

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL Nos. 267 of 2016 & 190 of 2017**

Dated : 29<sup>th</sup> August, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member

**In the matter of:**

**APPEAL No. 267 of 2016**

**GRIDCO Limited**

Janpath,  
Bhubaneswar – 751022  
Odisha.

... Appellant

*Versus*

**1. M/s. Bhushan Power & Steel Limited**

A company incorporated under the  
Provisions of the Companies Act, 1956,  
Having its Registered Office at 4<sup>th</sup> floor,  
Tolstoy House, Tolstoy Marg,  
Connaught Place, New Delhi – 110001.

**2. Odisha Power Transmission Corporation Limited (OPTCL)**

Janpath, Bhubaneswar,  
Odisha - 751022

**3. Central Electricity Regulatory Commission**

4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi - 110001

**4. State Load Despatch Centre (SLDC), Odisha**

327/2100, Mancheswar Station Road,  
Chandrasekharpur,  
Bhubaneswar, Odisha – 751017

... Respondent (s)

Counsel for the Appellant(s) : Raj Kumar Mehta for App. 1  
Counsel for the Respondent(s) : Rajiv Yadav for Res. 1  
Raj Bahadur Sharma for Res. 2  
Raj Bahadur Sharma  
Mohit K. Mudgal  
Tulika Bhatnagar  
Sachin Dubey  
Mohit Jain for Res. 4

**APPEAL No. 190 of 2017**

**M/s. Bhushan Power & Steel Limited**

*Through Director*

F Block, 1<sup>st</sup> Floor,  
International Trade Tower  
Nehru Place  
New Delhi – 110 019

... Appellant

*Versus*

**1. Central Electricity Regulatory Commission**

*Through Secretary*

4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath,  
New Delhi - 110001

**2. GRIDCO Limited**

*Through Chairman & Managing Director*

Janpath,  
Bhubaneswar – 751022  
Orissa

**3. Orissa Power Transmission Corporation Limited**

*Through Chairman and Managing Director*

Janpath,  
Bhubaneswar - 751022

**4. Orissa State Load Despatch Centre (SLDC), Odisha**  
327/2100, Mancheswar Station Road,  
Chandrasekharapur  
Bhubaneswar, Odisha – 751017 ... Respondent (s)

Counsel for the Appellant(s) : Rajiv Yadav for App. 1

Counsel for the Respondent(s) : for Res. 1

Raj Kumar Mehta for Res. 2

Raj Bahadur Sharma for Res. 3

Raj Bahadur Sharma  
Mohit K. Mudgal  
Tulika Bhatnagar  
Sachin Dubey  
Mohit Jain for Res. 4

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The legality and validity of order dated 10<sup>th</sup> June, 2016 passed by Central Electricity Regulatory Commission (hereinafter referred to as “the Commission”) has been assailed in these two appeals. The Commission has passed this order in Petition under Section 79(1)(f) of the Electricity Act, 2003 by M/s Bhushan Power and Steel Limited seeking payment of Rs.5,75,76,584/- along with interest @18% per annum from GRIDCO Ltd. as unscheduled interchange (UI) charges. The Commission has rejected the contention of GRIDCO that M/s Bhushan Power has indulged in “gaming” and held it entitled to only an amount of

Rs.2,94,27,375/- as determined by the Eastern Regional Power Committee (ERPC) in its report dated 15<sup>th</sup> September, 2014 and also awarded simple interest @9% per annum on the same.

2. GRIDCO Limited is aggrieved by the said order of the Commission in so far as it holds that allegation of “gaming” has not been proved against M/s Bhushan Power and Steel Limited (BPSL) and has accordingly impugned the findings of the Commission on this aspect in Appeal No. 267 of 2016.

3. BPSL is aggrieved by the impugned order in so far as interest has been awarded from the date of filing of the petition and not from the date when the payment had actually become due to it. Accordingly, BPSL has filed Appeal No. 190 of 2017 on this aspect.

4. Since both the appeals arise out of the order dated 10<sup>th</sup> June, 2016 of the Commission, the same are taken together for disposal vide this common judgement.

5. For the sake of convenience, the parties in the two appeals are referred to by their names and not as Appellant and Respondents.

### **Facts and Circumstances of the Case**

6. BPSL has set up an integrated steel plant in Sambhalpur District in the State of Odisha and a Captive Power Plant (CPP) with a total

capacity of 100 MW consisting of two units of 40 MW and 60 MW each. Prior to the commissioning of the Steel Plant, BPSL had surplus power available with it and intended to sell the same outside the State of Orissa. Accordingly, it submitted a petition bearing No. 174 of 2003 before the Orissa Electricity Regulation Commission for grant of open access for sale of available surplus power outside State of Odisha by utilizing the transmission network of GRIDCO.

7. After recording the no objection of BPSL for accepting UI pricing mechanism available to inter-state transactions for Open Access customers as well as the submission that application for inter-state transmission electricity would be made to the nodal agency in accordance that the Central Electricity Regulatory Commission (Open Access and Inter-State Transmission) Regulations, 2004 (hereinafter referred to as 2004 Open Access Regulations) and upon taking note of unwillingness expressed by GRIDCO to purchase such surplus power, the Odisha Commission passed order dated 27<sup>th</sup> February, 2004 permitting BPSL to sell its surplus power in accordance with the Electricity Act, 2003. The Commission also observed in the said order that tariff for inter-state transmission of electricity would be determined by the Central Commission.

8. BPSL entered into an agreement for sale of power upto to 64 MW with Reliance Energy Trading Ltd. which sold the power outside the State to its committed customers by verifying the short-term inter-state open access system after obtaining clearances from State Load Despatch Centre, Odisha, which is Respondent No. 4 in the two appeals.

9. Vide letter dated 25<sup>th</sup> August, 2005, GRIDCO advised BPSL to open irrecoverable letter of credit for Rs.10,00,000/- towards payment security management for realization of UI charges, if any, for mis-match between scheduled export and actual export of power. The said requisite letter of credit was duly opened by BPSL.

10. In the said letter dated 25<sup>th</sup> August, 2005, GRIDCO had agreed to issue weekly bills for payment of UI charges. It appears that no such bills were received by BPSL. Accordingly, BPSL addressed a letter dated 24<sup>th</sup> October, 2005 to Director (Finance), Odisha Power Transmission Corporation Limited (in short "OPTCL"), which is arrayed as Respondent No. 2 in Appeal No. 267 of 2016 and Respondent No. 3 in Appeal No. 190 of 2017 pointing out that the bills for payment of UI charges have not been received. BPSL also requested for considering the secure meter data of WESCO for the purpose of UI billing since the apex meters installed at Budhipadar sub-station were not set for 15 minutes

integration data. Similar letter was sent by BPSL to the General Manager, OPTCL also.

11. BPSL executed a short-term open access commercial agreement with GRIDCO on 5<sup>th</sup> July, 2006. It was mentioned in the agreement that BPSL has been selling about 64 MW of power through the Electricity Trader M/s Reliance Energy Trading Limited. With regards to the UI Charges applicable to sale of electricity by BPSL, the agreement provide as under :-

*“2. ABT will be applicable to BPSL for above short-term transactions and will be guided by CERC Open Access Regulations, 2004 with its amendments issued from time to time. For smooth operations of transactions, however, as embedded customer, following commercial/stipulations are agreed.*

*3. (A) BPSL will endeavour to inject as per daily schedules as advised by SLDC.*

*(B) Any mismatch between the schedule and actual injection accepted by SLDC shall be governed by UI pricing mechanism. Such UI bills shall be prepared by SLDC on weekly basis. In the case of under/over injection the UI payable/receivable will be settled after taking care of STU losses and wheeling charges.*

*(C) In the event of zero scheduling by BPSL/ ERLDC, no UI mechanism shall be operative.*

*(D) When the frequency falls below 49.4 Hz, BPSL shall endeavour to maximize its injection at least up to the level, which can be sustained, without waiting for the instructions of SLDC. Under ABT regime such injection shall be covered under UI mechanism.*

*(E) In the event of mismatch between the schedule and actual injection, the matter will be governed by UI regulation applicable.....”*

12. Since the bills for UI charges were not issued by GRIDCO, BPSL started raising the bills for UI charges receivable by it. The first such bill was for the period 28<sup>th</sup> August, 2005 to 30<sup>th</sup> December, 2005 in the amount of Rs.1,31,89,525.77/-. Thereafter, BPSL raised several bills for the UI charges receivable by it.

13. Vide letter dated 6<sup>th</sup> February, 2006 addressed to OPTCL, BPSL cancelled all the previous UI bills and issued a fresh bill for Rs.1,92,67,450/- for the period 28<sup>th</sup> August, 2005 to 8<sup>th</sup> January, 2006. Vide subsequent letter dated 22<sup>nd</sup> July, 2006 addressed to GRIDCO, BPSL forwarded a statement of pending UI bills and sought its intervention for the clearance of those bills. Follow up letters dated 26<sup>th</sup>



October, 2006, 8<sup>th</sup> December, 2006 and 12<sup>th</sup> March, 2007 were also sent by the BPSL to GRIDCO but did not receive any response thereto.

14. Letter dated 17<sup>th</sup> April, 2008 was ultimately sent by GRIDCO to SLDC with the request to verify and certify the UI claims of BPSL. However, OPTCL vide its letter dated 18<sup>th</sup> April, 2008 informed GRIDCO that it did not have any historical record of schedule by open access customers and was, therefore, unable to verify the UI bills of BPSL. According to the BPSL, internal audit report dated 25<sup>th</sup> July, 2009 prepared by Central internal audit sale of OPTCL with respect to pending UI bills of BPSL acknowledges that BPSL is entitled to UI charges being claimed by it.

15. Vide its letter dated 4<sup>th</sup> November, 2009, 10<sup>th</sup> December, 2009 and 5<sup>th</sup> January, 2010, BPSL reiterated its request to the GRIDCO and OPTCL for payment of UI charges totaling Rs.5,75,76,584/- along with interest @18% per annum.

16. According to BPSL, the bills for over injection of power had already been accounted for in the UI bill account of the State whereby GRIDCO has received payments from Eastern Regional Load Despatch Centre (ERLDC) and therefore continued retention of UI charges received by

GRIDCO from ERLDC amounts to it unjust enrichment at the expense of BPSL.

17. On these facts, BPSL had approached the Commission with its petition No. 163 of 2012 seeking direction to GRIDCO and OPTCL to release the payment of Rs.5,75,76,584/- @ 18% per annum from due date of pending UI bills till actual payment thereof. It appears that in their replies to the petition by the ERPC and OPTCL, a preliminary objection was taken regarding the maintainability of the petition before the Commission under Section 79(1)(f) of the Electricity Act on the ground that dispute raised in the petition is not covered under the said section. It was also stated in the reply that in terms of Regulation 34 of the 2004 Open Access Regulations, BPSL should have approached Member Secretary, EREB/ERPC for resolution of the dispute and in the event the dispute was not resolved, the matter should have been reported to the Commission. Bar of limitation was also agitated in the reply.

18. Vide order dated 9<sup>th</sup> May, 2013, the Commission held the petition to be maintainable thereby dismissing the above noted preliminary objections raised by GRIDCO and OPTCL. GRIDCO assailed the said order of the Commission before this Tribunal by way of Appeal No. 169 of 2023 which came to be dismissed vide judgement dated 1<sup>st</sup> July, 2014.

**Proceedings of the petition before the Commission :**

19. During subsequent proceedings of the petition, the Commission vide order dated 9<sup>th</sup> May, 2013 had directed the Member Secretary (MS), ERPC to verify the necessary data for adjudication of the claims of BPSL for UI receivables. The relevant part of the said order is extracted hereinbelow :-

*“43. We find that there is a controversy regarding availability of data for working out and verifying the data needed for adjudication of the petitioner's claim. For this purpose, we consider it appropriate to take assistance of the technical experts in the investigation of the petitioner's claim. Member Secretary, Eastern Regional Power Committee who is responsible for maintenance of the UI energy accounting at Regional level is considered to be most appropriate authority for this purpose. Accordingly, we direct the Member Secretary to investigate the petitioner's claim and submit a report to this Commission latest by 20.6.2013 for its consideration. The Member Secretary shall investigate the UI charges recoverable and payable by the petitioner for the entire period during which short-term inter-State open access was availed by the petitioner. The parties are directed to render necessary assistance to the Member Secretary in investigation. For this purpose, the parties shall appear before the Member*

*Secretary on 20.5.2013 along with the available data in their possession in support of their respective claims.*

*44. The investigation by the Member Secretary ordered by us conforms to the provisions of Regulation 35 of the 2004 Regulations on which heavy reliance has been placed by the respondents, in letter and spirit even though we are of the considered opinion that the assistance of the Member Secretary, and for that matter any other person or authority, can be sought by this Commission without a provision analogous to Regulation 35 of the 2004 Regulations.”*

20. It appears that in pursuance to said directions of the Commission, ERPC held three meetings with ERLDC, GRIDCO, OPTCL/SLDC Orrisa and BPSL on 10<sup>th</sup> June, 2013, 5<sup>th</sup> August, 2013 and 30<sup>th</sup> September, 2013. In the first meeting held on 10<sup>th</sup> June, 2013, sources of data to be considered for calculation of UI charges were unanimously decided. In the 2<sup>nd</sup> special meeting held on 5<sup>th</sup> August, 2013 ERPC informed that it had calculated the UI charges for the period from 25<sup>th</sup> August, 2005 to 31<sup>st</sup> August 2006 in accordance with the decision taken in the 1<sup>st</sup> special meeting. Since GRIDCO and SLDC/OPTCL pointed out in the meeting that the results obtained by them were not tallying with that of ERPC Secretariat, it was decided that ERPC, ERLDC GRIDCO, SLDC, OPTCL and BPSL would sit together and reconcile the data for the purpose of

calculation of UI charges. A broad consensus was also arrived in the meeting for consideration the schedule figure/injection figure and UI vector for the purpose of UI charges calculation.

21. Third meeting was convened on 30<sup>th</sup> September, 2013 for reconciliation of data. Finally, ERPC Secretariat prepared its report on the basis of above exercise and submitted the same to the Commission on 15<sup>th</sup> September, 2014. In the report following methodology was adopted to work out the UI charges payable to BPSL:-

*“(a) The scheduled figures furnished by ERLDC for the period 28.8.2005 to 31.10.2006 were taken for computation of UI. For the period from 1.11.2006 to 31.12.2006, the schedule figures furnished by BPSL were considered.*

*(b) For the period 28.8.2005 to 21.10.2005, half hourly actual injection figures at Budhipadar as furnished by SLDC Bhubaneswar was considered and the figures were divided by 2 to arrive at the 15 minutes time block. For the remaining period, 15 minutes actual injection figure as recorded in the SEM at Budhipadar were taken into computation.*

*(c) ERLDC vide its letter dated 3.10.2013 confirmed that the schedule figures were at the Odisha-CTU periphery. The actual injection figure of BSPL were found to be at Budhipadar bus. These figures were reduced by 4% to account for the STU*

*loss in Odisha system as per the decision in the meeting taken on 10.6.2013. The actual injection figures were multiplied by 0.96 to arrive at the actual injection by BPSL at Odisha ER-CTU periphery.*

*(d) Since GRIDCO has received UI for excess injection by BPSL based on the reading at Odisha/CTU-ER periphery, UI payable to BPSL was calculated at this point.*

*(e) As per clause 3(C) of Commercial Agreement between GRIDCO and BPSL, in the event of zero scheduling in any time block by BPSL/ERLDC, UI charge receivable by BPSL has been made zero.*

*(f) The UI vector for the purpose of calculation was taken based on the CERC Notification No. L-7/25(5)/2003-CERC date 3.9.2004.”*

22. In annexure XXV of the report, the total UI amount receivable by BPSL from GRIDCO from the period 28.8.2005 to 31.12.2006 has been calculated at Rs.2,94,27,375.02/- against total injection of power during this period as 1221051.024 MW.

23. In its affidavit dated 30<sup>th</sup> September, 2014 filed before the Commission, GRIDCO submitted that BPSL has taken advantage of prevailing low frequency and injected power into the grid at its will for commercial gain through UI mechanism without adhering to its schedule

of open access transaction and thus has indulged in “Gaming”. The allegation of Gaming was denied by BPSL in its rejoinder dated 24<sup>th</sup> November, 2014 stating that the provisions regarding Gaming is applicable only to transactions where the beneficiaries have long-term lein over the power plant capacity. It was further stated that neither GRIDCO nor OPTCL did ever deny the UI claims on BPSL and the allegation of Gaming levelled by GRIDCO is only an unscrupulous attempt to unlawfully misappropriate UI proceeds payable to BPSL.

24. Vide order dated 9<sup>th</sup> December, 2015, the Commission directed ERPC to submit its views on the allegation of Gaming made by GRIDCO in its affidavit dated 30<sup>th</sup> September, 2014 and also to convene a meeting of concerned parties for reconciliation of data and to submit the reconciled data along with the minutes of meeting dated 10<sup>th</sup> June, 2013, 15<sup>th</sup> August, 2013 and 30<sup>th</sup> September, 2013 convened by it.

25. Accordingly, ERPC convened a meeting on 5<sup>th</sup> January, 2015 which was attended by GRIDCO, SLDC Odisha, BPSL and ERLDC in which it emerged that data taken by ERLDC for computation of UI is acceptable to all stake holders. It was also decided in the meeting that SLDC Odisha would scrutinize and analyze the time block wise data regarding the BPSL’s injection (scheduled and actual) and

establish/certify gaming, if any, and submit its observations to the Commission.

26. In its affidavit dated 4<sup>th</sup> March, 2015 submitted by SLDC, Bhubaneswar to the Commission, it was stated that the schedule and injection data considered by ERPC for computation of UI charges payable/receivable by BPSL for the period 28<sup>th</sup> August, 2005 to 31<sup>st</sup> December, 2006 has been analyzed which has conclusively proved the allegation of gaming against BPSL. The summary of the analysis of its report submitted by SLDC is as under :-

Sr No	Percentage Deviation from Schedule	Total No. of blocks from August 2005 to December 2005	Percentage (%) of blocks where deviation has taken place
1.	< 5%	7860	17.70
2.	5 to 10%	6372	14.35
3.	10 to 20%	8972	20.21
4.	20 to 50%	10996	24.76
5.	50 to 100%	6250	14.08
6.	100 to 200%	2148	04.84
7.	> 200%	1806	04.07
8.	Total scheduled blocks	44404	100.00



27. It was submitted by SLDC that as per the above data, it is clearly established that the activities of BPSL in the ABT regime of system of operation cannot be considered as legitimate by any stretch of imagination and the act of the BPSL is solely guided by profit motive by indulging in unfair gaming. SLDC further submitted that the act of BPSL was intentional for two reasons, namely, to pay less on transmission charges as no transmission charge is payable on UI and UI pricing being frequency linked is normally priced higher.

28. In order to get an independent verification of the allegation of gaming against the BPSL, the Commission vide order dated 31<sup>st</sup> March, 2015 directed ERPC to examine in consultation with ERLDC the data submitted by SLDC Odisha and submit its report on this aspect. In pursuance to these directions, ERPC vide its report dated 24<sup>th</sup> April, 2015 has submitted as under :-

- a) *ERPC and ERLDC convened a meeting with SLDC Bhubaneswar on 23.4.2015. Since the period of dispute was from 28.8.2005 to 31.12.2006, exhaustive checking of 15 minutes time block data was not possible. Random checking of data was resorted to and the same was also done in the presence of SLDC Engineers and the data were found to be in order. A copy of the Minutes of the meeting signed by Member Secretary of ERPC, DGM of*

*ERLDC and GM of SLDC/OPTCL has been placed on record.*

- (b) In the process of random checking, no discrepancy with respect to the data submitted by SLDC Bhubaneswar vis-à-vis the data accepted in the joint meeting held on 7.1.2015 could be found.*
- (c) ERPC and ERLDC are of the opinion that during the period under consideration i.e. from 28.8.2005 to 31.12.2006, the word gaming was referred to as the intentional mis-declaration by an ISGS in Regulation 24(2)(i) and (ii) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2004. This was done to protect the interests of the beneficiaries of ISGS. There was no bar on over-injection or under-injection by any entity supplying power. Over-injection and under-injection used to be settled in the light of the relevant settlement mechanism prevalent at that time. Further BSPL was a CPP and an embedded entity of Odisha system. After meeting its own requirement, surplus power available with it was traded through Short Term Open Access. Scheduling of export of power by BSPL was within the purview of SLDC Bhubaneswar. Therefore, gaming, if any, by BSPL in the matter of export of power could be identified and checked by SLDC Bhubaneswar in the light of relevant CERC/OERC Regulations.*

(d) *During the preliminary checking of data, it emerged that the petitioner had over-injected beyond its schedule in the following manner in the 44,404 time blocks for which export schedule was approved:*

S. No.	Range of Deviation	No of Time Blocks (As per SLDC Bhubaneswar )	% of Total Scheduled Blocks (As per SLDC Odisha)	No of Time Blocks (As per ERPC)	% of Total Scheduled Blocks (As per ERPC)*
1	5 to 10%	6372	14.35	3554	8
2	10 to 20%	8972	20.21	5238	11.8
3	20 to 50%	10996	24.76	6212	13.99
4	50 to 100%	6250	14.08	3379	7.61
5	100 to 200%	2148	4.84	2141	4.82
6	> 200 %	1806	4.07	180 6	4.07

(Emphasis supplied)

29. It was also explained by ERPC that while arriving at the above figures, only those time blocks when there is over-injection have been considered whereas SLDC has considered over-injection as well as under-injection. It was also stated that the time blocks where there was zero schedule have not been considered and, therefore the range from 0 to 5% of deviation has been eliminated. In the letter dated 2<sup>nd</sup> July,

2015, these findings were reiterated with addition of following two paragraphs :-

*“We, at ERPC Secretariat, have completed the verification of authenticity of analysed data submitted by SLDC Bhubaneswar on the direction of the Hon’ble Commission and have found that there is no discrepancy of this data vis-à-vis the data reconciled in the joint meeting held on 07.01.2005.*

*As per CERC (Terms and Conditions of Tariff) (First amendment) Regulations, 2004 prevalent during the period of dispute, the alleged ‘gaming’ by M/s BPSL is neither proved by SLDC, OPTCL through submission of mis-declaration of generation capacity nor is evident from their data.”*

30. In its affidavit dated 22<sup>nd</sup> July, 2015, submitted by SLDC Odisha, objection was raised to addition of two more paragraphs by ERPC in the report dated 2<sup>nd</sup> July, 2015, which were not there in the earlier report dated 24<sup>th</sup> April, 2015 prepared jointly by ERLDC and SLDC. It was stated that there is no objection with regards to the 1<sup>st</sup> paragraph but the 2<sup>nd</sup> paragraph is totally misleading and misconceived since the gaming has been viewed by the ERPC in the context of the CERC Tariff Regulations, 2004 which is not applicable in the case of BPSL.

31. The query appears to have been put by the Commission to SLDC as to whether the issue of gaming as alleged vide affidavit dated 4<sup>th</sup> March, 2015 was ever raised by it in the year 2005-06. In the reply, SLDC, Bhubaneswar has stated that the SLDC is responsible to carry out its operation in accordance with the provisions of Section 32 of the Electricity Act, 2003 as per which the scheduling and dispatch of electricity is to be conducted in accordance with the contract entered with the generating companies. It was stated that since in the present case, there was no commercial agreement till 5<sup>th</sup> July, 2006 in respect of UI, the question of raising the issue of gaming till 5<sup>th</sup> July, 2006 did not arise.

32. GRIDCO also, in its affidavit dated 7<sup>th</sup> August, 2015 submitted that the data given by SLDC and verified by ERPC clearly proves beyond any doubt that the BPSL had indulged in gaming during the relevant period and the observations of ERPC in the report dated 2<sup>nd</sup> July, 2015 are not only unjustified but also misconceived.

33. Thus, both GRIDCO and SLDC Odisha contested findings of ERPC with regards to the gaming and reiterated that BPSL indulged in gaming by injecting surplus power from its captive generating plants during low voltage condition.

34. Upon scrutiny of these reports and considering the submissions of the parties, the Commission in the impugned order came to conclusion that the charge of gaming is not established against the BPSL and also held BPSL entitled to receive UI charges from GRIDCO for the over-injection of power during the period from 28<sup>th</sup> August, 2005 to 31<sup>st</sup> December, 2006. Accordingly, it held BPSL entitled to receive UI amount of Rs.2,94,27,375/- as determined by ERPC in its report dated 16<sup>th</sup> September, 2014, along with simple interest @9% per annum from the date of filing of the petition till actual payment.

### **Submission of the parties**

#### **A. Submission on behalf of GRIDCO :**

35. Learned Counsel for GRIDCO submitted that BPSL is not entitled to claim UI charges as it has indulged in gaming. He argued that the Commission has erroneously held that only Regulation 24(1) of CERC Tariff Regulations, 2004 applies to the instant case and Regulation 24(2) does not apply. He submitted that having held in paragraph 43 of the impugned order that supply of electricity by BPSL to a trading licensee through short-term open access in the present case will be governed by the provisions of Electricity, 2003 and CERC tariff Regulations, 2004, the Commission was not justified in applying UI mechanism as per

Clause I of Regulations 24 of these Regulations without considering the Clause II which relates to gaming. He further argued that:-

- i. Regulation 24 of CERC Tariff Regulations, 2004 is to be considered in totality in respect of the Transmission for the UI Settlement. It cannot be that while BPSL will take the benefit of the first part of the Regulation, it will not be governed by the condition imposed in the latter part of the same Regulation.*
- ii. The Commission further erred in holding that principle of Gaming as per Regulation 24 (2) of the CERC Tariff Regulations, 2004 is applicable only in respect of Inter-State Generating Stations (ISGS) and will, therefore, apply between a Generator and a Beneficiary but not to a Captive Generating Plant (CGP) like BPSL which is selling Power to an outside Customer for making profit.*
- iii. The Commission did not appreciate that the Transaction in question in the present case was also an Inter-State Transaction since the CGP is situated in Odisha and the Power was supplied through Short-Term Open Access to*

*the industry of Respondent No. 1, i.e. BPSL situated outside the State of Odisha.*

- iv. Moreover, nowhere in the Agreement dated 05.07.2006 it was mentioned that the UI Regulation would be applicable in part (i.e. Regulation 24 (1) of CERC Tariff Regulations, 2004 would be applicable) but Regulation 24 (2) would not be applicable and therefore such selective application of Regulation 24 is, therefore, not permissible and wholly unjustified.*
- v. The Commission erred in holding that the Odisha Grid Code Regulations, 2006 are not applicable to CGP.*
- vi. The Commission did not appreciate that the provisions contained in Para 6.4.15 of Odisha Grid Code, 2006 relating to Gaming would be applicable in view of Para 3 (B) of the Agreement dated 05.07.2006, to the effect that any mismatch between 'Schedule' and 'Actual Injection' accepted by SLDC shall be governed by UI Pricing Mechanism.*
- vii. The Commission once Clause 6.4.15 of Odisha Grid Code, 2006 is held applicable, SLDC is empowered / required to periodically review the Actual deviation from the Schedule to*



*check whether any of the Beneficiaries who were allowed Open Access are indulging in unfair Gaming.*

*viii. The view taken by the Commission amounts to holding that the Agreement dated 05.07.2006 allowed BPSL to over-inject power unabatedly and indiscriminately in spite of the clear provision in the agreement that:*

*"Under ABT Regime such injections shall be covered under UI mechanism, and that in the event of mismatch between the Schedule and the actual injection, the matter will be governed by UI Regulation applicable."*

*ix. The Commission was not justified in holding that BPSL is not guilty of gaming even though BPSL had Over-injected more than 50% to 200% of the schedule in 23% of the Total Scheduled Blocks and Over-injected more than 10% to 50% of the Schedule in 25% of the total Scheduled Blocks during the period in question.*

*x. Such huge receivable amount of UI Charges as claimed by BPSL with marginal quantum of scheduled transactions for a short period (less than one and half years), by itself clearly*

*proves the misuse of UI Mechanism by BPSL in a calculated manner for undue commercial gain.*

- xi. *Without prejudice to the above, it is submitted that Short Term Open Access Commercial Agreement which contained the provision regarding UI Settlement was signed between GRIDCO and BPSL and came into force only on 05.07.2006. Since there was no such Agreement prior to 05.07.2006, BPSL is not entitled to any UI Charges prior to the said date and the Commission grossly erred in coming to a conclusion to the contrary."*

**Submission of behalf of SLDC :**

36. On behalf of SLDC, it was pointed out that BPSL started injecting power into the grid when there was no existing contract between it and GRIDCO and, therefore, issue of gaming could not be monitored till execution of agreement between BPSL and GRIDCO on 5<sup>th</sup> July, 2006. It is submitted that the Commission, while passing the impugned order has failed to consider that BPSL has never taken prior approval from SLDC for injecting power into the grid and during the period 28<sup>th</sup> August, 2005 to 31<sup>st</sup> December, 2006, BPSL was not maintaining any infrastructure at its end for data communication facility to SLDC. It is

submitted that the communication system i.e. PLCC/SCADA system of BPSL became functional only in April and May, 2012.

37. Citing the judgement of this Tribunal in Appeal No. 120 of 2016 - Kamachi Sponge & Power Corporation Ltd vs. Tamil Nadu Generation and Distribution Corporation Ltd. & Anr., the Learned Counsel for SLDC argued that the power generator has to seek prior approval from SLDC before pumping electricity into the grid. It is thus argued that the act of BPSL in pumping energy into the grid on its own without entering into the contract with GRIDCO and without seeking any approval/schedule from SLDC is unauthorized, solely motivated from commercial gains and amounts to gaming.

38. It is also argued that the Commission has erroneously held that the provisions of Regulations 24(2) of CERC Tariff Regulations, 2004 are not applicable in case of short-term consumptions. It is submitted that the said observation of the Commission is contrary to safe and secure operation of the grid as per the Section 32(2) of the Electricity Act, 2003. It is further submitted that the Commission has ignored the fact that the captive power generators also can endanger the safe and secure operation of the grid in case they are permitted to inject power as much as they want over and above the schedule given to them. Further, the

Learned Counsel has reiterated the submissions made on behalf of GRIDCO.

**Submission on behalf of BPSL :**

39. On behalf of BPSL, its counsel argued that the baseless belated allegations of gaming by GRIDCO were only a mis-leading and misconceived attempt to deny the legitimate UI dues to BPSL and have been rightly rejected by the Commission in the impugned order. It is pointed out that these allegations are contrary to the internal audit report of GRIDCO itself in which it is specifically noted that UI amount is indeed payable to BPSL.

40. Learned Counsel further argued that CERC Tariff Regulations, 2004 providing for the concept of “Declared Capacity” were applicable only to cases where tariff is to be determined by the Commission based on capital cost. It is submitted that the discoms being the beneficiaries of the generating stations typically have a pre-allocated share in the capacity of generating stations and, therefore, are covered by these Tariff Regulations, 2004 and for this reason only Regulation 24(2)(ii) provides that if a generating station is found to have indulged in gaming, UI amount for extra generation shall be adjusted in UI account of beneficiaries in the ratio of their capacity share in the generating station. According to the

Learned Counsel, since the beneficiaries in the instant case neither had any capacity allocation in the power plant of BPSL nor was its tariff determined on the basis of capital cost, the concept of gaming was not applicable. In this regard, he referred to previous order of the Commission in petition No. 24 of 2007 Nava Bharat Ventures Limited Vs. WRLDC. He pointed out that the said order of the Commission in Nava Bharat case was cited by the GRIDCO in its internal audit report also.

41. Referring to the clauses 6.4 (7) and 6.4(12) of Odisha Gridco, 2006, Learned Counsel submitted that these did not restrict injection of power over and above the generation schedule and have been duly considered by the Commission while passing the impugned order. Learned Counsel further argued that:-

- i. The allegation of Gaming i.e. "Intentional mis-declaration" of declared capacity schedule by BPSL with the object of making any undue commercial gain through UI mechanism is misconceived and at odds with the data relating to injection of power by BPSL during the relevant period. It is noteworthy that BPSL had over-injected in 16710 time blocks of 15 minutes during non-peak hours (18:00 hrs to 22:00 hrs) having lower*

*average UI rate as compared to over-injection during 8815 time blocks during peak hours (06:00 hrs to 10:00 hrs), when the average UI rate is typically higher. This aspect has been noted by CERC in para 50 of the impugned order.*

- ii. Needless to add, had BPSL indulged in "intentional mis-declaration" of schedule with a view to making financial gains from high UI charges, it would have over-injected much more during peak hours (when average UI rates are typically higher). However, during peak hours, BPSL's over. injection is to the tune of 1,39,67,306 units as compared to over-injection of 3,12,81,641 during non-peak hours. A copy of the statements, summarising month-wise details of deviation from schedules, over-injection and under-injection, prevailing average monthly UI rates are part of the record.*
- iii. Furthermore, even during peak hours (06:00 hrs to 10:00 hrs), BPSL's under-injection during periods of higher average UI rate (Rs. 3.43/unit) is quite significant at about 84,87,415 units. Such under-injection belies any allegation of Gaming. Needless to add, if BPSL had been indulging in "intentional mis-declaration", it would have 'over-injected' significant*

*quantum when UI rates were higher during peak hours. In this regard, it may be useful to refer to the following data culled out from the details of scheduled and actual injection of power submitted by Odisha SLDC, as well as UI rates prevailing during the relevant period:*

<b>Summary of power exported by Bhushan Power &amp; Steel Ltd.</b> <b>(28.08.2005 to 31.12.2006)</b>				
<b>Sl. No.</b>	<b>Particulars</b>	<b>Diff. kWh</b>	<b>Amount</b>	<b>Average UI rate</b>
1.	Over injection during peak hours	1,39,67,306	4,00,17,005	2.87
2.	Under injection during peak hours	- 84,87,415	- 2,90,99,333	3.43
3.	Over injection during non-peak Hours	3,12,81,641	7,80,76,377	2.50

*From the above statement, it is evident that over-injection or under-injection of power by BPSL was not influenced by the prevailing UI rates and/or the consequential financial gain. It is noteworthy that over-injection during non-peak hours at average UI rate of Rs. 2.50/kWh is more than double the over-injection during peak hours when average UI rate was Rs. 2.87/kWh. Such a pattern clearly proves that BPSL was not indulging in Gaming by intentional mis-declaration of schedule,*

*as its over-injection during peak hours has been significantly lower than its over-injection during non-peak hours.*

- iv. Given the nature of steel manufacturing operation, it is submitted that it is not possible to predict the power consumption requirement of iron and steel industry with accuracy. The consumption load of power intensive industries fluctuate due to various reasons, which results in varying quantum of power injection into the grid.*
- v. Also it may be noted that under the extant CERC (Terms and Conditions of Tariff) Regulations, 2004, the allegation of gaming was required to be investigated by RLDC. Since no such investigation has, admittedly, been undertaken by RLDC, the appellant's allegation of gaming against BPSL is unsustainable. In other words, since the prescribed procedure of investigation by RLDC was not followed in the present case, it was not open to GRIDCO to belatedly allege Gaming. In this regard, reliance is placed on Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn. (2023) 10 SCC 817:*

*14. ...where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily*



*forbidden when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all other methods of performance are forbidden. This Court, too, has adopted this maxim. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way."*

vi. *It may further be noted that the Grid Coordination Committee, constituted under the Odisha Grid Code, 2006 was tasked with the responsibility to "investigate/ take action in case any Beneficiary is indulging in unfair gaming or collusion after getting reported from SLDC."*

vii. *Admittedly, no such reporting was done by SLDC against BPSL during the implementation of the subject transaction between 28.8.2005 to 31.12.2006. Therefore, in para 55 of the impugned order, the CERC has pertinently observed that "There is nothing on record to suggest that SLDC Odisha had advised the petitioner to back down because it had exceeded the limit required to meet deficit conditions." Accordingly, in para 56 of the impugned order, it has been correctly held:*

*"56. ....It may be seen from the above that SLDC if required may ask the petitioner about the situation of mismatch with necessary back up data. The contention of OPTCL/SLDC Odisha is that the petitioner has over-injected much beyond*

*its schedule. In that event it was incumbent of SLDC to ask for explanation with back-up data. No such exercise has been undertaken by SLDC Odisha during the relevant period....".*

- viii. It needs to be emphasised that throughout the relevant period (28.8.2005 to 31.12.2006), GRIDCO never alleged Gaming. It may be pointed out that BPSL had written 17 letters to GRIDCO requesting for payment of its UI dues. [Annexure R-6 (colly) and R-10 (colly) respectively to BPSL's Counter Affidavit in the present appeal). The said letters have also been filed as Annexure A-10 (colly) and A-15 (colly) to Appeal No. 190/2017. At no stage, GRIDCO denied its liability to pay UI dues of BPSL on the ground of alleged Gaming and/or otherwise. Therefore, it is submitted that GRIDCO was estopped from alleging Gaming for the first time.*
- ix. There is no justification for GRIDCO to withhold the amount received by it from regional pool. Para of OPTCL's Internal Audit Report of BPSL's Appeal No. 190/ 2017 records that "The total UI for the state as a whole including Open Access has come to GRIDCO."*

## **Our Analysis**

### **Appeal No. 267 of 2016 by GRIDCO Ltd.**

42. The main issue which arises for our consideration in this appeal is whether BPSL has indulged in “Gaming” as claimed by GRIDCO Ltd. The Commission has, in the impugned order, arrived at the conclusion that the allegation of “Gaming” has not been proved against the BPSL.

43. Upon analysis of the contentions of the parties and the rival submissions made on their behalf by their Learned Counsels, we feel in agreement with the said findings reached by the Commission in the impugned order. The reasons for our conclusion are set out hereinbelow.

44. Vide order dated 27<sup>th</sup> February, 2004 passed in petition No. 174 of 2003 filed by BPSL, the Odisha Commission had permitted BPSL to sell its surplus power in accordance with the Electricity Act, 2003, the tariff for which would be determined by the Central Commission. It is to be noted that during the proceedings of this petition, GRIDCO had expressed its unwillingness to purchase surplus power from the captive generating plant of BPSL. Thus, as per the said order of the Odisha Commission, BPSL was free to sell its surplus power in accordance with the provisions of Electricity Act, 2003 and UI pricing mechanism

applicable to inter-State transactions for open access customers was applicable to such sale of power by BPSL also.

45. Thereafter, vide letter dated 25<sup>th</sup> August, 2005, GRIDCO asked BPSL to open irrevocable letter of credit for Rs.10 lakhs towards payment security management for realization of UI Charges and further asked it to sign an agreement with GRIDCO/OPTCL towards short term open access within a couple of days. BPSL opened the letter of credit on 25<sup>th</sup> August, 2005 itself but signed the short-term open access commercial agreement with GRIDCO on 5<sup>th</sup> July, 2006. Even though signing of agreement regarding short-term open access was a condition precedent for commencement of transactions as per the letter dated 25<sup>th</sup> August, 2005 of GRIDCO, short-term open access transactions were commenced by BPSL w.e.f. 28<sup>th</sup> August, 2005 in the absence of said agreement. No objection was raised either by GRIDCO or OPTCL for such short-term open access transactions commenced by BPSL in the absence of requisite agreement with GRIDCO. BPSL even wrote to OPTCL on 24<sup>th</sup> October, 2005 pointing out that bills for payment of UI charges have not been received. Since GRIDCO did not issue bills for UI charges despite the said letter of BPSL, BPSL started raising bills for UI charges receivable by it. The first such bill was for th period 28<sup>th</sup> August,

2005 to 30<sup>th</sup> December, 2005 in the sum of Rs.1,31,89,525.77/- which was followed by several more bills. Vide letter dated 6<sup>th</sup> February, 2006 addressed to OPTCL, BPSL cancelled all the previous UI bills and issue a fresh bill for Rs.1,92,67,450/- for the period from 28<sup>th</sup> August, 2005 to 8<sup>th</sup> January, 2006. No response was received by BPSL to these UI bills either from GRIDCO or from OPTCL. Therefore, the Commission has rightly observed in the impugned order that GRIDCO & OPTCL permitted open access transactions by BPSL even in the absence of short-term open access commercial agreement.

46. Vide letter dated 22<sup>nd</sup> July, 2006 addressed to GRIDCO (which was subsequent to the signing of short-term open access commercial agreement dated 5<sup>th</sup> July, 2006 with GRIDCO) BPSL forwarded statement of pending UI bills and sought its intervention for the clearance of these bills. Follow up letters dated 26<sup>th</sup> October, 2006, 8<sup>th</sup> December, 2006 and 12<sup>th</sup> March, 2007 were also sent by BPSL to GRIDCO but did not receive any response thereto. Ultimately, vide letter dated 17<sup>th</sup> April, 2008, GRIDCO requested SLDC to verify and certify the UI bills of BPSL. However, OPTCL vide its letter dated 18<sup>th</sup> April, 2008 informed GRIDCO that it did not have any historical record of schedule for open access customers and was, therefore, unable to verify the UI bills to BPSL. Vide

letter dated 4<sup>th</sup> November, 2009, 10<sup>th</sup> December, 2009 and 5<sup>th</sup> January, 2010, BPSL reiterated its request to GRIDCO and OPTCL for payment of UI charges totaling Rs.5,75,76,584/- along with interest @18% per annum.

47. What is noticeable is that GRIDCO and OPTCL maintained stoic silence on these UI bills raised by BPSL and never informed BPSL that no UI charges are payable to it as it had resorted to “Gaming”.

48. Even in the reply filed on behalf of GRIDCO/OPTCL before the Commission, no allegation of Gaming was raised against BPSL. In the replies filed by GRIDCO and OPTCL/SLDC before the Commission, objections were raised to the maintainability of the petition before the Central Commission. It was also contended that the petition was barred by limitation. Apart from these preliminary objections, the data submitted by BPSL in support of its claim for UI charges, was disputed. It is in view of these contentions raised on behalf of GRIDCO/OPTCL that the Commission passed order dated 9<sup>th</sup> May, 2013 thereby dismissing the preliminary objections raised by them and holding the petition to be maintainable and within limitation. At the same time, in view of the controversy regarding availability of data for working out and verifying the data needed for adjudication of the claim of BPSL, the Commission

directed the Member Secretary, Eastern Regional Power Committee (ERPC) to investigate the claim of BPSL and submit the report latest by 20<sup>th</sup> June, 2013 for consideration of the Commission. The relevant portion of the said order dated 9<sup>th</sup> May, 2013 of the Commission has already been extracted in paragraph No. 19 herein above.

49. In pursuance to the said directions of the Commission, ERPC held three meetings with ERLDC, GRIDCO, OPTCL/SLDC Odisha and BPSL on 10<sup>th</sup> June, 2013, 5<sup>th</sup> August, 2013 and 30<sup>th</sup> September, 2013. In the first meeting held on 10<sup>th</sup> June, 2013 sources of data to be considered for calculation of UI charges were unanimously decided. In the 2<sup>nd</sup> meeting held on 5<sup>th</sup> August, 2013, ERPC informed that it had calculated UI charges for the period from 25<sup>th</sup> August, 2005 to 31<sup>st</sup> August, 2006 in accordance with the decision taken in the first meeting. However, GRIDCO and SLDC/OPTCL pointed out that the results obtained by them were not tallying that of ERPC Secretariat. Accordingly, it was decided that all the parties would sit together and reconcile the data for the purpose of calculation of UI charges receivable by BPSL. Finally, the data was reconciled in the 3<sup>rd</sup> meeting convened on 30<sup>th</sup> September, 2013.

50. On the basis of such exercise, ERPC Secretariat prepared its report and submitted the same to the Commission on 15<sup>th</sup> September, 2014 wherein the total UI amount receivable by BPSL from GRIDCO for the period 28<sup>th</sup> August, 2005 to 31<sup>st</sup> December, 2006 has been calculated at Rs.2,94,27,375.02/- against the total injection of power during the said period by BPSL as 1,22,1051.024 MW.

51. Intriguingly, in none of these meetings did GRIDCO or OPTCL raise the allegations of Gaming against BPSL. The allegations of Gaming was raised for the first time by GRIDCO in its affidavit dated 30<sup>th</sup> September, 2014 filed before the Commission subsequent to the filing of above noted report by ERPC secretariat. GRIDCO and OPTCL have failed to explain as to why they did not contend in their replies filed before the Commission and in the meetings convened by ERPC in pursuance to the order dated 9<sup>th</sup> May, 2013 of the Commission that BPSL is not entitled to any UI charges as it had resorted to Gaming during the relevant period. Thus, the allegations of Gaming raised by GRIDCO at such a belated stage patently appear to be concocted as well as after thought with the sole motive to avoid payment of UI charges to BPSL as determined by ERPC in its report dated 15<sup>th</sup> September, 2014 on the



basis of data reconciled between ERLDC, GRIDCO, OPTCL/SLDC Odisha and BPSL.

52. In view of the allegations of Gaming levelled by GRIDCO in its affidavit 30<sup>th</sup> September, 2014, the Commission vide order dated 9<sup>th</sup> December, 2015 directed the ERPC to submit its views on the same. Since SLDC, Odisha also, in its affidavit 4<sup>th</sup> March, 2015 filed before the Commission, stated that the analysis of data for computation of UI charges payable/receivable by BPSL conclusive proves the allegations of Gaming against BPSL, the Commission thought of getting an independent verification of the said allegation. Accordingly, vide order dated 31<sup>st</sup> March, 2015, the Commission directed ERPC again to examine the data submitted by SLDC Odisha in consultation with ERLDC and submit a report on this aspect. In pursuance of the directions, ERPC submitted its report dated 24<sup>th</sup> April, 2015 the relevant part of which has already been quoted in paragraph No. 28 hereinabove. In the subsequent report dated 2<sup>nd</sup> July, 2015, ERPC specifically stated that the alleged “Gaming” by BPSL is neither proved by SLDC/OPTCL nor is evident from their data.

53. Once an Independent and Expert Body like ERPC, which analyzed the data in consultation with ERLDC, came to the conclusion that

allegation of Gaming is not proved against BPSL, we find that the Commission was justified in accepting the said report and basing its decision upon the same.

54. We feel in agreement with the submissions on behalf of BPSL that had it intended to indulge in intentional mis-declaration of schedule with a view to making financial gains from high UI charges it would have over-injected more during peak hours when UI rates are typically higher. On the contrary, BPSL has over injected in 16710 time blocks of 15 minutes during non peak hours (1800 hours to 2200 hours) having lower average UI rate as compared to over injection during 8,815 time block during peak hours (600 hours to 1000 hours) when average UI rate is typically high.

55. Thus, during peak hours over injection by BPSL was to the tune of 1,39,67,37,306 units as compared to over injection of 3,12,81,641 during non peak hours. Even during peak hours, under injections by BPSL during the periods of high average UI rate is quite significant at about 84,87,415 units which also belie the allegation of gaming. Manifestly, the over-injection or under injection of power by BPSL was not influenced by prevailing UI rates and/or consequential financial considerations and, therefore, it is difficult to say that BPSL has indulged in 'Gaming' by intentional mis-declaration of schedule.

56. It is also argued on behalf of the GRIDCO and OPTCL that the Commission has erred in applying only Clause(1) of Regulation 24 of CERC Tariff Regulations, 2004 and observing that its Clause (2) is not applicable to the instant case.

57. Regulation 24 of CERC Tariff Regulations, 2004 is as under :-

***“24. Unscheduled Interchange (UI) charges: (1) Variation between actual generation or actual drawal and scheduled generation or scheduled drawal shall be accounted for through unscheduled interchange (UI) Charges. UI for a generating station shall be equal to its actual generation minus its scheduled generation. UI for a beneficiary shall be equal to its total actual drawal minus its total scheduled drawal. UI shall be worked out for each 15 minute time block. Charges for all UI transactions shall be based on average frequency of the time block and the following rates shall apply with effect from 1.4.2004.***

<b>Average Frequency of time block UI Rate (Paise per kWh)</b>	
50.5 Hz and above	0.0
Below 50.5 Hz and up to 50.48 Hz	8.0
Below 49.04 Hz and up to 49.02 Hz	592.0
Below 49.02 Hz	600.0
Between 50.5 Hz and 49.02 Hz	Linear in 0.02 Hz step

*(Each 0.02 Hz step is equivalent to 8.0 paise /kWh within the above range).*

**Note:**

*The above average frequency range and UI rates are subject to change through a separate notification by the Commission.*

*(2) (i) Any generation up to 105% of the declared capacity in any time block of 15minutes and averaging upto 101% of the average declared capacity over a day shall not be construed as gaming, and the generator shall be entitled to UI charges for such excess generation above the scheduled generation (SC). (ii) For any generation beyond the prescribed limits, the Regional Load Despatch Centre shall investigate so as to ensure that there is no gaming, and if gaming is found by the Regional Load Despatch Centre, the corresponding UI charges due to the generating station on account of such extra generation shall be reduced to zero and the amount shall be adjusted in UI account of beneficiaries in the ratio of their capacity share in the generating station.”*

58. Regulation 21 of these Regulations is also relevant and extracted herein above :-

**“UNSCHEDULED INTER-CHANGE (UI) CHARGES:**

*21. (i) The mismatch between the scheduled and the actual drawal at drawal point (s) and scheduled and the actual injection at injection point (s) shall be met from the grid and shall be governed by UI pricing mechanism applicable to the inter-state transactions:*

*(ii) A separate bill for UI charges shall be issued to the direct customers and in case of the embedded customers, a composite UI bill for the State as a whole shall be issued, the segregation for which shall be done at the State level.”*

59. The argument advanced on behalf of the GRIDCO/OPTCL is that allegation of “Gaming” against the petitioner should be considered with reference to the limits prescribed in Regulation 24(2) (i) of CERC Tariff Regulations, 2004. We are unable to accept these arguments on behalf of the GRIDCO/OPTCL. As rightly held by the Commission in the impugned order from the Tariff Regulations are applicable in cases of generating stations whose tariff is determined by the Commission. Since the tariff for captive generating plant of the BPSL is not determined by the Commission, these tariff Regulations would not apply to the instant case. Further, the Commission, in its order dated 6<sup>th</sup> March, 2007 passed in petition No. 24 of 2007 has itself clarified that

the provisions of Regulation 24(2)(i) of Tariff Regulations are not applicable in case of short-term open access transactions. The facts of that case are almost identical to the facts of the instant case. In that case also, petitioner No. 1 had established a coal based captive plant with a capacity of 30 MW at Meramundali in State of Odisha. Vide order dated 11<sup>th</sup> January, 2005 passed in case No. 133 of 2004, Odisha Commission had permitted the petitioner No. 1 to trade its surplus energy by way of sale to GRIDCO or to some other party on mutually acceptable terms and conditions. Upon no objection having been given by GRIDCO for sale of surplus power by Petitioner No. 1 to a third party, the Petitioner No. 1 entered into a Memorandum of Understanding dated 27<sup>th</sup> December, 2005 with OPTCL and GRIDCO for short-term open access to the transmission system of OPTCL. Subsequently, a short-term open access commercial agreement dated 5<sup>th</sup> June, 2006 was executed between Petitioner No. 1 and GRIDCO. In these facts and circumstances, the Commission had observed and clarified as under:-

*“(e) We have also noted references to ABT, injection limit of 105% and disallowance of UI under certain conditions in the “Short-term open access commercial agreement” dated*

*5.6.2006 referred to in para 2 above. We must point out that the limits of 105% and 101% have been specified by the Commission in the context of gaming in availability declaration where the beneficiaries have long-term lien over the power plant capacity. These limits have no relevance where no availability linked capacity charges are being paid, and the State utilities only provide open access.”*

60. It is not disputed that availability based capacity charges are not paid in case of transactions through short-term open access and, therefore, manifestly the limits of 105 percent to 101 percent specified in the context of Gaming in availability declaration cannot be made applicable in case of transactions executed by BPSL during the period of dispute by availing short term open access.

61. At the same time, it has been clarified by the Commission in the impugned order that UI pricing mechanism provided under Regulation 24(1) of CERC Tariff Regulations, 2004 has to be applied on account of the specific stipulation in Regulation 21(i) of these Regulations to the effect that pricing mechanism applicable for inter-state transactions shall be applicable for mis-match between the schedule and actual

drawal at drawal point (plant) and schedule and actual injection at injection point in the course of inter-state transaction.

62. Learned Counsel for GRIDCO also argued that the Commission erred in holding the provisions contained in Regulations 6.4.12 & 6.4.15 of the Odisha Grid Code, 2006 are not applicable to the instant case. He would submit that these clauses of the Grid Code are applicable in view of para 3(B) of the agreement dated 5<sup>th</sup> July, 2006 to the effect that the mis-match between schedule and actual injection accepted by SLDC shall be governed by UI pricing mechanism. Regulations 6.4.12 & 6.4.15 of Odisha Grid Code, 2006 are extracted hereinbelow :-

*“12. It shall be incumbent upon the SGS/ISGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC may ask the SGS/ISGS to explain the situation with necessary backup data.*



15. *SLDC shall periodically review the actual deviation from the despatch and net Drawal Schedules being issued, to check whether any of the Beneficiaries / ISGS / SGS who are allowed open access are indulging in unfair gaming or collusion. In case any such practice is detected, the matter shall be reported to the SLDC for further investigation / action. (emphasis added)”*

63. A plain reading of these two provisions of the Grid Code clearly reveals that these are applicable only in case of State generating stations, inter-state generating stations and beneficiaries. The Appellant's captive generating plant is not an SGS or ISGS or a beneficiary. Therefore, these two provisions of the Grid Code cannot be made applicable to the case of BPSL.

64. We may note that Regulation 6.4(6) and 6.4(7) of Odisha Grid Code Regulations relate to captive generating plants and provide as under :-

*“(6) The SGS/CGP shall be responsible for power generation / injection generally according to the daily schedules advised to them by the SLDC on the basis of the requisitions received from the Distribution Licensees and Beneficiaries, and for*

*proper operation and maintenance of their generating stations, such that these stations achieve the best possible long-term availability and economy.*

*(7) While the SGS and CGP would normally be expected to generate power according to the daily schedules advised to them, it would not be mandatory to follow the schedules tightly. The SGS and CGP may also deviate from the given schedules depending on the plant and system conditions. In particular, they would be allowed/encouraged to generate beyond the given schedule under deficit conditions. Deviations from the Ex-power Plant generation injection schedules shall, however, be appropriately priced through the UI mechanism.”*

65. These two Regulations make it manifest that the captive generating plants may deviate from a given schedule depending upon the plant and system conditions. Regulations 6.4(7) goes further to provide that captive generating plants would be allowed/encouraged to generate beyond the given schedule under deficit conditions and such deviation would be appropriately priced through UI mechanism. Thus, when the Regulations itself encourage the captive generating plants to generate beyond the given schedule under deficit conditions and further

provide that such deviation would be appropriately priced through UI mechanism, the arguments raised GRIDCO & OPTCL that BPSL has taken advantage of deficit conditions by over injecting power on account of surplus power available with it, evaporates in thin air.

66. In view of the aforesaid reasons, no merit is found in appeal filed by GRIDCO and the same is hereby dismissed.

**Appeal No. 190 of 2017 filed by BPSL**

67. As already noted hereinabove, BPSL is aggrieved by the impugned order dated 10<sup>th</sup> June, 2016 of the Commission in so far as interest has been awarded only from the date of filing of the petition and not from the date when the payment had actually become due to it.

68. We find that no reason at all has been recorded by the Commission in the impugned order for not granting interest from the date when the amount in question had become due to BPSL.

69. We may note that payment of “interest” cannot be equated to payment of penalty or fine. “Interest” is normal accretion to money when invested lawfully by the person in whose hands it is. When a person is deprived of the use his money to which he is lawfully entitled, he would have a legitimate claim for interest upon such amount of money for the period during which he was deprived of its use. In other words, any

person who has enriched himself by use of the money belonging to some other person, is legally duty bound to compensate the latter by payment of interest on the said money, from the use of which he had been deprived. Payment of interest is a necessary corollary to the return on money retained by a person unjustly or unlawfully. This has been explained by the Supreme Court succinctly in Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545 by way of the following illustrations: -

*“For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. With these observations the impugned judgment is modified and the appeal is disposed of accordingly.”*

70. In the instant case, the claim of BPSL for UI charges relates to the period from 28<sup>th</sup> August, 2005 to 31<sup>st</sup> December, 2006. GRIDCO has failed/neglected to pay these charges to BPSL despite repeated requests and reminders from BPSL and without any cogent ground. It is not in dispute that bills for over-injection of power have been accounted for in the UI bill of the State whereby GRIDCO has received payments from ERLDC. Thus, GRIDCO has pocketed UI charges and has been enjoying the same as per its financial wisdom thereby enriching itself at the expense of BPSL. In these circumstances, we find no reason for not granting interest on the UI charges receivable by BPSL from the date when these charges were payable to it by GRIDCO.

71. Hence, the instant appeal filed by BPSL must succeed.

### **Conclusion**

72. Having regard to the above discussion, we affirm the impugned order of the Commission in so far as it holds that the charge of “Gaming” is not established against BPSL and held it entitled to amount Rs.2,94,27,375/- as UI charges from GRIDCO Ltd. as determined by ERPC in its report dated 15<sup>th</sup> September, 2014. However, we set aside the impugned order in so far as it holds BPSL entitled to interest from the

date of filing of petition only. We hold BPSL to interest on the amount of UI charges from the date when the same had fallen due to it.

73. Accordingly, M/s Bhushan Power Steel Limited (Appellant in Appeal No. 190 of 2017) is held entitled to amount of Rs.2,94,27,375/- along with interest @9% per annum from the date when the said amount had fallen due to it from GRIDCO Ltd.

74. Thus, Appeal No. 190 of 2017 filed by Bhushan Power Steel Limited stands allowed whereas Appeal No. 267 of 2016 filed by GRIDCO Ltd. stands dismissed.

Pronounced in the open court on this 29<sup>th</sup> day of August, 2025.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

✓

*REPORTABLE / ~~NON-REPORTABLE~~*

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