court of Kerala by filing a WPC (26124 of 2020) and Hon. High court of Kerala granted interim stay on revenue recovery proceedings on the condition that the petitioner pay the admitted amount of Rs.5,29,17,750/- in four equal and successive monthly instalments from 20-12-2020. The said Order has been complied with by the petitioner and the respondent had acknowledged the receipt of money vide letter dated 27-03-2021.
18. The petitioner further states that in the event of CTs do not have required accuracy as alleged by the licensee and the consumer is not in a position to replace the CTs. Instead, licensee should have procured and installed the new CTs with appropriate ratio instead of denying the reduction in contract demand for such long period. The Model Agreement for supply of Energy also specifically state that CT unit shall be installed and maintained by KSEB Ltd.
19. The petitioner stated that the impugned Order 11-02-2021 of the Commission on the recorded demand would stand in the way of the KSEB Ltd reducing the alleged dues of the petitioner and requested to review the Order and permit the petitioner to pay the Recorded demand as maximum demand for the period in which dues are pending as full and final settlement of all dues payable by the petitioner to KSEB Ltd. The respondent has the full details of the maximum demand of the petitioner.

## Second Hearing on the Petition

20. The Second Hearing on the Review Petition which was rescheduled on the petitioner's request was held on 07-07-2021 through video conference mode. Sr.Adv. Joseph Kodianthara appearing for the petitioner cited the Order of the Hon. High Court of Kerala dated 20-08-2015 directing KSEB Ltd to consider the request for revising the contract demand. However, the respondent KSEB Ltd as per the recommendation of the Technical Committee directed the petitioner to replace the metering system before allowing the request for reducing the contract demand. Learned Sr.Advocate pointed out that at present the petitioner's factory is closed and there exists minimum requirements of power.
21. Sr.Adv.Kodiyanthara pointed out that as per the Order of the Commission dated 11-02-2021 on OTS 2021, there cannot be any negotiated settlement on the demand charges of closed units and the same is to be based on the recorded maximum demand. KSEB Ltd is not allowing to settle the matter based on the recorded maximum demand pointing out the Order of the Commission dated 11-02-2021.
22. Drawing the attention of the Commission to the provisions in sub Regulation 10 of Regulation 100 of the Supply Code, 2014 which is quoted below:

*"100. Reduction of connected load or contract demand.- .....*

*.....  
.....*

*(10) If the application is not decided and order is not issued by the licensee within the above mentioned period of fifteen days from the date of completion of inspection, permission for reduction of connected load or contract demand, as the case may be, shall be deemed to have been granted with effect from the sixteenth day.*

Sr.Adv.Kodiyanthara stated that the approval for the reduction in contract demand of the petitioner was deemed to have been granted by the KSEB Ltd, since the application was not decided by KSEB Ltd within the stipulated 15 days.

23. KSEB Ltd in their arguments before the Commission submitted that, the Daily Order dated 31-03-2021 stated that the scheme shall not in anyway extend beyond the period allowed or the conditions of the scheme approved in the Order dated 11-02-2021. Hence the matter is to be rejected.
24. Regarding the reduction in contract demand, KSEB Ltd could not reduce the contract demand for the reasons attributable to the petitioner alone. KSEB Ltd stated that the reduction in contract demand beyond a reasonable level without modification of the metering system has serious impact on the accuracy of the measurement of energy consumed by the petitioner. The onus of correcting the metering system rests with the petitioner, which could not be attributed to KSEB Ltd.

25. Shri. Nawas, representing the petitioner, replying to a query from the Commission on the accuracy of the metering system stated that, the company has installed 0.2 S class accuracy metering system which has an accuracy level even as below as 1% of the loading.
26. Shri. Bismith appearing for the petitioner requested for an early settlement of the matter since the Company has submitted a proposal before the Government for establishment of new park in the premises after settling the various dues of the Company. One of the major issues now pending is the dues with KSEB Ltd and accordingly the request for an early resolution of the issue.
27. During the hearing, the Commission pointed out that the matters sought to be reviewed in the petition is much beyond the scope of the Review petition. Further the impugned Order is a General Order and it is not proper to amend the Order for considering the individual cases.
28. Sr.Adv. Kodiyanthara requested permission for submitting a detailed written note including the chronology of events. Considering the request of the petitioner, the Commission vide daily Order dated 08-07-2021 directed the petitioner to submit the written note as requested by the petitioner by 21-07-2021 with a copy to the respondent KSEB Ltd. Time was allowed to respondent KSEB Ltd to furnish the remarks if any on the same by 06-08-2021.
29. As per the Daily Order dated 08-07-2021, the petitioner filed the chronology of events with supporting the relevant details. In addition to the averments, the petitioner stated that they had submitted the application dated 17-03-2021 to KSEB Ltd for settlement of OTS 21 before the due date of 31-03-2021 and hence the interest rate determined by the Commission is to be made applicable to the arrears payable by the petitioner. Further the petitioner states that unless the Commission clarifies the observations made about clause 8 of the Guidelines for reduction in MD for demand based billing consumers during the period of closure, KSEB Ltd may use the same for deny the benefits of the letter dated 05-04-2016 of KSEB Ltd which states that KSEB Ltd is bound to comply with the request for reduction in contract demand.
30. The petitioner further argued that on reasons that billing of closed down factory based on the pre-closure contract demand level, in spite of (i) the customers request for reducing the contract demand to 300kVA (ii) the actual recorded MD being still lower (iii) the customer having installed high accuracy class meter jointly certified by KSB Ltd engineer though prior to the closure (iv) the direction of CMD of KSEB Ltd to compute a correction factor if required for billing and (v) the miniscule impact of the probable error on the amounts payable, is unjust.
31. The petitioner claims that the metering system installed in 2013 of the petitioner is having accuracy class 0.2S (ie., maximum error is 0.2%). As per the Test Reports of the manufacturer, which was witnessed by the KSEB Ltd Engineers, the CTs have the required accuracy even at loads as low as 1% of the rated

current. The petitioner also furnished the copies of the test reports. According to the petitioner the impact of the error is negligibly small when compared to KSEB Ltd's demand of Rs.30.15 lakh every month towards MD charges. According to the petitioner, based on the test reports and accuracy of the meters, the error in MD charges would be between Rs.174/- to Rs.870/- per month only. Hence the contention of KSEB Ltd regarding revenue loss is not correct.

32. Further as per the Order dated 9-10-2015 from the Office of the CMD of KSEB Ltd which says a correction factor is required to avoid revenue loss to KSEB Ltd. The copy of the report was never made available to the petitioner and KSEB Ltd did not implement the correction factor as per Board Order. KSEB Ltd has to change the metering system as per Regulation 6(2)(a) of CEA (installation and operation of meters) Regulations 2006. Hence, KSEB Ltd could have replaced the CTs with new ones and reduced the Contract Demand. The petitioner further submitted that, the Contract Demand was not reduced even with direction from Hon. High Court of Kerala. It was under such circumstances that the petitioner has requested to review the impugned Order and to direct KSEB Ltd to permit the petitioner to pay the demand charges based on the recorded demand as maximum demand for the period for which dues are pending as full and final settlement of all dues payable by the petitioner to KSEB Ltd.

#### **Response of KSEB Ltd**

33. In the counter affidavit dated 17-05-2021 KSEB Ltd stated that the petition for review is not maintainable under law since the petition filed by KSEB Ltd on the OTS 2021 is as per the provisions of Regulation 136(5). As per the said regulation only licensee can formulate a scheme for the approval of the Commission. Though the KSEB Ltd made a request in the original petition for considering the recorded maximum demand for the during the closure period, the Commission did not allow the same and KSEB Ltd has decided to implement the Order of the Commission. The present request of the petitioner cannot be considered as the request of KSEB Ltd, and not maintainable under law. The petitioner has requested to settle the demand charges based on the recorded maximum demand, whereas as per the prevailing Tariff Order, billing of HT and EHT consumers will be the recorded maximum demand or 75% of the contract demand, whichever is higher. This minimum charges is applicable even during the disconnection period. The claim of the petitioner that KSEB Ltd refused to accept the request for reduction in contract demand was legal and the inability of KSEB Ltd to respond to the request of the petitioner is due to the reasons attributable only to the petitioner as the petitioner refused to modify the metering system as per the requirements. In this circumstances, the Committee constituted by KSEB Ltd to arrive at the correct conversion factor had reported that due to the low operating current of the petitioner, a particular correction factor cannot be applied to the recorded consumption. Hence, the only solution for

lowering the contract demand was to replace the CT which the petitioner was unwilling to comply.

34. Further, KSEB Ltd stated that the arrear of the petitioner is from 03/2014 to 03/2018 which is as per the OTS Order of the Commission is at 6% interest rates. Hence, the request of the petitioner to clear the arrears at 4% may also be denied.
35. KSEB Ltd in their reply dated 09-08-2021 to the additional affidavit filed by the petitioner stated that the chronological events filed by the petitioner is to put the blame on KSEB Ltd for delaying the request for reduction in contract demand. The matter is a dispute between licensee and a consumer which will not come under the jurisdiction of the Commission. KSEB Ltd further stated that the Commission in its Daily Order dated 31-03-2021 had ordered that the OTS 2021 shall not in any way extend the period or the condition of the schemes as ordered in 11-02-2021. KSEB Ltd has taken steps for reducing the contract demand of the petitioner from 24000 kVA to 18000 kVA with effect from 30-04-2014 as per the prevailing rules and regulations. While it is true that the petitioner requested for reduction in contract demand to 1500kVA on 24-02-2015 and further to 300kVA on 14-12-2015 was not been considered by KSEB Ltd purely due to the reason attributable to the petitioner since the petitioner failed to rectify the defects in the metering system which was the leading cause to this petition.
36. According to KSEB Ltd, accuracy of measurement of energy supplied to the consumer is central to the business of any DISCOM as per Section 55 of the Electricity Act 2003. Lowering of contract demand beyond a limit without modification of metering system would have serious impact on the correctness of the measurement of energy at the premise and would result in financial loss to KSEB Ltd. The onus of correcting the changes in metering system lies with petitioner and the petitioner's unwillingness to effect the necessary changes has lead to denial of the request for reduction on contract demand.
37. KSEB Ltd also cited the Order of the Commission in OP 09/2016, which states that the replacement of current transformers of the consumers requesting for enhancement/reduction in contract demand shall be decided considering the provisions of CEA (installation and operation of meters) Regulations 2006 and the IS15707:2006 and IS2705". KSEB Ltd further citing the provisions of sub Regulation 8 of Regulation 100 of the Supply Code 2014 stated that reduction in load can be sanctioned only after the expenditure inclusive of any meter modification is remitted by the consumer. The petitioner refused to replace the CT in compliance of the above and hence the contract demand of the consumer could not be changed by KSEB Ltd.
38. KSEB Ltd also challenged the contention of the petitioner on the deemed effect of the reduced contract demand from the 16<sup>th</sup> day by invoking the provisions of Regulation 100(10) since according to KSEB Ltd an application as per

Regulation 2(8) of the Supply Code 2014 means an application complete in all respects along with payment of necessary charges and necessary documents. The petitioner has not fully complied with the above. The petitioner has approached the Hon. High Court and as per Order dated 20-08-2015, Hon. High Court directed KSEB Ltd to consider the request of the petitioner and accordingly, Deputy Chief Engineer submitted the feasibility report which says that the petitioner has to replace the metering arrangement using 150/1A CT of class 0.2S with 10/1A class 0.2S for reducing the contract demand. The petitioner refused to comply with the same and hence, contract demand could not be changed.

39. In the above circumstances, the CMD, KSEB Ltd vide B.O dated 09-10-2015 directed to maintain the supply at 110kV to the petitioner for a period of 6 months and a three member technical committee was also formed for the matter for a feasible solution. The decision to constitute a committee was a proactive effort to find a solution. The committee however reported that considering the low operating current a particular correction factor cannot be applied to the recorded consumption. KSEB Ltd stated that since the petitioner could not rectify the defects in the metering system, the request for reduction in contract demand was not done and billing of the petitioner based on the contract demand as per contract agreement was within the rules and regulations in this regard. KSEB Ltd further stated that review of the Order of the Commission regarding reduction of interest to 4% is not maintainable under law. The petitioner is asking for something which is not proposed by KSEB Ltd for OTS. As per the provisions of law, condition for OTS is to be proposed by the licensee. Hence the petition is not maintainable. The period of OTS was from 15-02-2021 to 31-03-2021 which has expired. Hence it is not appropriate to modify the conditions of the scheme retrospectively based on the request of the petitioner.
40. According to KSEB Ltd the actual arrears is now Rs.46,62,64,591/- (Principal Rs.28,30,67,357/- and Arrears Rs.18,31,97,596/-) but the actual contract demand disputed amount as on 31-07-2020 is Rs.14,73,69,532/- only. Considering these averments, KSEB Ltd requested to reject the petition.

### **Analysis and decision of the Commission**

41. The Commission has in detail analysed the averments of the petitioner M/s EZL and the respondent KSEB Ltd. As per the petition, the petitioner prayed for a review of the Order and incorporate that the consumers who close down their operations shall be charged at actual /recorded MD and the interest for arrears payable by consumers who closed down their operations may be reduced to 4%.
42. However, in the further submissions dated 17-04-2021 and 21-07-2021, the petitioner seeks to direct KSEB Ltd to permit the petitioner to pay the Demand charges based on the Recorded Maximum demand for the period in which dues

are pending as full and final settlement of all dues payable by the petitioner to KSEB Ltd.

43. In the reply affidavit dated 17-05-2021, KSEB Ltd stated that, in the petition for approval of OTS 2021, KSEB Ltd had requested for reduction in MD for demand-based consumers during the period of closure based on the recorded MD. However, the Commission while issuing the order denied the approval of the same. The Commission notes that the said statement of KSEB Ltd is completely misleading. In the petition, under clause 8 of the 'Guidelines for settling arrears entangled in court cases and similar issues by the District Level Committee as per OTS 2021', KSEB Ltd had sought to approve a proposal for settling the outstanding demand "*considering the recorded MD as an indicator for a seriously negotiated settlement as part of the OTS scheme*". The Commission is of the view that such '*serious negotiations*' bring in an element of subjectivity into an otherwise definitive, measurable parameter i.e., recorded MD. Since the said proposal contained no measurable parameter and even had scope for "serious negotiations" with defined parameter, the Commission was constrained not to agree to such a proposal for taking recorded demand as *indicator* for negotiations and settlement. Hence, the Commission in para 26 (II)(c) of the impugned Order dated 11-02-2021 stated as follows:

**"c. Clause 8 Reduction in the MD for Demand based Billing Consumers during the period of Closure:** The Commission has noted that in the General guideline for settlement, the proposal is for settling the outstanding demand "considering the recorded MD as an indicator for a seriously negotiated settlement as part of the OTS scheme". The Commission is not able to assess what shall be the criteria for a seriously negotiated settlement, since no measurable parameter is indicated. Moreover, such negotiations would bring in an element of subjectivity and can lead to avoidable misgivings and disputes at a later stage. **Since KSEB Ltd has not specified criteria/parameter for such settlement, the Commission cannot agree to this clause. Hence the Commission hereby directs that the clause in the Guidelines be deleted"**

44. The petitioner also sought to clarify para 26 (II) (c) of the impugned Order as stated above. In the written note dated 21-07-2021, the petitioner argued that any person considering being aggrieved by decree or order may seek review "*any sufficient reason*" as mentioned in Order 47 Rule 1 of CPC. The petitioner argues that as far as the petitioner is concerned, discernible guidelines have been imposed by KSEB Ltd in the letter dated 05-04-2016 and the recorded maximum demand is also available with KSEB Ltd. However, the petitioner apprehends that the observations in para 26(II)(c) as mentioned above in the Order dated 11-02-2021 regarding maximum demand would stand in the way of the KSEB Ltd reducing the alleged dues of the petitioner since the petitioner has

applied for OTS on 17-03-2021. Hence, according to the petitioner unless the Commission clarifies the clause 8 of the Guidelines for reduction in MD for demand based billing consumer during the period of closure, KSEB Ltd would use the same as ruse to deny the benefits of the letter dated 05-04-2016. Hence according to the petitioner, there is sufficient reason exist for limited review of the Order passed in the Order dated 11-02-2021 in so far as it clarify the observations in clause 8 of the guidelines.

45. Per contra, KSEB Ltd mentioned that the petition is not maintainable as per the provision of law. KSEB Ltd argues that as per Regulation 135 of the Supply Code 2014, only licensee can formulate the condition of the OTS and not by the petitioner. KSEB Ltd also justified the billing of the petitioner as per the provisions of the prevailing Tariff Orders. The version of the KSEB Ltd is that the complete onus of not reducing the contract demand rest with the petitioner who did not made the modifications in the metering system as required since such modifications are required for ensuring accuracy in metering for recording the reduced contract demand sought by the petitioner. KSEB Ltd also made important observation that the issues with respect to reduction in contract demand is relating to a dispute between a consumer and a licensee which is not under the jurisdiction of the Commission.
46. The Commission examined the averments in the petition. The power of review for the Commission is as per the provisions of Section 94(1)(f) of the Electricity Act 2003, which provides that the Commission may review its decisions or Orders as per the provisions in Code of Civil Procedure 1908. Further, Regulation 67 of KSERC (Conduct of Business) Regulations 2003 provides as follows:

*“67. Powers of review, -*

*(1) Any person or party affected by a decision, direction or order of the Commission may, within forty five days from the date of making such decision, direction or order apply for the review of the same.*

*(2) An application for such review shall be filed in the same manner as a petition under Chapter III of these regulations.*

*(3) The Commission may after scrutiny of the application, review such decisions, directions or orders and pass such appropriate orders as the Commission deems fit within forty five days from the date of filing of such application:*

*Provided that the Commission may, at its discretion, afford the person or party who filed the application for review, an opportunity of being heard and in such cases the Commission may pass appropriate orders as the Commission deems fit within thirty days from the date of final hearing:*

*Provided further that where the application for review cannot be disposed of within the periods as stipulated, the Commission shall record the reasons for the additional time taken for disposal of the same”*

47. As per above provision, the Commission has to issue appropriate orders within thirty days from the date of final hearing. Since after the hearing on the request of the petitioner the Commission in its Order dated 08-07-2021, has allowed time till 21-07-2021 and for furnishing reply remarks for the respondent KSEB Ltd till 06-08-2021. Hence, the present Order is issued only after the stipulated period of thirty days.
48. The powers of review have been circumscribed under Order 47 Rule 1 of Code of Civil Procedure Code 1908. As per the Order 47, Rule 1 review is justified on discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge or could not be produced by the parties at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons. Hence, the review petition has to be dealt with as per the powers conferred upon the Commission. It is beyond doubt that the review jurisdiction is a limited power to be exercised by the Commission.
49. In *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715 Hon Supreme Court observed and held as under:
- “.. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC.”
50. The review power available to the Commission is akin to the powers conferred to a civil court and hence to be used in such manner. In *Ajit Kumar Rath vs. State of Orissa*, (1999) 9 SCC 596, Hon. Supreme Court has reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court as follows:
- “30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression ‘any other sufficient reason’ used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule..

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

51. It is also pertinent to mention the observations of Hon Supreme Court in Parsion Devi v. Sumitri Devi, (1997) 8 SCC 715.

“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’.”

52. Hon Supreme Court reiterated that the review power is limited. It was held Lily Thomas vs. Union of India, (2000) 6 SC 224 that:

“56. It follows, therefore, 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.”

53. The petitioner has mentioned that review can be sought for ‘any sufficient reason’ in addition to correct the error apparent face of record or on account of any new fact or evidence. However the term ‘any sufficient reason’ cannot be enlarged to include reasons beyond the scope of words mentioned in the said provision. It has been held that in the Judgment dated 03-09-2020 in Shri Ram Sahu Vs Vinod Kumar Rawat & Others, Hon Supreme Court citing from earlier judgments has held that:

“6.2 In the case of Lily Thomas vs. Union of India, (2000) 6 SC 224, it is observed and held 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.

It is further observed in the said decision that the words **“any other sufficient reason” appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule”** as was held in Chhajju Ram vs. Neki, AIR 1922

PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs Most Rev. Mar Poulouse Athanasius, AIR 1954 SC 526”

54. Thus, as mentioned above, the Commission is vested with limited powers under the Review jurisdiction. The contentions of the petitioner for invoking the provisions of the review is in fact beyond the scope of the review jurisdiction. At the outset, the petitioner could not succeed in invoking the powers of the Commission to a review of the Order since the petitioner failed to point out any apparent error on the face of record or produce a new and important matter of evidence. The petitioner could not bring out any sufficient reason for a review. The petitioner emphasised on invoking the review power for a clarification of para 26 II(c) of the impugned Order. However, as per the impugned Order the said para (clause 8 of the Guidelines) was deleted. **However, as mentioned in Para 12 of the Order, as a general rule all OTS Orders are applicable only to that OTS Scheme and valid only for the period of validity of the Scheme.**
55. The petitioner also sought to direct KSEB Ltd for settling the dues based on the actual recorded demand. The Commission is of the view that this prayer is beyond the scope of the review jurisdiction. KSEB Ltd on the other hand pointed out that they have accepted the decision of the Commission in the impugned Order and implemented the OTS 2021 and not proposed any changes or modification in the conditions. As pointed out by the KSEB Ltd as per the provisions of the Supply Code 2014, the licensee has to propose conditions for the OTS scheme and the petitioner has no *locus standi* in proposing the conditions of the Scheme. In these circumstances, the Commission has no other means but to reject the petition.
56. It is to be noted that the petitioner in the guise of the review petition, has placed before the Commission their grievance regarding the request for reduction in contract demand which was not resolved as per the provisions of the Supply Code 2014, by KSEB Ltd. The grievance of the petitioner is that even after seeking reduction in contract demand on account of closure of the company, KSEB Ltd did not reduce the same as per the provisions of the Supply Code, which is one of the reasons for mounting arrears of the petitioner. KSEB Ltd on the other hand argued that contract demand was not reduced due to the inaction of the consumer. The Commission is of the view that KSEB Ltd may take up the matter appropriately for an amicable settlement, considering the issues involved in the matter in a time bound manner.

### **Orders of the Commission**

57. After examining the petition, additional details furnished by the petitioner and reply filed by KSEB Ltd, the Commission is of the view that the present petition for a review of the Order dated 11-02-2021 is not maintainable under Section 94(1)(f).

58. The Commission however clarifies that all conditions mentioned in the Commission's Order on 'OTS 2021' dated 11-02-2021 shall be applicable only for that specific scheme and for that duration and shall not apply either to any other OTS Scheme which shall be governed under conditions mentioned therein or form part of the any general guidelines. It is also clarified that this Order does not have any bearing on the petitioner's plea before the Hon'ble High Court or to any other specific cases.
59. Accordingly, the petition is disposed of and ordered accordingly.

**Sd/-**

A.J. Wilson  
Member (Law)

**Sd/-**

Preman Dinaraj  
Chairman

Approved for Issue

Sd/-

Secretary (i/c)