

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE NO. 105 of 2020**

**Case of Adani Electricity Mumbai Limited (Generation) seeking review of certain aspects of Multi Year Tariff (MYT) Order dated 30 March 2020 in Case No. 298 of 2019**

**Coram**

**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

Adani Electricity Mumbai Ltd.-Generation Business ..... Petitioner

**Appearance**

For the Petitioner : Shri. Venkatesh (Adv.)

**ORDER**

**Date: 18 July, 2020**

1. Adani Electricity Mumbai Ltd.- Generation Business (**AEML-G**) filed a Petition on 25 June, 2020 under Section 94 (1)(f) of the Electricity Act (**EA**), 2003, read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, seeking review of the Multi Year Tariff (**MYT**) Order issued on 30 March, 2020 for AEML-G in Case No. 298 of 2019 (**Impugned Order**) in the matter of Truing-up of ARR for FY 2017-18 and FY 2018-19, Provisional Truing-up of ARR for FY 2019-20 and ARR and Tariff for the fourth Control Period from FY 2020-21 to FY 2024-25.
2. **The main prayer of AEML-G is as under-**
  - i. *Consider the actual Interest on Working Capital as submitted by the Petitioner for FY 2017-18 and FY 2018-19 instead of considering the actual Interest on Working Capital*

*as "Nil" or "zero" while computing the efficiency gains on account of savings in Interest on Working Capital;*

3. At the time of E-hearing dated 9 July 2020, Advocate of AEML reiterated the submissions made in the Petition.
4. The Commission notes that the Review Petition has been filed under Regulation 85 of the MERC (Conduct of Business) Regulations, 2004, which specifies as follows:

**"Review of decisions, directions, and orders:**

*85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon 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 direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."*

Thus, the ambit of review is limited, and AEML-G's Petition has to be evaluated accordingly.

5. Before dealing with the issues for review, the Commission notes that review Petition is not filed within 45 days period allowed in Regulation 85 of MERC (Conduct of Business) Regulations, 2004. On this issue, AEML-G made following submissions:
  - 5.1. There is no delay in filing the present Review Petition as the Hon'ble Supreme Court vide its Order dated 23 March, 2020 passed in *Suo Motu* Writ Petition No. 03 of 2020 has extended the limitation period of all proceedings, with effect from 15 March, 2020, before all judicial/ quasi-judicial fora in the country, irrespective whether the said proceedings are governed by special or general law of limitation, until further orders.
  - 5.2. Therefore, AEML-G has claimed that present Review Petition is within the period of limitation.
6. In view of above, the Commission notes that the Hon'ble Supreme Court vide its Judgment dated 23 March 2020 has extended limitation period for filing of all types of Petitions including Review Petition. Therefore, the Commission rules that this review Petition is filed within limitation period. Accordingly, the Commission is dealing with issue raised in this review Petition as follows.
7. The Commission deals with the review issue submitted in the Petition as follows:

**Issue: Consideration of actual IoWC for FY 2017-18 and FY 2018-19 as "Nil" and calculation of Efficiency Gains considering actual IoWC as Nil**

### ***AEML-G's submissions***

- 7.1 The Commission has considered the actual IoWC for FY 2017-18 as "NIL" and has considered the difference between Normative IoWC and "Nil" actual IoWC as Efficiency Gains as the same was inadvertently not provided by AEML-G at the relevant point in time.
- 7.2 The Commission in the MTR Order dated 12 September, 2018 in Case No. 202 of 2017 has considered sharing of Efficiency Gains/Losses computed on the basis of "Nil" actual IoWC. The Review of the MTR Order filed by RInfra in Case No. 316 of 2018 was rejected by the Commission vide its Order dated 7 December, 2018. Thereafter, RInfra has filed an Appeal No.442 of 2019 before the Hon'ble Tribunal challenging the Commission's MTR Order in Case No. 202 of 2017 which is pending for hearing / decision.
- 7.3 Therefore, without prejudice to its contentions in the pending appeal before the Hon'ble Tribunal, in the MYT proceedings in Case No. 298 of 2019, AEML-G had computed IoWC for FY 2017-18 considering entire normative IoWC as Efficiency Gains as per the MYT Regulations, 2015. AEML-G has also prayed to the Commission to approve the net entitlement on IoWC for FY 2017-18 as shown in the Table below:

**Table No. 1: Net entitlement of IoWC as claimed by AEML-G in MTR Petition**

<b>Particulars / (Rs. Crore)</b>	<b>FY 2017-18</b>
Normative IoWC	22.19
Actual IoWC	-
Net Entitlement	7.40

- 7.4 The Commission in the Impugned Order based on the approach adopted in the MTR Order has considered the actual IoWC as zero. The Commission in the Impugned Order has treated total normative IoWC as Efficiency Gain
- 7.5 In the Impugned Order, the Commission has granted limited relief to AEML-G as its submission was without prejudice to the pending Appeal No. 442 of 2019 before the Hon'ble Tribunal. However, the actual IoWC has been considered as zero which is erroneous. In the FY 2017-18, Generation Business was with RInfra as an integrated entity having other regulated business apart from Generation business. Being an integrated entity with several businesses, it was not possible for RInfra to identify separate cash flows for any business or allocate any separate funds towards working capital requirement of any particular business. In light of the above factual background, AEML-G is demonstrating the actual IoWC by way of the documents in the instant Petition.

7.6 AEML-G has submitted that the documents were inadvertently not produced before the Commission as AEML-G had recently acquired the concerned generation business and the financial modalities were being assessed. The details submitted by AEML-G are outlined below:

- a. The consortium of banks led by Canara Bank have accorded Cash Credit Facilities to the RInfra separately for each business viz., Generation, Transmission, Distribution etc and has accorded business wise Drawing Power after retaining certain margin out of the sanctioned drawing power.
- b. Total Working Capital drawn in a month and IoWC is apportioned to each Business Division based on the percentage share of the Drawing Power accorded to Rinfra in a particular month
- c. The Details of the Working Capital drawing power, actual drawn Working Capital and IoWC for FY2017-18 and FY2018-19 (up to 28 August, 2018) is provided by AEML-G and is summarised as under:

**Table 2: Details of Working Capital Drawing Power, Working Capital and IoWC submitted by AEML-G (Rs. Crore)**

Particulars	Generation	Transmission	Distribution	Other	Total
<b>FY 2017-18</b>					
Avg . Working Capital - Drawing Power	106.39	21.37	848.36	186.30	1,162.41
Working Capital - Actual Drawn	88.66	17.68	699.94	154.21	960.49
Working Capital - Interest	<b>11.42</b>	2.25	88.77	19.84	122.28
<b>FY 2018-19 (up to 28 August, 2018)</b>					
Working Capital - Drawing Power	143.23	22.43	896.50	112.16	1,174.32
Working Capital - Actual Drawn	126.13	19.77	792.81	98.66	1,037.37
Working Capital - Interest	<b>7.22</b>	1.15	45.60	5.76	59.73

- d. The month-wise Cash Credit Facilities Statement of Stock and Book Debts duly acknowledged by banks and the Auditor's Certificate certifying the breakup of business wise Drawing Power for FY 2017-18 and FY 2018-19 (up to 28 August, 2018) is attached as part of the Review Petition.
- e. In support of the above claim, AEML-G has submitted Statutory Auditor certificates for FY 2017-18 dated 22 June, 2020 and for FY 2018-19 dated 3 July, 2020 detailing out the above mentioned information in the Review Petition.

- f. AEML-G, on 7 July, 2020 has submitted a copy of the Statutory Auditor certificate dated 3 July, 2020 showing division wise utilisation of Working Capital facilities and IoWC paid for the period of April 2018 to August 2018 .
- 7.7 Hence, AEML-G has submitted that actual IoWC for sharing of Efficiency Gains for FY 2017-18 shall be Rs. 11.42 Crore instead of Nil. Similarly, for FY 2018-19, actual IoWC shall be Rs. 15.45 Crore instead of Rs. 8.23 Crore approved in impugned Order.
- 7.8 Net entitlement of IoWC claimed by AEML-G for FY 2017-18 and FY 2018-19 based on above submission is as under:

**Table 3: Net Entitlement of the IoWC as claimed by AEML-G (Rs. Crore)**

Particulars	FY 2017-18		FY 2018-19	
	Approved in MYT Order	Claimed in Review Petition	Approved in MYT Order	Claimed in Review Petition
Normative IoWC	19.19	19.19	23.91	23.91
Actual IoWC	-	11.42	8.23	15.45
<b>Net Entitlement</b>	<b>6.40</b>	<b>14.01</b>	<b>13.46</b>	<b>18.27</b>

- 7.9 AEML-G has requested to consider the same for review. In support of its contentions, AEML-G states that Review Petition would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some inadvertent mistake or for any other sufficient reason. In this regard, AEML-G has relied upon the following Judgements as case laws:

- i. In Board *of Control for Cricket, India and Anr. vs. Netaji Cricket Club and Ors.*, [2005] 4 SCC 74, the Hon'ble Supreme Court observed as under: -

*“Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason”.*

- ii. In State *of Maharashtra vs. Ramdas Shrinivas Nayak*, AIR [1982] SC 1249, the Hon'ble Supreme Court held that: -

*"If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error."*

- iii. In *TNEB v. TNERC*, 2009 ELR (APTEL) 412, the Hon'ble Appellate Tribunal for Electricity has held that the Order can be said to be suffering from apparent error if sufficient opportunity is not given to the Appellant to represent its case. This ground can be covered under third ground namely "any other sufficient reason". The Hon'ble Supreme Court also said that justice is a virtue that transcends all barriers and rules or procedures or technicalities of law cannot stand in the way of administration of justice.

7.10 AEML-G in its additional submission dated 13 July, 2020 has stated that the issue of IoWC is common in Case No.103 of 2020, 104 of 2020 and 105 of 2020 and hence has requested to consider its combined submission in the present case also. These additional submissions summarised are as under:

- a. RInfra, at the relevant point in time, availed financial assistance/ lending at the entity level and incurred the expenditure towards the IoWC as an integrated entity. The action of RInfra was purely a business decision and at no point in time violated any specific provision of the Regulations framed by the Commission or any law.
- b. In absence of Generation, Transmission, Distribution segment wise books of accounts of the RInfra, the documentary evidence could not be placed on record at the time of proceeding of the MTR Order in Case No. 202 of 2017 as well as the Impugned Order. As no scientific method existed at the relevant point of time which would enable RInfra to segregate IoWC until the same gets approved by the Statutory Auditors appointed for RInfra under Companies Act, 2013.
- c. Subsequently, RInfra, after much deliberation, discovered that the Working Capital drawn and corresponding interest expenditure can be individually attributable to Distribution, Generation and Transmission segments by using Drawing Power Reports submitted by RInfra to its lenders on a monthly basis. The above discovery was made on the basis of the MYT Tariff Regulations, 2015 and the Accounting Standards based on segment wise & month-wise Stock Statement/ Drawing Power statements furnished to lenders which were accepted by working capital lenders in order to allow R-Infra to draw the working capital to meet the requirement of business/ operations.
- d. The said documentary evidence depicting segment wise drawing power of Working Capital was furnished to the Statutory Auditor and the same was duly accepted by the Statutory Auditor. The copies of the Auditor's Certificates certifying the Business Division wise Working Capital Drawn and corresponding Working Capital Interest are placed on record.
- e. The approach proposed by AEML-G to provide documentary evidence to the Commission has subsequently been accepted by the Statutory Auditor who issued the certificate dated 5 May, 2020. The Statutory Auditor Certificate dated 5 May, 2020

qualifies as Material Evidence which was not in the possession of AEML-G when the Impugned Order was passed and warrants exercise of Review Jurisdiction.

- f. In support of maintainability of review Petition in the light of the new evidence, AEML-G referred the Hon'ble Supreme Court's Judgement in the case of "*State of West Bengal vs. Kamal Sengupta & Anr. [(2008) 8 SCC 612]*" wherein it was held that:

*"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debitojusticiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier."*

- g. AEML-G submitted that from the perusal of the above quoted Judgment, the following legal position emerges:

(I) When review of an order is sought based on discovery of new matter or evidence then:

(i) Such evidence must be relevant;

(ii) Such evidence must be of such a character that if the same had been produced, it might have altered the judgment.

(II) The party seeking review must depict that the additional evidence was not within its knowledge and even after the exercise of due diligence.

- h. AEML-G has submitted that evidence now provided by AEML-G fulfils the mandatory requirement of furnishing documentary evidence as per MYT Regulations, 2015. Moreover, the data and certificates produced on record were discovered subsequently and was not within the knowledge of AEML-G. Therefore, the present case is a fit case for review.

- i. AEML-G has submitted that the Commission would appreciate that IoWC is granted to all licensees operating in Maharashtra and in the case of AEML-G the same was denied for want of documentary evidence. AEML-G could not place the evidence on record due to reasons as aforesaid. Hence, after much brainstorming AEML-G have used the Drawing Power Reports to compute IoWC and the said approach has also been accepted by the Statutory Auditor. Therefore, it is respectfully prayed that the Commission may

accordingly take an appropriate view in the matter as the problem for providing evidence of IoWC is peculiar to the Petitioner itself.

### **Commission's Analysis and Ruling**

- 7.11 The main contention of AEML-G is that the Commission, in the Impugned Order while truing up of FY 2017-18 and FY 2018-19 (for the period April 2018 to August 2018 i.e. pre-AEML period), has considered the actual IoWC as Zero and has treated entire normative IoWC as Efficiency Gain. Hence, the amount receivable by AEML-G towards IoWC after sharing of Efficiency Gain is reduced accordingly.
- 7.12 As per the Regulation 31.6 of MYT Regulations, 2015 (which governs FY 2017-18 and FY 2018-19 period under consideration), the sharing of Efficiency Gains/Losses needs to be computed based on actual IoWC substantiated by documentary evidence. The relevant extract of the Regulation is provided below:-

*“31.6 For the purpose of Truing-up for each year, the variation between the normative interest on working capital computed at the time of Truing-up and the actual interest on working capital incurred **by the Generating Company or Licensee or MSLDC, substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss, as the case may be, on account of controllable factors, and shared between it and the respective Beneficiary or consumer as the case may be, in accordance with Regulation 11 :***

**Provided that the contribution of delay in receipt of payment to the actual interest on working capital shall be deducted from the actual interest on working capital, before sharing of the efficiency gain or efficiency loss, as the case may be.**”

- 7.13 AEML-G in the MYT Petition in Case No. 298 of 2019 had submitted that the actual IoWC for FY 2017-18 and FY 2018-19 (pre-AEML period) was Nil. The relevant part of the Petition is reproduced here below:

#### ***“ 3.23 Sharing of Efficiency Gains / Losses on Interest on Working Capital***

##### ***AEML-G's Submission***

***3.23.1 In FY 17-18, there is no actual interest on working capital and the working capital requirement was met through internal accruals. In line with the judgments of the Hon'ble APTEL in Appeal No. 203 of 2010 and Appeal Nos. 17, 18, 19 of 2011, absence of external funding of working capital does not mean that the cost of funds deployed is “zero”. Internal funds also carry cost and a reasonable cost for the same is required to be worked out by the Commission and allowed for determination of Interest on Working Capital.***

***3.23.2 However, the Commission in truing up for FY 2016-17 in the MTR Order has held as follows:***



*“4.22.6 Also, the present MYT Regulations 2015 which is applicable from FY 2016-17 onwards, are very clear that it required a documentary evidence of actual Interest borne on Working Capital. ....Further, the very fact that no actual IoWC has been incurred shows that the Licensees have efficiently managed their cash inflows and cash outflows in such a manner that the working capital loan requirement itself is zero. Accordingly, the benefits of such efficiency have to be shared with the beneficiaries in accordance with the Regulations.”*

*3.23.3 AEML-G has filed appeal before the Hon’ble APTEL against the MTR Order, inter alia, on the above issue, and the matter is pending. It is further submitted that when working capital is funded internally and no external loans appear on the balance sheet, this does not mean working capital loan requirement is zero as has been held in the above Order. ....*

*3.23.4 However, AEML-G without prejudice to the above, has computed efficiency gain/ loss and net entitlement on interest on working capital in accordance with the approach in the MTR Order.*

*3.23.5 For FY 2017-18, no claim on IoWC has been made by AEML-G however it has calculated the IoWC of Rs. 22.19 Crore on normative basis and has claimed Rs. 7.40 Crore (1/3rd of normative) after sharing.*

*3.23.6 For FY 2018-19 there had been actual short-term loans based on which sharing benefits have been claimed.”*

- 7.14 Further, similar submission was made by AEML-G (earlier RInfra-G) in MTR Order in Case No. 202 of 2017. From the above submission, it is noticeably clear that for the Pre-AEML period, RInfra has not taken any loans for working capital and managed the same from internal accruals. No documentary proof was submitted for pre-AEML period from April 2017 to August 2018. Hence, the Commission in the Impugned Order, based on the submission by AEML-G and in line with the provisions of the Regulation 31.6 of the MYT Regulations, 2015 approved the IoWC expenses of Rs. 6.40 Crore and Rs. 13.46 Crore for FY 2017-18 and FY 2018-19 respectively along with the sharing of efficiency gains on IoWC expenses.
- 7.15 The Commission notes that AEML-G, contrary to its earlier submission, now, in the Review Petition and additional submission dated 13 July, 2020 has submitted that the consortium of banks led by Canara Bank has accorded Cash Credit facilities to the RInfra separately for each business viz., Generation, Transmission, Distribution etc. and has accorded business wise Drawing Power after retaining certain margin out of the sanctioned drawing power. AEML-G as part of documentary proof has submitted Statutory Auditor’s certificate dated 22 June, 2020 and 3 July, 2020 for FY 2017-18 and FY 2018-19 respectively. The Certificates clearly mention that utilization of Working Capital loan and actual IoWC is allocated in the ratio of Working Capital Drawing Power of each business. Accordingly,

from the certificates, it is clear that IoWC amount claimed by AEML-G as per Auditor's certificates is not based on the actual Working Capital utilized for Generation Business, and hence does not represent actual usage scenario.

- 7.16 The intention behind addition of provision in the MYT Regulations, 2015 for submission of documentary evidence for actual IoWC was to evaluate the IoWC based on factual position instead of assumptions. However, the Statutory Auditor's Certificates submitted by AEML-G clearly show that utilization of working capital loan and the actual IoWC is allocated in the ratio of Working Capital Drawing Power of each business. Hence, the claim of RInfra that post Impugned Order, after much deliberation it has discovered the method of allocation of IoWC on basis of the MYT Tariff Regulations, 2015 and the Accounting Standards is not justified. In view of the above, AEML-G's claim that the Statutory Auditor Certificates qualifies as Material Evidence which was not in the possession of AEML-G when the Impugned Order was passed and warrants exercise of Review Jurisdiction does not hold the ground.
- 7.17 It is a fact that the Commission has approved the IoWC for the utilities fulfilling the condition of the MYT Regulations, 2015 without any discrimination after examining the documentary evidence submitted by Utilities. AEML-G itself stated that there was no actual IoWC. Hence, contention of AEML-G that the Commission has allowed IoWC to all Utilities operating in the State and denied to AEML-G does not hold any merit.
- 7.18 Further, the details provided in Auditor's certificates and Review Petition for FY 2017-18 regarding actual working capital loan utilized and actual IoWC for each business is also not matching as shown in the Table below :

**Table 1: Mis-match in details of Working Capital in Petition and Auditor's Certificate for FY 2017-18 (Rs. Crore)**

Particulars	Generation	Transmission	Distribution	Other	Total
<b>As per Petition</b>					
Working Capital - Drawing Power	106.39	21.37	848.36	186.30	1,162.41
Working Capital - Actual Drawn	<b>88.66</b>	17.68	699.94	154.21	960.49
Working Capital - Interest	<b>11.42</b>	2.25	88.77	19.84	122.28
<b>As per Auditor Certificate</b>					
Working Capital - Drawing Power	106.39	21.37	848.36	186.30	1,162.41
Working Capital - Actual Drawn	<b>90.05</b>	17.83	702.17	157.30	967.34
Working Capital - Interest	<b>11.45</b>	2.24	88.82	19.77	122.28

- 7.19 The Commission in the MTR Order in Case No. 202 of 2017 has considered actual IoWC as NIL for FY 2017-18 as AEML-G at that time had not substantiated its claim with documentary evidence, as required under the MYT Regulations, 2015. Therefore, AEML-G was well aware that if the documents are not provided in MYT proceedings, the Commission as per the MYT Regulations, 2015 will consider the actual IoWC as NIL for FY 2017-18. Also, the Commission vide its Order dated 7 December 2018 in Case No. 316 of 2018 (Review of Case No. 202 of 2017) has rejected the review on the issue of IoWC. Further, AEML-G has filed appeal on this issue in Appeal No. 442 of 2019 which is pending before Hon'ble ATE.
- 7.20 Further, the contention of AEML-G that it has inadvertently not submitted the documents at the time of MYT Petition as AEML had recently acquired the concerned Generation Business and the financial modalities were being assessed, cannot be accepted, as the transaction of takeover of the Generation Business was effected in August 2018, and the MYT Order was issued in March 2020, i.e., 18 months after such date. Also having experience of MTR Order, AEML-G should have started the activities for segregating the accounts well before the MYT Proceedings to avoid the disallowance.
- 7.21 It is not the case that the Commission had carried out its own analysis based on the available information and disallowed cost without considering the information/data submitted by AEML-G. AEML-G was given sufficient opportunity to provide necessary details and based on submission of the AEML-G, the Commission has considered "nil" actual IoWC in line with the provisions of the MYT Regulations, 2015.
- 7.22 Statutory Auditor's Certificates submitted by AEML-G for FY 2017-18 and FY 2018-19 are dated 22 June 2020 and 3 July 2020, respectively. AEML-G has filed the review Petition on 25 June 2020. Hence, sequence of event shows that Auditor's certificates are obtained to support the Review Petition already filed, is an afterthought. For these documents to qualify as relevant new and important matter or evidence, they should have existed at that time, while at the same time not being in AEML-G's knowledge. These documents clearly did not exist at the time of issuance of the MYT Order. Hence, Auditor's Certificates cannot be treated as the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within AEML-G's knowledge or could not be produced by AEML-G at the time of proceedings in the Impugned Order, to Review the Impugned Order as claimed by AEML-G.
- 7.23 The Judgments of Hon'ble Supreme Court and ATE cited by AEML-G essentially state that the review is maintainable if there is error of facts in the impugned Order or there is new evidence /fact, or if proper opportunity was not given to the Appellant in the main proceedings. These Judgments are not applicable to present review as the MYT Order fully considered the submissions made by AEML-G at that point in time and also proper opportunity had been given to AEML-G for submission of data during MYT proceeding. In

any case the scope of review application is limited and same is also recited in the Judgement quoted by AEML-G.

- 7.24 Further, the Hon'ble Supreme Court's Judgement in the case of "*State of West Bengal vs. Kamal Sengupta & Anr. [(2008) 8 SCC 612] decided on 16 June, 2008*" referred by AEML-G at the hearing and in the additional submission also provides that while considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring that the initial Order / decision is vitiated by an error apparent.
- 7.25 Additionally, the Hon'ble Supreme Court's Judgement dated 16 June 2008 also mentions that mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.
- 7.26 AEML-G, on the one hand has stated that it has not submitted the information of actual IoWC to the Commission and on other hand, it is stating that the Commission has erred in considering the actual IoWC as NIL while calculating the efficiency gain/loss, which is a self-contradictory submission and not tenable.
- 7.27 In view of the foregoing it is clear that there is neither error on the face of record nor the new material facts are brought on the record by AEML-G which were not known at the time of proceeding of the Impugned Order . Also, there are discrepancies in the submission made in the Petition and Auditor's certificate which creates further ambiguity in the matter. The Commission's decision to treat actual IoWC as Nil and sharing of the normative IoWC with the consumers is correct based on AEML-G's own submission at that point in time.
- 7.28 In view of the above, the review Petition filed by AEML-G does not fulfil the criteria specified in Regulation 85(a) of the MERC Conduct of Business Regulations 2004. Hence, the review of the Impugned Order is not allowed. Accordingly, no change is made in the approved IoWC expenses for FY 2017-18 and FY 2018-19.
8. Hence, the following Order

### ORDER

**The Case No. 105 of 2020 is dismissed.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

  
(Abhijit Deshpande)  
Secretary

