

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN,
UNIT – VIII, BHUBANESWAR – 751 012**

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**Present : Shri S. P. Nanda, Chairperson
Shri S. P. Swain, Member
Shri A. K. Das, Member**

Case No. 55/2013

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| Director (RA), OERC Vrs. R-Infra Managed DISCOMs (NESCO, WESCO & SOUTHCO) & Others | ----- Petitioner ----- Respondents |
|---|---|

AND

**In the Matter of: Suo motu proceeding under Section 19(3) of the
Electricity Act, 2003 for Revocation of License of R-Infra
Managed DISCOMs (NESCO, WESCO & SOUTHCO).**

For the Petitioner: Shri Priyabrata Patnaik, Director (Regulatory Affairs),
OERC, the designated Petitioner.

For the Respondents: Shri P. K. Mohanty, Sr. Advocate, Shri Debasish Das,
AVP (RA), CSO, NESCO, WESCO & SOUTHCO, Shri
Rajesh Ku. Mahapatra, Advocate, and Shri Sanjay Sen,
Sr. Advocate on behalf of Reliance Infra Ltd., Shri L N
Mohapatra, Advocate and Shri B. P. Mishra, CGM
(RT&C) on behalf of OPTCL, Shri N. C. Panigrahi, Sr.
Advocate and Shri S. R. Panigrahi, Advocate on behalf
of GRIDCO and Ms. Niharika Patnaik, ALO, DoE, GoO
are present.

ORDER

Date of hearing: 05.09.2014

Date of order: 04.03.2015

Notices dated 13.05.2013 under Section 19(3) of the Electricity Act, 2003
(hereinafter referred to as ‘the Act’) were issued to NESCO, WESCO and
SOUTHCO (DISCOMs or Distribution Companies or Distribution Licensees),

asking the distribution licensees to show cause as to why their licenses should not be revoked in public interest for non-compliance of orders of the Commission and violation of provisions of the Act. The Government of Odisha, the major investors of the DISCOMs, namely, Reliance Infrastructure Limited (in short Reliance Infra) and GRIDCO were also impleaded as respondents in the present proceeding. The show cause notices were prepared and issued after due enquiry and elaborate fact finding exercises carried out by the Commission from time to time, narrating in detail, the reasons for which it was proposed in public interest to revoke the licences granted to NESCO, WESCO and SOUTHCO. The reasons for revocation of licences narrated in the show cause notice are briefly as follows:

- (a) Highly unsatisfactory performance of the licensees in different key areas, such as energy audit, inability to control technical and commercial loss, poor billing efficiency, non payment of arrears with regard to Bulk Supply Price (BSP) and NTPC Bond, failure to create requisite corpus for terminal benefits of employees and non-compliance of various directions of the Commission spelt out in Retail Supply Tariff (RST) orders and during performance reviews;
- (b) Non-incorporation of important clauses of Shareholders Agreement in the Articles of Association of the distribution company when 51% of share in NESCO, WESCO and SOUTHCO were divested by GRIDCO in favour

of private investors leading to public breach of trust and compliance of mandatory legal provisions of the Act;

- (c) Subsequent transfer of shares to companies which were not group companies; and, thereby, violating the provisions of Shareholder Agreement;
- (d) Gradual dilution of shares in favour of companies who did not have the original technical and financial pre qualifying criteria specified at the time of initial divestment; and
- (e) Violation of Section 17(3) of the Electricity Act, 2003 and violation of Section 21(2) of the Orissa Electricity Reform Act, 1995, in as much as part ownership of the utility has been systematically transferred to other companies by way of sale (transfer) of shares without permission of the Commission.

The above acts and omissions amounts to wilful and prolonged defaults in complying with the directions of the Commission under the Acts and Regulations made thereunder. The licensees have broken the terms and conditions of their licenses, the breaches of which have been expressly declared by the licenses to render the licenses liable to revocation. Also, the licensees have failed to show, to the satisfaction of the Commission that they are in a position to fully and efficiently discharge their duties and obligations imposed on them by their licenses; and the financial position of the licensees is such that

they are unable to fully and efficiently discharge their duties and obligations imposed on them by their licenses. The case therefore comes within the mischief of clauses (a), (b), (c)(i) and (d) of Section 19(1) of the Act.

2. In pursuance of the notice mentioned above, *Suo motu* proceeding was initiated in Case No. 55/2013 by the Commission and Director (RA), OERC was designated to present the matter in the capacity of the Petitioner under Regulation 9(4) of the OERC (Conduct of Business) Regulations 2004, for revocation of licence. A copy of the show cause notice under Section 19(3) of the Electricity Act, 2003 was sent to GRIDCO and Government of Odisha for their comments on the proposed revocation of licence. It is worth mentioning here that 49% of share of NESCO, WESCO and SOUTHCO are held by GRIDCO which in turn is a state public sector undertaking and has a substantial stake holding in the company, the Commission wanted to ascertain the views of GRIDCO and Government of Odisha on this matter.
3. The first hearing took place on 20.08.2013 and the Commission wanted further details from the respondents such as the latest audited balance sheet, address and PAN number of all the present shareholders and also the legal status of the Central Services Office (CSO) office at Bhubaneswar and its funding pattern. The distribution companies (DISCOMs) were asked to furnish these details by next date of hearing.

4. As the DISCOMs did not respond, another reminder was issued on 23.09.2013. Due to continued non-response another letter was issued on 12.12.2013 seeking the details mentioned earlier with regard to the shareholding pattern of the companies from 01.04.1999 onwards. The case was fixed for hearing on 07.01.2014 and as per the requests of the DISCOMs the case was adjourned to 21.01.2014.
5. Hearing was conducted on 21.01.2014 and the Commission raised further queries communicated through a letter dated 22.01.2014 asking for reply by 05.02.2014. The queries were related to the following matters:
 - (a) To furnish the date on which the amendment of Articles of Association was effected by inserting Article 9A (1). The names of transferor and transferee with address indicating that transferee belongs to the Group companies (as defined in the Shareholders Agreement);
 - (b) Whether shares were transferred to the Group companies basing on the technical and financial criteria fixed in the original Bid document; and
 - (c) To submit the net worth and balance sheet of the present shareholding companies.

Further clarification through letter dtd.16.05.2014 was sought from the DISCOMs on the following issues:

- (a) Whether any prior permission of the Commission was taken regarding transfer of shares in terms of Section 21(2) of the Orissa Electricity Reform Act, 1995 read with Section 17(3) of the Electricity Act, 2003;
 - (b) Whether these companies are Group companies as defined in Shareholder Agreement and hold the same technical and financial criteria on which the BSES Ltd. was granted 51% of stake in the company; and
 - (c) To furnish audited accounts of all the companies (as per the list) to whom shares of BSES Ltd. were transferred.
6. On the request of the DISCOMs, Commission granted extension of time for filing replies to the above queries on three occasions upto 26.06.2014, 07.07.2014 and 31.07.2014. Most of the queries were not replied to or inadequately responded to by the licensees. As sufficient opportunities had been granted, final hearing was conducted on 05.09.2014. During the hearing, Director (RA) handed over audited figures of DISCOMs upto 31.03.2013 relating to issues contained in the original show cause notice to the licensees. It may be mentioned here that the first show cause notice was issued on 13.05.2013 containing information relating to the performance of the licensees for a period upto 31.03.2012 available with the Commission. These figures were updated on the basis of the latest

audited balance sheets and also the figures submitted by the licensees during the performance review conducted for the FY 2013-14. Request for further adjournment was denied as sufficient opportunities have already been granted to the licensees and therefore hearing was concluded on 05.09.2014. The licensees along with legal representative of Reliance Infra were asked to furnish their final written submission within two weeks time. Accordingly, Licensees have filed the audited accounts of the companies as called for in our letter dated 16.05.2014.

7. i) Before dealing with the issues relating to revocation of licence on merit, it is necessary to narrate in brief, the background of the present proceeding.

Action for suspension of licences of the DISCOMs was initiated earlier in the year 2005 by the Commission. Though the appointment of special officers during the pendency of the proceeding was quashed by the Hon'ble ATE and also by Supreme Court, the Hon'ble Supreme Court in its order CA No. 946/2007 and CA No. 2309/2007 dated 05.01.2009 upheld the action of this Commission for initiating and proceeding with the matter relating to suspension of the licence under Section 24(1) of the Act. The order of Hon'ble ATE was quashed so far as it annulled the show cause notice issued by the Commission under Section 24(1) of the Act.

ii) Once the action of the Commission was upheld by the Hon'ble Apex Court the Commission proceeded with the matters relating to suspension of the licences and passed the order on 12.05.2011 in Case No. 35/2005. The Commission observed in the said order that the performance of the DISCOMs in controlling Aggregate Technical and Commercial (AT&C) loss, energy audit, theft of energy, failure in servicing of NTPC bond, improving standard of service etc. and finally running the organisation in a financially viable manner was highly unsatisfactory. However, instead of penalising the DISCOMs by suspension of licence the Commission gave a further opportunity to the licensees to improve their performance. The key areas on which the Commission expected considerable improvement in performance were highlighted in para 64 of the order and it was clearly mentioned therein that the Commission would periodically review the progress made by the DISCOMs in complying with the stipulations as indicated above in para 64 of the said order. It was also clearly mentioned in the concluding para 65 of the order dated 12.05.2011 that in case the DISCOMs fail to carry out the instructions spelt out in para 64 of the order with regard to improvement of their performance the Commission would be at liberty to initiate action either under Section 19 or 24 of the Act. This order of the Commission passed

on 12.05.2011 has not been challenged by the DISCOMs or any other party and has thus attained finality.

- iii) In pursuance of this order and also in due discharge of their statutory and regulatory functions, the Commission have been regularly conducting enquiries and performance reviews from time to time to ascertain if their earlier directions in Case No. 35/2005 have been complied with by the DISCOMs or not. Through these reviews and enquiries thereon, the Commission, being satisfied that the DISCOMs have miserably failed to improve their performance and financial health as per our earlier direction, have issued the present Show Cause Notice dated 13.05.2013 for revocation of licence under Section 19 of the Electricity Act in public interest. Thus the present proceeding has a legal and historical background. Though technically a fresh proceeding, it is actually an attempt to complete and carry to its logical conclusion an exercise mandated by the Commission's own order dated 12.05.2011. It is repeated here for the sake of emphasis that this order has attained finality and the power of the Commission to initiate and conclude proceedings under Section 19 or Section 24 of the Act has been duly vindicated by the order of the Hon'ble Apex Court in CA Nos. 946/2007 and 2309/2007 dated 05.01.2009.

8. The present proceeding is being disposed of keeping in mind this stated background. Replies of the DISCOMs, replies of Reliance Infra, Government of Odisha and GRIDCO submitted during the course of hearing and also the oral submissions made during the hearing have been duly taken into account while deciding the issues. As stated earlier, the Commission have made various enquiries / reviews to find out if the directions of the Commission in para 64 of their order dtd.12.05.2011 have been complied or not and the results of such enquiry/reviews have been communicated to the licensees during the course of hearing.
9. i) Before dealing with various issues, it is necessary to decide on the preliminary objections raised by the DISCOMs and objections which were also raised in subsequent hearings.

The licensees contended that as per Section 19(1) of the Act, the Commission have to make an enquiry before revoking the licences and in this case no such enquiry, which is a condition precedent to revocation of licence, has been made. According to the licensees the issue of show cause notice without enquiry is legally not tenable and therefore the present Suo motu proceeding in Case No.55/2013 is not maintainable. The petitioner also contended that in this case investigation under Section 128 of the Act has not been made and Regulation 64 and Regulation

47(3) of OERC (Conduct of Business) Regulations, 2004 have not been followed.

ii) The word enquiry has been used in Section 19(1) of the Act in a general manner and no procedure or method of such enquiry has been prescribed either in the Act or in the Rules. “Enquiry” has to be understood in its ordinary sense as it appears from the dictionary meaning. The dictionary meaning “to enquire” as appearing in Oxford Dictionary is as follows:

“To ask, to explore, to search, to seek information etc.”

The Chamber dictionary also defines “Enquiry” as follows:

“An act or the process of asking for information.”

“Enquiry”, therefore, means a fact-finding exercise to be conducted by the Commission and confronting the licensees with the findings of such an exercise and seek replies before taking a decision. This is prescribed so as to preclude the possibility of taking pre-meditated and ex-parte decision and also to ensure that the principles of natural justice are not violated. The ‘enquiry’ contemplated in Section 19(1) can be enquiry(ies) antecedent to action under Section 19(1) of the Act and not necessarily a fresh enquiry initiated for the purpose of taking action under Section 19(1) of the Act, provided that materials obtained from such

antecedent enquiry(ies) are confronted to delinquent licensees in the proceeding under Section 19(3) of the Act. This requirement of the statute has been scrupulously followed by the Commission in the present proceeding.

The Commission, in discharge of its regular statutory functions and also as mandated by its own order dated 12.05.2011 in Case No.35/2005, have conducted a series of enquiries, reviews and inspections results of which have been duly communicated to the licensees from time to time. This has been done while scrutinising the Annual Revenue Requirement (ARR) of the licensees and also while conducting performance reviews of the licensees twice a year and covers all the key parameters of the licensees' performance such as completion of energy audit, improvement of billing and collection efficiency, payment of arrear Bulk Supply Price (BSP), improvement of Standard of Performance (SoP), reduction of Aggregate Technical and Commercial (AT&C) loss, redressal of consumers grievances etc. Instances of such enquiries conducted by the Commission and communicated to the licensees are numerous and a few examples of such exercises are given below:

- a) Proceeding of Performance Review for FY 2010-11 communicated on 11.07.2011, 14.7.2011 and 15.07.2011 to NESCO, WESCO and SOUTHCO respectively;
- b) Proceeding of Performance Review for 2011-12 (April 2011 to September 2011) communicated on 14.2.2012 to NESCO, WESCO and SOUTHCO;
- c) Proceeding of Performance Review for complete financial year 2011-12 communicated on 18.06.2012, 29.6.2012 and 04.07.2012 to NESCO, WESCO and SOUTHCO respectively;
- d) Proceeding of Performance Review for FY 2012-13 communicated on 03.07.2013, 27.6.2013 and 02.07.2013 to NESCO, WESCO and SOUTHCO respectively;
- e) Proceeding of Performance Review for the period (April 2013 to September 2013) communicated on 06.01.2014, 06.01.2014 and 02.01.2014 to NESCO, WESCO and SOUTHCO respectively;
- f) Proceeding of Performance Review for FY 2013-14 communicated on 22.08.2014 to NESCO, WESCO and SOUTHCO;

- g) Direction of the Commission vide Letter No. 3817 dt.28.04.2010 to DISCOMs to make pilot studies on Energy Audit;
- h) Direction of the Commission vide Letter No. 1197 dt.11.11.2013 to the Reliance Managed DISCOMs to focus on Energy Audit of 11 KV feeders;
- i) Letter Nos. 1417, 1418 & 1419 dt.09.12.2013 of the Commission directing the DISCOMs to make metering and other allied arrangements necessary for energy audit for all consumers fed from at least one 33/11 KV sub-station of each circle;
- j) Letter No. 340 dated 22.02.2014 to furnish the Energy Audit report by end of February, 2014; and
- k) Letter No. 637 dtd. 05.05.2014 to furnish the action taken report / subsequent Energy Audit report.

All these materials were confronted to the licensees during the proceeding in response to the show cause notice under Section 19(3) of the Act.

- iii) It is important to mention here that enquiry as mentioned in Section 19(1) of that Act is a condition precedent for revocation of licence but it is not a condition precedent for issue of show cause notice

under Section 19(3) of the Act. In that sense the show cause notice itself is the intended final enquiry to be made by the Commission to collect and examine relevant facts and seek to be satisfied about performance of the licensees in different key areas and also various necessary legal issues including views of the respondents. The 'enquiry' contemplated under Section 19(1) of the Act is not necessarily an independent enquiry initiated afresh *de hors* Section 19(3) of the Act for the purpose of revocation of the license: materials collected during various antecedent enquiries may be contextualized in the proceeding under Section 19(3) of the Act, provided that they are confronted to the delinquent licensees who are given an opportunity to explain.

iv) In view of the above position of facts and law, we hold that the Commission have conducted due enquiry as mandated in Section 19(1) of the Act. Proceedings for revocation of licences have been initiated after meeting all statutory requirements. The contention of the licensees in this regard is misconceived and is rejected as devoid of any merit.

10. i) On the assertion of the Licensees that investigation, inquiry etc. as per Regulation 64 of OERC Conduct of Business Regulation, 2004 read with Section 19 (1) of the Act has not been conducted, it may be stated

that Regulation 64 gives wide range of powers to the Commission to collect information. Under these Regulations several methodologies of enquiry, where investigation under Section 128 is one, have been prescribed. The intention of an inquiry under this Regulation is to obtain information hitherto unknown to the inquiring authority i.e. the Commission. The Commission have issued several directions in Case No. 35/2005 to the licensees to improve their performance in terms of capital investment, loss reduction, energy audit and improvement in collection efficiency etc. During the periodic performance reviews which were conducted after the order dated 12.05.2011 the Commission have made detailed enquiries and sought a number of information involving the issues which are technical, commercial and financial in nature. The Commission in their letter dated 03.12.2011, 08.05.2012, 11.12.2012, 23.05.2013 04.12.2013 and 04.06.2014 have sought numbers of information from the DISCOMs which inter alia includes the following:

- Overall performance, system performance, division-wise performance, cash flow, progress of Capex programme and electrical accidents.
- Amount released by GRIDCO towards escrow relaxation.
- Metering and energy audit, quality of supply, loss reduction and turnaround strategy.

- Implementation of safety measures.
- Collection of arrears.
- Plan of action to implement various direction given in the Retail Supply Tariff (RST) order for FY 2011-12.

The DISCOMs have furnished the data accordingly. The results of such information have been analysed and communicated to them along with further direction. This is nothing but an enquiry as understood in common parlance as opposed to the contention of the DISCOMs and the results of such enquiries have been confronted to the licensees during the proceeding following upon the show cause notice under Section 19(3) of the Act, insofar as they are relevant to the grounds stated in the show cause notice for proposed revocation.

- ii) The licensees have also submitted the information as required by the Commission including their audited accounts. The Commission have fully relied on those information submitted by the Licensees themselves in correspondences and affidavits. No other party including Licensees have disowned that information at any point of time. Admitted facts need not be proved again through another enquiry necessarily. The Officers of the Commission have analyzed those information. This constitutes an inquiry under Regulation 64

of OERC Conduct of Business Regulation. The Act does not specify the procedure of an inquiry giving liberty to the Commission to hold such an inquiry in appropriate manner. The Commission have utilised those information submitted by the licensees in response to the notice issued under Section 19 (3) of the Act and also have allowed the Licensees reasonable opportunity for filing objections and making submission on the report or information including open hearing. This is also in consonance with Regulation 65 (2) of the OERC Conduct of Business Regulation prescribed in Chapter X under the caption Investigation, Inquiry, Collection of Information etc. Therefore, the contention of the licensees that the Commission have not adhered to Regulation 64 does not hold good.

- iii) Regulation 47 (3) of OERC Conduct of Business Regulation gives enough latitude to the Commission to hold an inquiry in such cases by specifying that an inquiry can be conducted if it is applicable. The Commission have adhered to its Regulation by making an inquiry in a suitable way as provided under regulation 64 of the Conduct of Business Regulation.
- iv) On own admission of the Licensees, the public interest in the present context refers to the interest of larger section of people of

the State in terms of uninterrupted supply of quality power at affordable price protecting the interest of the consumers. But the same public interest has been grossly undermined in the licensed area which had resulted in Case No. 35/2005. During each year of tariff proceedings, the public in general resist the tariff hike proposal of the licensees by citing numerous violation of standard of performance and licence conditions. Even the Consumer Counsel engaged by the Commission under Section 94 (3) of the Act during the tariff proceeding, after making field visits, have submitted reports to the Commission regarding the dismal performance of the Licensees in terms of consumer service and supply of quality power. Now, examples of utter disregard to the public interest have also been brought before us through mounting cases in GRF and Ombudsman and even also violation of orders of such Forum. During periodic performance review the Licensees have submitted before the Commission about high level of transformer failure, frequent low voltage in large numbers of pockets and long duration of power interruption. Therefore, public interest has been completely jeopardised and it rightfully demands proceeding under Section 19 of the Act because of the failure of licensees to protect consumer interest.

- v) Section 19(2) of the Act on which the DISCOMs have relied upon has least relevance in the present case because that refers to a situation where licence is revoked with the consent of the licensee or on an application seeking revocation. The present proceeding is a *suo motu* proceeding of the Commission under Regulation 9 of the OERC (Conduct of Business) Regulations, 2004.
- vi) The Commission is fully empowered to initiate proceeding *Suo Motu* and designate an officer of the Commission to present the matter in the capacity of Petitioner under Regulation 9 (1) and (4) of OERC Conduct of Business Regulation, 2004. The Commission was desirous of expeditiously disposing of the matter through a proceeding and coming to a conclusion as enjoined in Section 19(1) of the Act. Therefore, an officer of the Commission was designated as Petitioner under the Regulation 9(4) of the OERC (Conduct of Business) Regulations 2004, and the said officer filed a petition on 01.08.2013 which was registered as Case No. 55/2013. Expeditious action as per Regulation can't be termed as violative of any provision of the Act or Regulation. Public interest required expeditious action.
- vii) The DISCOMs have contended that since the proceeding in Case No. 35/2005 dated 12.05.2011 was for suspension of Licence under

Section 24 of the Electricity Act, the Commission should first initiate proceeding under Section 24 of the Electricity Act. Sections 19 and 24 of the Act are independent provisions and the latter is not the stepping stone for invoking the former. Hence a separate proceeding under Section 19 can be initiated in isolation. In para 65 of the order in Case No. 35/2005, it was clearly mentioned that on being satisfied on the fact of the case the Commission would be at liberty to initiate proceeding under Sections 19 or 24 of the Act. This order has not been challenged and has attained finality. Therefore, the Commission is within its mandate in initiating the present proceeding under Section 19 of the Act and there appears no procedural error on the face of respondent's claim.

The performance of the DISCOMs in the key areas as mentioned in our Show Cause Notice dated 13.05.2013 are now analyzed in detail to determine Licensees' compliance with the directions of the Commission under the Act and the Regulations.

11. High Distribution Loss

One of the major objectives of the privatisation of distribution business is to run it in a viable, efficient and commercially sustainable manner. It was expected and rightly so that a private investor should be able to infuse capital to make necessary investment in network so as to reduce

transmission and distribution loss. It was also expected that the efforts should be made to ensure that every end user of electricity pays for it. The present DISCOMs took over the distribution business from 01.04.1999. Even after 15 years of operation, the licensees have consistently failed to run the enterprise in a commercially sustainable manner.

The main reason is the total inability to realise costs from end users and reduce distribution loss by making necessary investment and initiating administrative reforms.

Table - 1
Overall Distribution Loss Proposed and Actual Level Achieved By Licensees (In %)

| | NESCO | | | WESCO | | | SOUTHCO | | |
|----------------|--------------------------|----------------------------|---------------------------------|--------------------------|----------------------------|---------------------------------|--------------------------|----------------------------|---------------------------------|
| | Proposed by the Licensee | Approved by the Commission | Actual attained by the Licensee | Proposed by the Licensee | Approved by the Commission | Actual attained by the Licensee | Proposed by the Licensee | Approved by the Commission | Actual attained by the Licensee |
| 2005-06 | 36.63% | 35.00% | 37.08% | 32.65% | 31.00% | 37.80% | 37.30% | 36.00% | 41.07% |
| 2006-07 | 33.58% | 31.51% | 33.22% | 33.00% | 33.75% | 36.36% | 35.88% | 33.00% | 43.39% |
| 2007-08 | 30.00% | 26.00% | 31.17% | 31.00% | 25.00% | 36.13% | 40.16% | 30.40% | 45.49% |
| 2008-09 | 27.58% | 25.50% | 34.57% | 31.51% | 25.00% | 33.55% | 39.31% | 30.42% | 47.78% |
| 2009-10 | 29.20% | 23.00% | 32.52% | 33.66% | 22.50% | 35.09% | 39.48% | 27.92% | 48.03% |
| 2010-11 | 28.30% | 18.46% | 32.75% | 28.45% | 19.93% | 38.89% | 42.76% | 27.82% | 48.22% |
| 2011-12 | 27.66% | 18.40% | 34.28% | 31.29% | 19.70% | 38.89% | 42.67% | 26.50% | 46.42% |
| 2012-13 | 29.00% | 18.35% | 34.93% | 34.51% | 19.60% | 38.27% | 43.72% | 25.50% | 43.68% |
| 2013-14 | 32.53% | 18.35% | 33.84% | 35.01% | 19.60% | 36.68% | 40.03% | 25.50% | 40.99% |

This table clearly indicates that instead of reducing loss gradually over a period of nine years the loss has remained more or less constant and in some years it has increased and thus there has been no improvement.

The plea taken by the DISCOMs that the Commission in their Tariff Orders have fixed notional loss in an unrealistic and arbitrary manner is not correct. The table above will prove beyond doubt that at the outset of

the DISCOM's business the Commission more or less accepted the loss projection made by the Licensees and very gradually and progressively have reduced this figure while prescribing a target. Unfortunately this target set by the Commission has neither ever been achieved nor any effort has been made to achieve the same and this explains the gradually widening and yawning gap between the loss approved by the Commission and the loss proposed by the Licensees. In case of NESCO the reduction of loss is mainly on account of substantial addition of Extra High Tension (EHT) consumers where distribution loss is nil. The real test for the DISCOMs is to reduce the distribution loss in the Low Tension (LT) segment where it has failed miserably. The table above indicates distribution loss for entire area of DISCOM and once Extra High Tension (EHT) consumers are taken out, the loss figure will substantially rise because of poor performance at LT sector. The performance at LT sector has been discussed and analysed in subsequent paragraph.

The figures given in the table above are revealing because the loss projection made by the Licensees in different years has never been achieved. Had the Licensees achieved their own target of loss reduction, that would have generated substantial surplus from year to year which would have made their operation viable. One percent loss reduction at

present level would have resulted in around additional revenue of Rs.26 Cr. for NESCO, Rs.36 cr. for WESCO and Rs.13 Cr. for SOUTHCO.

Low Tension (LT) distribution is the place where managerial performance is reflected which is shown in the tables below:

Table -2
Division-wise LT Performance of NESCO

| Name of Division | FY 2013-14 | | | |
|-------------------|-------------------|-------------|--------------------|----------------------------|
| | Distribution Loss | AT & C Loss | Billing Efficiency | Realisation Per Unit (Rs.) |
| BSED, Bhadrak | 54% | 66% | 46% | 1.28 |
| AED, Anandpur | 51% | 66% | 49% | 1.33 |
| CED, Balasore | 57% | 65% | 43% | 1.35 |
| BTED, Basta | 59% | 58% | 41% | 1.38 |
| JED, Jaleswar | 57% | 57% | 43% | 1.42 |
| RED, Rairangpur | 51% | 61% | 49% | 1.42 |
| UED, Udla | 47% | 55% | 53% | 1.45 |
| JTED, Jajpur Town | 56% | 61% | 44% | 1.47 |
| KUED, Kuakhia | 56% | 63% | 44% | 1.49 |
| BNED, Bhadrak | 51% | 59% | 49% | 1.69 |
| JRED, Jajpur Road | 59% | 59% | 41% | 1.74 |
| BPED, Baripada | 42% | 49% | 58% | 1.98 |
| SED, Soro | 47% | 46% | 53% | 2.10 |
| KED, Keonjhar | 43% | 42% | 57% | 2.43 |
| JOED, Joda | 46% | 46% | 54% | 2.45 |
| BED, Balasore | 38% | 36% | 62% | 3.02 |
| NESCO | 51% | 56% | 49% | 1.74 |

Table – 3
Division-wise LT Performance of WESCO

| DIVISION | FY 2013-14 | | | |
|---------------------|-------------------|--------------------|--------------|----------------------------|
| | Distribution Loss | Billing Efficiency | A T & C Loss | Realisation Per Unit (Rs.) |
| BWED, Bargarh(W) | 68% | 32% | 85% | 0.61 |
| SED, Sonapur | 58% | 42% | 79% | 0.83 |
| BED, Bargarh | 65% | 35% | 75% | 0.99 |
| BED, Bolangir | 66% | 34% | 76% | 1.00 |
| TED, Titlagarh | 59% | 41% | 76% | 1.03 |
| NED, Nuapada | 64% | 36% | 74% | 1.13 |
| SED, Sundergarh | 64% | 36% | 71% | 1.21 |
| DED, Deogarh | 56% | 44% | 71% | 1.24 |
| SEED, Sambalpur (E) | 63% | 37% | 71% | 1.25 |
| BED, Brajrajnagar | 57% | 43% | 67% | 1.43 |

| DIVISION | FY 2013-14 | | | |
|----------------------|-------------------|--------------------|--------------|----------------------------|
| | Distribution Loss | Billing Efficiency | A T & C Loss | Realisation Per Unit (Rs.) |
| KEED, Kalahandi (E) | 55% | 45% | 69% | 1.44 |
| SED, Sambalpur | 54% | 46% | 68% | 1.45 |
| KWED, Kalahandi (W) | 58% | 42% | 68% | 1.45 |
| JED, Jharsuguda | 50% | 50% | 62% | 1.67 |
| RSED, Rourkela-Sadar | 52% | 48% | 58% | 1.97 |
| RED, Rajgangpur | 52% | 48% | 54% | 2.20 |
| RED, Rourkela | 51% | 49% | 52% | 2.21 |
| WESCO | 59% | 41% | 70% | 1.30 |

Table - 4
Division-wise LT Performance of SOUTHCO

| DIVISION | FY 2013-14 | | | |
|----------------------|-------------------|--------------------|-------------|---------------------------|
| | Distribution Loss | Billing Efficiency | At & C Loss | Realisation Per Unit (Rs) |
| MED, Malkangiri | 65% | 35% | 77% | 0.91 |
| AED II, Aska | 68% | 32% | 75% | 1.01 |
| BOED, Boudh | 46% | 54% | 66% | 1.19 |
| PSED, Purusottampur | 54% | 46% | 66% | 1.30 |
| NED, Nowrangpur | 45% | 55% | 65% | 1.33 |
| AED I, Aska | 61% | 39% | 65% | 1.37 |
| KED, Koraput | 62% | 38% | 67% | 1.39 |
| GNEED, Chatrapur | 50% | 50% | 63% | 1.46 |
| GSED, Digapahandi | 50% | 50% | 61% | 1.49 |
| BED, Bhanjanagar | 56% | 44% | 61% | 1.55 |
| PED, Phulbani | 41% | 59% | 50% | 1.77 |
| PKED, Paralakhemundi | 40% | 60% | 46% | 2.09 |
| JED, Jeypore | 45% | 55% | 51% | 2.09 |
| GED, Gunupur | 25% | 75% | 34% | 2.51 |
| RED, Rayagada | 25% | 75% | 36% | 2.58 |
| BED III, Berhampur | 31% | 69% | 35% | 2.74 |
| BED II, Berhampur | 24% | 76% | 25% | 3.40 |
| BED I, Berhampur | 24% | 76% | 22% | 3.58 |
| SOUTHCO | 46% | 54% | 54% | 1.85 |

(Source: Data submitted by the Licensees for Review of Performance for FY 2013-14.)

The figures indicate that the LT realisation per unit is far below the average cost of supply for the State as a whole for that year which is at 466.68 paise per unit. This inefficiency to recover cost in LT segment has

adversely affected cash flow position of DISCOMs resulting in poor service to the consumers.

12. Erosion of Net Worth

DISCOMs in their reply have contended that the current financial position is an outcome of factors beyond their control and is a reflection of the impasse that plagues the distribution sector. This argument clearly indicates the intention of the Licensees to shift the blame of its non performance on others rather than owning the responsibility of the present condition. Their non performance has gradually eroded the net-worth, weakening the financial strength and has led to accumulation of huge losses progressively as shown in their own audited accounts. DISCOMs are required to procure power from GRIDCO and sale the same to the consumers at a reasonable price determined by the Commission which is the main objectives for which licenses were granted. Without sound financial strength these functions cannot be carried out to the satisfaction of the consumers and other stakeholders; one of the necessary requirements of their licence conditions. The Commission have analyzed the present financial status of three licensees from their audited accounts. This shows an eroded net-worth and staggering accumulated loss position as shown in the Tables below:

Table -5
Net worth and Accumulated loss position as on 31.03.2013
(NESCO)

(Rs. In Crs.)

| Financial Year ending March 31st | Net worth | Accumulated Loss |
|---|----------------------|-----------------------------|
| 2005-06 | -534.67 | -658.08 |
| 2006-07 | -520.84 | -646.03 |
| 2007-08 | -495.91 | -623.85 |
| 2008-09 | -498.89 | -626.07 |
| 2009-10 | -528.87 | -656.57 |
| 2010-11 | -602.63 | -730.98 |
| 2011-12 | -696.67 | -826.40 |
| 2012-13 | -775.21 | -906.31 |

Table – 6
Net worth and Accumulated loss position as on 31.03.2013
WESCO

(Rs. In Crs.)

| Financial Year ending March 31st | Net worth | Accumulated Loss |
|---|----------------------|-----------------------------|
| 2005-06 | -331.73 | -449.86 |
| 2006-07 | -298.03 | -418.04 |
| 2007-08 | -351.28 | -467.73 |
| 2008-09 | -340.25 | -457.14 |
| 2009-10 | -369.28 | -486.73 |
| 2010-11 | -408.54 | -526.68 |
| 2011-12 | -462.45 | -581.45 |
| 2012-13 | - 595.63 | -715.62 |

Table – 7
Net worth and Accumulated loss position as on 31.03.2013
SOUTHCO

(Rs. In Crs.)

| Financial Year ending March 31st | Net worth | Accumulated Loss |
|---|----------------------|-----------------------------|
| 2005-06 | -449.14 | -538.28 |
| 2006-07 | -526.87 | -617.43 |
| 2007-08 | -552.27 | -643.23 |
| 2008-09 | -588.90 | -680.88 |
| 2009-10 | -629.48 | -722.33 |
| 2010-11 | -649.26 | -743.03 |

| Financial Year ending March 31st | Net worth | Accumulated Loss |
|---|----------------------|-----------------------------|
| 2011-12 | -671.63 | -766.34 |
| 2012-13 | -706.59 | -802.30 |

It is to be mentioned here that the equity infused by the investors at the beginning of the privatisation were Rs.65.91 cr., Rs.48.65 cr. and Rs.37.66 cr. for NESCO, WESCO and SOUTHCO respectively. The net worth of the Companies over the last eight years have continuously eroded and have reached an unacceptable position for which their business acumen and credibility has become a matter of serious concern. This huge negative net worth is the main reason for which the DISCOMs are unable to access funds from the market either for their capital works or for their day-to-day operational requirement. This makes the system universally unworthy of credit. The financial positions of licensees are now such that they are unable to fully and efficiently discharge the duties and obligations imposed on them by their licences as envisaged under Section 19 (1) (d) of the Act.

13. Financial un-viability of the DISCOMs

The financial positions of licensees are such that they have been depending on GRIDCO months after months through escrow relaxation for their day-to-day expenses such as payment of salary to their employees. The DISCOMs are almost running by doles granted by GRIDCO through escrow relaxation only. In order to facilitate DISCOMs

to have smooth ESCROW mechanism, the Commission have prioritised the relaxation norms for GRIDCO to release funds from ESCROW. However, the moot point is that DISCOMs should be able to put enough funds through their improved collection efficiency in order to have leeway for GRIDCO to relax release of funds from ESCROW. However, sadly, this has not been done by the Licensees and therefore several conflicts are arising between licensees and GRIDCO when Licensees seek relaxation of escrow inspite of poor collection. The state of finances of DISCOMs is, therefore, on artificial support system. The atmosphere of irresponsibility like this is thus perpetuated adversely affecting the interest of the consumers and attracts the mischief under Section 19 (1) (d) of the Act.

14. Default to GRIDCO (Supplier of power)

Licensees have contended that DISCOMs have not been able to improve performance efficiency due to long standing pending issues such as redetermination of loss level, release of hypothecated assets by GRIDCO to fund capital works and administrative support in the form of law and order to curb theft. This is an unacceptable and unconvincing contention as all along they have been surviving on the consumer security deposit, capital contribution from the consumers and loan borrowed by GRIDCO as a part of reform process from different agencies such as PFC, REC,

World Bank etc. and relaxation of ESCROW on payment of their BSP dues. This has also resulted in not only creating an adverse impact on the finances of DISCOMs but also has affected the viability of GRIDCO which purchases power for DISCOMs from different Generators. GRIDCO has also borrowed heavily from different sources such as State Government and other financial institutions to pay the Generators for power purchased from them to meet the demand of the DISCOMs thereby escalating the per unit cost of energy. As a result the total power value chain has entered into a vicious circle. This alarming scenario can be seen from the following table:

Table - 8
Default in payment made by DISCOMs to GRIDCO as on 31.03.2014
(Rs. in Crs.)

| | NESCO | WESCO | SOUTHCO |
|--|---------------|----------------|----------------|
| Arrear on Bills served till 31.03.2013 | 667.97 | 762.40 | 156.06 |
| Outstanding BSP for 2013-14 | 98.09 | 174.76 | 128.28 |
| Total BSP outstanding arrear as on 31.03.2014 | 766.06 | 937.16 | 284.34 |
| Securitisation of past power purchase dues as per order of the Commission on 01.12.2008. | 216.64 | 206.38 | 202.89 |
| Total | 982.70 | 1143.54 | 487.23 |

Due to this above default of the DISCOMs, there is always a lingering risk of power regulation which would affect the consumer service severely. This default also attracts the action under Section 19 (1) (a) & (d) of the Act.

15. Non-payment of Securitisation amount payable to GRIDCO

The argument of DISCOMs that they have failed to adhere to securitisation order of the Commission dated 01.12.2008 due to shortfall of revenue arising out of the notional sales approved by the Commission is not acceptable. In fact the securitisation order dated 01.12.2008 is a clarificatory order of the Commission in relation to Case No. 115/2004 dated 28.02.2005 which deals with Business Plan of the DISCOMs for the first control period and is not an isolated proceeding. During the hearing of original Business Plan order DISCOMs themselves proposed for reconciliation and securitisation of arrear BSP dues and loans of GRIDCO. Accordingly, after the reconciliation by both GRIDCO and DISCOMs the Commission securitised the dues of the licensees in their order dated 01.12.2008 asking them to pay the arrear BSP/ loan in 120 equal instalments. Both the orders of the Commission such as dated 28.02.2005 and 01.12.2008 have attained their finality since no appeal is pending before any higher forum on the issue.

The effect of so called notional sales on their revenue resulting in defaulting securitisation dues is an afterthought which DISCOMs cannot resort to now since the same has not been a part of securitisation proceeding. The DISCOMs have reconciled their dues with GRIDCO at that point of time which is binding on them. They cannot renege from their obligation through different alibis such as so called notional sales

and DPS on arrear dues not being considered in subsequent truing up order etc. In addition, the Licensees have entered into an agreement with GRIDCO on 28.10.1999 promising that they would clear all the loans which is a part of the securitised amount by FY 2015-16.

It is not only violation of contractual obligation but also is a clear violation of Commission's order and attracts mischief under Section 19 (1) (a) of the Act.

16. Energy Audit

The inefficiency of DISCOMs and their total indifference to improve the system is evident in the field of energy audit. Energy audit is the first step towards ascertaining the actual distribution loss. Since it will help the DISCOM to segregate technical and commercial loss it can lead to fixation of responsibility among officials to raise and collect the bill for the amount of energy actually utilised by the consumer. In absence of energy audit there will be a tendency to exaggerate distribution loss thereby diluting the responsibility of the DISCOMs in controlling theft and commercial losses. Metering is the first step and major prerequisite towards energy audit programme as each energy unit is to be measured and accounted for. The hollowness of the assertion of the Licensees that they have credible loss figure can be gauged from the following table showing metering position.

Table -9
Metering Position as on 01.04.2014 (in Nos.)

| | NESCO | WESCO | SOUTHCO |
|--|--------------|--------------|----------------|
| No. of 33 KV feeders (excluding GRIDCO interface) | 70 | 113 | 165 |
| No. of 33 KV feeder metering | 70 | 96 | 42 |
| No. of 11 KV feeders | 486 | 545 | 452 |
| No. of 11 KV feeder metering | 81 | 274 | 20 |
| No. of 33 / 11 kv transformers | 304 | 309 | 262 |
| No. of 33/11 kv transformer metering position | 40 | 0 | 0 |
| No. of distribution transformers (11/0.4 & 33/ 0.4 kv) | 43763 | 29456 | 27,232 |
| No. of distribution transformer metering position | 175 | 12658 | 215 |

The above table reveals that in case of NESCO and SOUTHCO not even ten percent of 11KV feeders have been metered and the situation becomes precarious in 33/11 KV metering where no metering is done by WESCO and SOUTHCO inspite of directives from the Commission. The situation is equally bad in Distribution transformer metering where NESCO and SOUTHCO have less than one percent metering. In view of such metering position no energy audit is carried out by the Licensees in spite of repeated directions from the Commission. Without carrying out energy audit the licensees are showing a loss figure which is based on presumptive sales which has no scientific basis. The Commission finds it hard to pass on the impact of such presumptive distribution loss to the consumer through tariff hike. The Commission have been consistently giving directions to the licensees to carry out enterprise wise energy audit

year after year. Some of the recent directions asking the licensees to carry out energy audit are as follows:

1. OERC Lr. No. 1197 dtd. 11.11.2013
2. OERC Lr. No. 1417-1419 dtd. 09.12.2013
3. OERC Lr. No. 340, dtd. 22.02.2014
4. OERC Lr. No. 465, dtd. 22.03.2014
5. OERC Lr. No. 637-639 dtd. 05.05.2014

Another contention of the licensees that no allocation has been made for energy audit in the Annual Revenue Requirement (ARR) of the respective year by the Commission is baseless. Since energy audit is a part of their regular activity of Administrative & General (A&G) expenses, therefore, there is no need to allocate such expenses under separate heading. Had the DISCOMs made any expenditure in this regard the Commission would have definitely allowed it in the next truing up exercise in view of Multi Year Tariff (MYT) order dtd. 28.02.2011 which clearly states as follows:

“In addition to above Commission would also allow expenses in addition to the normal A&G expenses for special measures undertaken by the DISCOMs towards reduction of AT&C losses and improving collection efficiency, after prudent check.”

On analysis of the Administrative & General (A&G) expenses over the years it is found that Licensees have been incurring more expenses than

the approved amounts in the Annual Revenue Requirement (ARR) in that head. Commission for the period from 1999 to 2013 have approved a cumulative amount of Rs. 162.06 cr, Rs 207.89 cr and Rs.144.73 cr for NESCO, WESCO and SOUTHCO respectively for such expenses. Against that approval Licensees have expended Rs. 166.77cr, Rs.189.91cr and Rs. 163.36 cr respectively which has also been allowed in the truing up exercise. Therefore carrying out of energy audit would not have been hampered due to alleged lack of funds.

When a staggering amount of Rs.2456.40 Cr. of electricity dues up to FY 2012-13 has remained uncollected due to lackadaisical attitude of the licensees any allocation, even if granted, would have become fruitless and would have landed as arrear. This exercise would have been like adding water to a leaking bucket. The DISCOMs with their resources in hand could have collected this amount and would have utilised part of it for energy audit. The Licensees, in fact, have no intention of carrying out any energy audit programme in order to mask the actual, accounted and measured loss. The alibi of fund deficit is nothing but an attempt by the licensees to hide their own deficiencies.

The three Licensees such as NESCO, WESCO & SOUTHCO have claimed Rs. 37.74 cr., Rs.71 cr. and Rs.15.54 Cr. respectively for creating the metering infrastructure for the networks which is a pre requisite for

energy audit. This requirement of energy audit has increased year after year and has reached the present level due to non-implementation energy audit programme by the DISCOMs. Had the DISCOMs taken appropriate and timely steps in this regard since their privatisation, this requirement would have been much less. Therefore, raising this type of claim at this stage does not hold good and attracts mischief under Section 19 (1) (c) (i) of the Act.

17. Repair and Maintenance (R&M) Expenses

The plea taken by the Licensees that non-availability of fund in the escrow account as the reason for less Repair and Maintenance (R&M) expenses is very weak one. The entire revenue of Licensees are to be deposited in the escrow account under Escrow agreement from which GRIDCO shall recover its dues towards sale of power as first charge. Thereafter, it shall relax the escrow for the DISCOMs for their various requirements including Repair and Maintenance (R&M) expenditure as per the priority fixed by the Commission. When the deposit in escrow account is insufficient to meet the requirement of power sale dues of GRIDCO, there is certainly a deficit to meet other requirements. This is the fault of DISCOMs for not collecting their revenue dues from the consumers and depositing the same in the escrow account. The table below shows the unrecovered amount from the consumers towards tariff dues.

Table - 10
Arrears from Consumers

(Rs. in Crs.)

| | NESCO | WESCO | SOUTHCO | Total |
|--|---------------|----------------|----------------|----------------|
| Net arrears as on 31.03.2005 (As per Receivable Audit report) | 241.63 | 529.61 | 171.40 | 942.64 |
| Gross arrear from 2005-06 to 2012-13 as per Audited account of the DISCOMs | 654.39 | 637.14 | 222.23 | 1513.76 |
| TOTAL | 896.02 | 1166.75 | 393.63 | 2456.40 |

Now we can have a look at approved Repair and Maintenance (R&M) expenditure of the DISCOMs by the Commission and corresponding amount spent by them as per the audited accounts available with the Commission.

Table - 11
Repair and Maintenance Expenses (2005-06 to 2012-13)
(Rs. in Crs.)

| | Approved by the Commission | Actual amount spent | Shortfall in expenditure |
|--------------|-----------------------------------|----------------------------|---------------------------------|
| NESCO | 261.14 | 133.91 | 127.23 |
| WESCO | 233.68 | 119.64 | 114.04 |
| SOUTHCO | 176.95 | 66.83 | 110.12 |
| TOTAL | 671.77 | 320.38 | 351.39 |

From both the above table we come to the conclusion that had the DISCOMs put in serious efforts to collect at least 50% of the outstanding dues from consumers (as shown in audited accounts), the shortfall towards Repair and Maintenance (R&M) expenditure could have been bridged by putting more revenue in escrow account. But the licensees have not shown any reason in particular for not collecting arrear dues from the consumers. They have only given a general excuse of lower

tariff due to approval of normative loss level for the DISCOMs which has no relevance to the arrear collection. The argument of the Licensees is self defeating as the allegedly lower tariff as allowed to them is also not collected. This shows the lackadaisical attitude of the DISCOMs of neglecting the distribution network and making the consumers vulnerable to power failure and attracts mischief under Section 19 (1) (c) of the Act.

18. Billing Efficiency and Collection Efficiency

The present unacceptable state of affairs of the DISCOMs is entirely self-inflicted. This is evident from the following table:

Table - 12
Billing and Collection mismatch

| Name of DISCOMs | No. of consumers | No. of bill generated | No. of bill distributed | No. of money receipt issued | %age of receipt issued against bill distributed |
|--------------------------------------|-------------------------|------------------------------|--------------------------------|------------------------------------|--|
| NESCO (FY 2013-14) | 13088484 | 13088484 | 13088484 | 5365923 | 41.00 |
| WESCO (FY April, 2013-January, 2014) | 9667906 | 7067490 | 7067490 | 2683913 | 37.98 |
| SOUTHCO (FY 2013-14) | 14269026 | 13371866 | 13371865 | 5234212 | 39.14 |

The above table reveals that the DISCOMs are not billing all the consumers. Even whatever bills they are generating, are not collected since money receipts generated are far less than the numbers of bills distributed.

In case of NESCO less than half of the consumers are paying bills which is evident from the fact that out of 13088484 nos. of bill distributed only 5365923 nos. of money receipt have been generated which is 41%. In

case of WESCO even all the consumers are not billed (out of 9667906 nos. consumers only 7067490 nos. are billed) and money receipt issued are way below the bill distribution figure (money receipt issued is only 37.98% of the bill distributed). The performance of SOUTHCO in this regard is no better. Out of 13371865 nos. of bill distributed only 5234212 nos. of money receipt are issued which is 39.14% of the nos. of bill distributed. It is estimated that if 60% of the consumers pay their bills then NESCO would generate extra revenue of Rs.250 crs., WESCO Rs.200 crs. and SOUTHCO Rs.280 crs. This figure will go up to nearly Rs.450 crs. more for NESCO, Rs.380 crs. for WESCO and nearly Rs.200 crs. for SOUTHCO if 80% of consumers pay. This would have left substantial surplus with the DISCOMs, enabling them to wipe-out their arrears and also to make investment in network improvement.

In summary we find that DISCOMs are very casual about their own revenue collection. Without making all out effort to collect their legitimate dues, the DISCOMs are attributing their financial failure to other extraneous factors.

19. Impact of Rural Electrification

Licensees have contended that with the addition of Below Poverty Line (BPL) consumers significantly over the years the DISCOMs find it challenging to maintain revenue sustainability as these consumers are

highly subsidised. This contention is misleading as the different schemes of rural electrification such as Rajiv Gandhi Grameen Vidyut Karan Yojana (RGGVY) and Biju Gram Jyoti Yojana (BGJY) etc. are fully funded Government schemes. DISCOMs do not pay anything to develop the rural electrification infrastructure and once the infrastructure is put to service the Commission allow special Repair and Maintenance (R&M) expenses in the Annual Revenue Requirement (ARR) of the DISCOMs for the said assets. Though there are several subsidised categories such as Kutir Jyoti (BPL), allied agricultural etc. they are cross-subsidised in tariff by other high end categories in absence of any tariff subsidy from the State Government to BPL categories. The DISCOMs do not bear any tariff/ subsidy burden in this regard. Moreover except SOUTHCO all other licensees have High Voltage Distribution System (HVDS) rural electrification system under Rajiv Gandhi Grameen Vidyut Karan Yojana (RGGVY) programme which has reduced the level of line loss in comparison to normal Low Tension (LT) distribution. Therefore, the Licensees should not have any grouse against it. The real problem is the total reluctance on the part of the DISCOMs to bill such type of consumers. This is a total management failure. The contention of the Licensees that rural electrification programme of the Government has shattered their revenue sustainability appears to be a very weak argument to justify their mismanagement.

20. Adjustment of arrear dues of Government with NTPC Bond dues

The contention of DISCOMs that the arrear dues of Government should be adjusted against their payable relating to NTPC bond dues is nothing but an attempt to mislead the Commission. The Commission in their order in Case No. 107/2011 dated 29.03.2012 and dated 30.03.2012 in respect of settlement of NTPC Bond directed the manner in which NESCO, WESCO & SOUTHCO should make payment to GRIDCO for their bond dues and also provided modalities for further payment from May, 2012 onwards. But DISCOMs without paying the same are raising the unconnected matters such as adjustment of NTPC bond dues with arrears of Government payable to them which is a clear violation of the Commission's said order. Moreover, Principal Secretary to the Government in Finance Department vide his letter No. 36938 (4) dated 26.08.2010 had also directed for reconciliation and payment of outstanding dues of DISCOMs by Urban Local Bodies, Panchayati Raj institutions, Public Sector Undertakings and Co-operatives by 30th September, 2010. Therefore, the issue is non-existent.

21. Violation of contractual Agreement with the power supplier (Mismanagement of Escrow account)

The Commission on 06.5.2013 had awarded the work of independent Escrow Audit of four distribution divisions (Baripada Electrical Division

(BED), Baripada under NESCO, Rayagada Electrical Division (RED), Rayagada under SOUTHCO and Rourkela Sadar Electrical Division and Rourkela Electrical Division (RED), Rourkela under WESCO) of DISCOMs for FY 2012-13 (01.10.2012 to 31.3.2013) to two nos. of independent Chartered Accountant Firms. The important observations of the auditors are mentioned below:

- (a) There is no system in place at division level to ensure that all the regular consumers have been billed for the month;
- (b) There is no system in place to ensure that the amount collected from consumers is properly booked under the heads on which they have been billed;
- (c) In some of the cases money deposited in the division office by the bill collectors is less than the money collected and is being deposited subsequently after the verification by the division office on a different date;
- (d) The exact amount of money collected on account of ESCROW and NON-ESCROW account is not deposited on day to day basis in the respective Bank account. The amount is being deposited on an approximate basis and adjusted in subsequent month after preparation of the assessment report;

- (e) The money collected is not deposited within the schedule time of 48 hours;
- (f) Money due to be collected during the month are extended till the 7th of the next month. The money so collected is shown as previous month receipt by putting the month end date on the money receipt; and
- (g) The time lag between the collection and deposit by the bill collector in certain cases varies from 8 to 10 days which amounts to 'teeming and lading' practice.

From the above observation of Auditors it is established that the Licensees are neither in a position to pay full Bulk Supply Price (BSP) through escrow account nor are able to manage the account properly through regular billing and collection of money for energy sold and depositing the same in the escrow account in violation of the escrow agreement for onward transmission to Generators through GRIDCO. This shows the casual approach of the Licensees to pay their power dues properly attracting power Regulation and consequential suffering of the consumers. Further, it shows failure of the Management to effectively manage the chain of activities of its own business and attracts mischief under Section 19 (1) (c) (i) of the Act.

22. Liability towards Terminal Benefit

Payment towards pension corpus is a statutory obligation of the licensees towards the employees. But there is a huge deficit in the pension corpus of the DISCOMs. This is shown in the table below:

Table - 13
Approved Corpus requirement vrs. Actual availability
(Rs. in Crs.)

| Name of the Licensee | NESCO | WESCO | SOUTHCO |
|--|---------------|---------------|----------------|
| Approved Corpus requirement as on 31.03.2013 | 375.8 | 408.41 | 379.21 |
| Actual Corpus availability as on 31.03.2013 | 107.47 | 122.62 | 42.57 |
| Deficit in Terminal Benefit Corpus Fund | 268.33 | 285.79 | 336.64 |

The contention of the DISCOMs that GRIDCO had understated terminal liability while they took over the distribution business is not correct. While fixing the initial fund requirement the Commission have accepted the audited accounts of GRIDCO as on 31.03.1999 as mandated under transfer notification No. 16019 dated 25.11.1998 of Government of Odisha.

The argument of the licensees that while computing the corpus requirement as on 31.03.2012 the Commission have not considered the payout from the corpus is not tenable. This is because payout is to be made out of the investment in the corpus. However, the Commission while carrying out truing up exercise have allowed the requirement as per audited accounts submitted to the Commission. Licensees cannot relate

lower recovery from tariff as a cause for less funding of the pension corpus. It is their inefficiency which has resulted in lower recovery and at the same time risking the interest of the employees. It is revealed from the audited accounts that licensees are spending more on employee cost than that have been approved in the Annual Revenue Requirement (ARR) of respective year. The total employee cost inclusive of terminal liability as per the audited accounts and as approved by the Commission is given below for the period FY 1999-2000 to 2012-13.

Table - 14
Approval of Employee Cost vrs Actual Expenses
(From FY 1999-2000 to 2012-13)

| | (Rs. in Crs.) | | |
|-------------------------------|---------------|---------|---------|
| | NESCO | WESCO | SOUTHCO |
| Approved by the Commission | 1216.02 | 1380.56 | 1170.72 |
| Actual as per audited account | 1476.19 | 1707.18 | 1344.53 |
| Excess spent | 260.17 | 326.62 | 173.81 |

The table above indicates that had the licensees tried to fund the pension corpus properly they could have done it easily. This shows the callous attitude of the licensees towards pension corpus contribution which is a statutory obligation. It is one of the glaring examples of fiscal mismanagement and attracts the mischief under Section 19 (1) (a) of the Act.

23. Inability of DISCOMs to invest in capital works.

Supplying uninterrupted quality power to the consumers is a prime responsibility of DISCOMs as per Licence condition and also under the

Regulation of the Commission. Commission have been receiving a lot of reports on consumer grievances in this regard from various sources such as Consumer Counsel engaged for Tariff proceedings and periodic performance review of the DISCOMs etc. As per such reports low voltage and power interruption have become order of the day. The distribution loss has also become uncontrollable due to inefficiency of the Licensees. All these maladies can be remedied if capital investment in the network is carried out in a planned manner. However, as revealed from the audited accounts, the distribution companies have failed to garner any cash towards capital expenditure. On analysis of the audited accounts from FY1999-2000 to 2012-13 it is revealed that the amount of funding of the capital expenditure by the companies is negligible. The table given below explains the statement:

Table - 15
Year Wise Capital Expenditure after Reform and Source of Funding
(Rs in Crs.)

| | Capital Expenditure (1990-2000 to 2012-13) | Source of Funding | | | | | | Total |
|----------------|--|-----------------------|---|-----------------|----------|-------------|------------------------|-------------------|
| | | Consumer contribution | GRIDCO loan as per securitisation order of 01.12.2008 | World Bank loan | APDRP | CAPEX (Goo) | Own source & borrowing | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 (3 to 8) |
| NESCO | 703.41 | 380.01 | 94.64 | 91.27 | 6.36 | 17.17 | 113.96 | 703.41 |
| WESCO | 466.35 | 173.63 | 138.46 | 90.96 | 5.48 | 6.95 | 50.87 | 466.35 |
| SOUTHCO | 271.00 | 59.56 | 134.36 | 72.59 | 6.62 | 20.38 | 0 | 293.51 |

In order to sustain the system and due to abject apathy by the Licensees to maintain the system, the Government of Odisha started an ambitious CAPEX programme in DISCOMs to reduce Aggregate Technical and

Commercial (AT&C) loss and to improve quality of supply since 2010-11 in which the DISCOMs are required to provide counterpart funding on the Government grant. Under the said programme the Government of Odisha is to make total investment of Rs.1200 crores and licensees are to contribute the matching amount. The Government of Odisha has till now invested an amount of Rs.72.16 cr., Rs.56.13 Cr., Rs.52.08 cr. in three DISCOMs, namely, NESCO, WESCO and SOUTHCO respectively. But the DISCOMs have utterly failed to arrange counterpart funding from their own source or through borrowing due to their negative net-worth in the balance sheet. This has severely affected the Capex programme in the State and consumers have been left with a poor quality of supply. This attracts mischief under Section 19 (1) (c) of the Act.

Status of Central Services Office (CSO)

24. In Case No. 35/2005 dated 12.05.2011 the Commission at Para 45 observed that the Managing Director appointed for NESCO, WESCO and SOUTHCO should take steps to allow the respective companies to function independently rather than centralised management at the Central Service Office (CSO). We have also during the hearing raised this issue and directed the DISCOMs in our interim order dated 23.08.2013 to furnish the legal status of CSO office of NESCO, WESCO and SOUTHCO at Bhubaneswar and funding pattern of the same. The

DISCOMs have replied that OERC is fully aware of the role of the CSO since the Commission in their order dated 30.09.2005 suggested for strengthening of CSO for co-ordinating the activities of three DISCOMs. But it is improper on the part of CSO office to take important policy decisions which goes against the corporate identity of the individual licensees. Moreover, creation of CSO amounts to each licensee DISCOM associating itself with other licensee DISCOMs without prior consent in writing of the Commission and is therefore void by virtue of Section 21(1) read with Section 21(5) of the Orissa Electricity Reform (OER) Act.

Issue of Start up and Construction Power

25. It is really incomprehensible why the DISCOMs should continue in the distribution business while suffering huge losses year after year leading to irreparable erosion to their net-worth. It is legitimate in these circumstances to hold that the present sad plight in the distribution sector is not only because of gross inefficiency; it is also largely due to entrenchment of vested interest within DISCOMs. In this context one of the points raised in show cause notice and their reply thereto is quite revealing. In our Show Cause Notice dated 13.05.2013 the DISCOMs were asked in Para 17 to furnish the details of all the industries having CD above 110 KW and IPP / CGP above 5 MW established after 2003

onwards indicating the name of the industries, total amount of construction and start up power enjoyed by them and the revenue realisation on such account. The DISCOMs did not furnish any information but made a vague reply stating that they have been providing the power strictly in accordance with the provision under the Electricity Act, 2003. However, the Commission have come across a gross violation in case of an EHT industry with regard to supply of start up and construction power in the licence area of WESCO. The Commission in Case No. 70/2011 dated 07.05.2012 constituted an Enquiry Team to find out the nature of transaction of power between one of the licensee WESCO with one EHT industry M/s. Vendanta Aluminium Ltd. (VAL). During enquiry it was found that licensee WESCO had not taken any step to ascertain the quantum of construction power availed by the IPP of M/s. SEL (now Sesa Sterlite Ltd.) during its construction from Captive Power Plant (CPP) of M/s. VAL as claimed by the said industry and the Independent Power Producer (IPP). On the other hand the IPP authorities claim that such construction work had been carried out by the use of power from their own diesel generators. But it was not understood how the testing and commissioning of the huge machineries of the power plant which require large starting current was made possible through diesel generators without grid support. The whole arrangement appears to be

unacceptable. This is an example of overlooking revenue leakage of DISCOMs by themselves.

Consistent failure to send bills to EHT consumers for start-up and construction power only reinforce the view that the management of DISCOMs is not serious in running the distribution business in a commercially sustainable manner and attracts mischief under Section 19 (1) (b) of the Electricity Act.

26. Breach of Licence Condition (Non-compliance of the Commission's directions)

Under Part – II of Licence Conditions (General Conditions of Licence) in Para 6.1 it is provided that *“The Licensee shall duly comply with the provisions of the Act, Rules, Regulations including Policies, Notifications, Circulars and Orders made thereunder and the provisions of all applicable laws and orders, directions issued by the Commission from time to time.”*

Not only after the issuance of our order in Case No. 35/2005 dated 12.05.2011 but prior to said order the Commission had issued several directions to the licensees in the tariff order of the respective years and during the periodic performance reviews. Some of such directions are enumerated below:

- (I) (a) Distribution Transformers must have effective and qualitative switch gear and cables by the end of 2008-09 in Retail Supply Tariff Order for FY 2008-09 (Para 489);
- (b) 100 % Distribution transformers metering should be completed during 2008-09 in Retail Supply Tariff Order for FY 2008-09 (Para 489);
- (c) Energy audit to be carried out in all 33 KV feeders/ 11 KV feeders by the end of 2008-09 in Retail Supply Tariff Order for FY 2008-09 (Para 488 & 489);
- (d) Complete the energy audit of each distribution transformer by the end of 2011-12 in Retail Supply Tariff Order for FY 2011-12 (Para 634);
- (e) All the 33/11 KV sub-stations must have boundary walls by the end of 2008-09 in Retail Supply Tariff Order for FY 2008-09 (Para 489);
- (f) Upgradation / installation of new distribution transformer by the end of 2010-11 in Retail Supply Tariff Order for FY 2010-11 (Para 569);
- (g) Installation of 11 KV circuit breakers in 20% of the sub-station by the end of 2010-11 in Retail Supply Tariff Order for FY 2010-11 (Para 569); and

- (h) Completion of Stringing of 300 kilometres of AB Cables by the end of 2010-11 in Retail Supply Tariff Order for FY 2010-11 (Para 569);
- (II) Similarly, in case No. 93, 94, 95 & 96 / 2011 for Retail Supply Tariff Order of FY 2012-13 the Commission have directed the licensees to take several measures for reducing Aggregate Technical and Commercial (AT&C) loss and improving standard of performance such as
- (a) Upgradation and installation of new distribution transformers 750 nos. each (Para 510);
 - (b) Complete the energy audit of each distribution transformer by the end of 2012-13. (Para 510);
 - (c) Complete Provision of 33 & 11 KV Ckt. Breaker by the end of 2012-13 (Para 510);
 - (d) Achievement of Collection target for arrear from the consumer (Para 517-521);
 - (e) Installation of pre-paid meters (Para 527); and
 - (f) Implementation of Smart Grid solutions (AMR & AMI) in DISCOMs under Boot Model. One or more divisions should

be entrusted on BOOT Model on revenue sharing basis.

(Para 533)

- (III) But none of the above directions have been complied with by the licensees fully as per their submission in various performance reviews, ARR filings and Business Plan filing (filing through affidavit in performance review dtd. 15.05.2012 and Lr. of WESCO dtd. 27.08.2012, letter of NESCO dated 13.06.2012 and letter of SOUTHCO dated 29.02.2012, affidavit of SOUTHCO & NESCO dated 31.05.2013 and affidavit of WESCO dated 30.05.2013). Due to this non-compliance the licensees attract mischief under Section 19 (1) (b) of the Act.
- (IV) Due to above non-compliance the consumer service and quality of supply have deteriorated to a point of no return. All the reasons cited by the licensees for non-compliance can be grouped into two categories such as deficit or lack of fund and Government support. In the earlier paragraphs we have discussed how the lack of fund is own creation of the licensees for which they cannot blame any other stakeholders. Similarly funding by external agencies / Government has never been a pre-condition for privatisation. This vividly explains the lack of will and desire on the part of the licensees to carry out their primary duties and responsibilities. The

non-compliance of the Commission directions has also resulted in violation of Licence conditions.

27. The Commission in the Show Cause Notice dated 13.05.2013 have also shown many instances of violation of licence conditions. In their reply, the DISCOMs have not specifically denied the prima facie finding with regard to their shoddy performance given in the Show Cause Notice. This was practically impossible for the DISCOMs because the data analysed by the Commission was not obtained from any third party but were furnished by DISCOMs themselves during various proceedings. The DISCOMs have mainly contended that their failure to contain loss is largely because of factors beyond their control. But as we have analysed in detail in the preceding paragraphs, we hold that, this state of affairs is entirely due to the inefficiency and callous attitude of DISCOMs. The general refrain in their replies is to blame the Commission and also the Government for their present state of affairs.

28. Issues claimed to be pending with the Commission and the Government

The DISCOMs have alleged in their replies that several important issues are pending before the Commission and those have adversely affected their functioning. Without prejudice to our detailed findings earlier that the problems of the DISCOMs are entirely of their own making the issues

raised by the DISCOMs vis-a-vis the Commission are analysed below in detail:

- (a) Business Plan order in Case No. 5, 6, 7 & 44 / 2013 for third control period has already been issued on 21.03.2014.
- (b) The truing up of account on a particular item such as distribution loss as per the directives of Hon'ble ATE has not taken place on account of non-submission of energy audit data by the licensees themselves. The presumptive loss figure can't be taken into consideration for truing up. The other cost components have been trued up upto 2012-13 as per the audited accounts submitted by licensees.
- (c) The Shareholder Agreement, at Clause 8 contains the method of financing of Distribution Companies. In the said agreement it is mentioned that *“If WESCO requires further financing, it shall use and the Investors shall procure that it uses, all reasonable endeavours to obtain such finance from a third party lender on reasonable commercial terms without breaching covenants WESCO’s loan documentation at the time of such further financing provided always that nothing shall oblige a Shareholder to provide any guarantee or security in respect thereof.”* Similar provision is also there in the Shareholder Agreement of NESCO & SOUTHCO.

This clearly goes on to say that all the endeavours of obtaining finances for the company is to be made by the investors and the licensees and there is no obligation on any other stakeholder such as Government or GRIDCO. On the one hand the licensees are pinning hope on the Government for funding their capital projects on the other hand they are blaming same Government for continuous lack of support in different areas of their business such as establishment of Police Stations/ Courts and investment in the network etc. The Government of Odisha has initiated an ambitious CAPEX programme of Rs 1464 cr for three DISCOMs, namely, NESCO, WESCO and SOUTHCO, out of which Government of Odisha would provide Rs 732 crs. and DISCOMs will provide the matching counterpart funding. But till today Government of Odisha has already provided Rs.180.37 crs. whereas DISCOMs have failed to invest anything. Even Government of Odisha has started Odisha Distribution System strengthening Programme (ODSSP) for constructing 500 numbers of 33/11kv substations in four DISCOMs of the state including NESCO, WESCO and SOUTHCO with a total investment of Rs.2600 crs. The DISCOMs would reap the benefit of such programmes, but without any investments. Similarly State Government has reconstructed the 'Philin' cyclone affected distribution network of SOUTHCO from their own

resources. Despite these initiatives by the Government, WESCO, NESCO and SOUTHCO have not reciprocated at all to match the activities. The allegation that the present state of affairs of the DISCOMs is because of lack of support of Government is false and misconceived. In fact, the help extended by Government of Odisha to a private distribution companies is unprecedented and Government of Odisha has gone beyond its limit to help the DISCOMs.

- (d) Reference to the report of the Kanungo Committee is unacceptable and irrelevant because the said report was not fully accepted by the appropriate authorities.
- (e) The Licensees have replied that because of the non-implementation of the orders of Hon'ble ATE, amount due to the licensees, as a result of upward revision of tariff has not been made available and this is one of the main reasons for the poor financial health of the licensees. Hon'ble ATE had passed several orders in appeal against tariff orders and MYT order of the last control period of the Commission. Those orders have been challenged by the Commission before Hon'ble Supreme Court in CA No. 759/2007, CA No. 572/2011, CA No. 2939-2943/2011, CA No. 10251-10263/2013. The Licensees have also challenged the order of the

Hon'ble Tribunal in one case relating to Tariff Order for FY 2013-14 before Hon'ble Supreme Court in CA No. 2625-2638/2014. The Hon'ble Apex Court has heard the matter analogously in part and has directed in CA No. 3858-60/2014 on 12.09.2014 *to list the matter for final hearing with interlocutory application No. 10-12 of 2014 within three months from today.* Since the Appeal to the Supreme Court is a statutory appeal under Section 125 of the Act, the matter has not reached its finality. Therefore, claiming financial relief of approximately Rs.4200 Crs. due to Hon'ble ATE's order to pay off cumulative losses and pay off all the liabilities is not tenable at this juncture. Moreover, as per audited accounts of the Licensees which are based on receivable audit carried out by them, they have a huge arrear of Rs.2456.40 Crs. up to the closure of financial year 2012-13 which has remained uncollected over the years from the consumers. This amount has already been allowed to the Licensees through tariff hike. Had the Licensees taken sincere steps to collect their arrears from the consumers this so called situation of acute financial deficit would not have arisen. This is a brazen example of gross and irresponsible fiscal mismanagement.

- (f) In the meanwhile order of the Appellate Tribunal for the Tariff order for FY 2014-15 has been received wherein the Tribunal has directed OERC to implement all its earlier orders relating to tariff (FY 2006-07, 2007-08, 2008-09, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15). The Commission has filed an appeal against this order before the Apex court and has also filed an application for stay of the operation of this order. The case was heard on 16.02.2015 and the Apex court while admitting the matter ordered for issue of notice for both the substantive appeal and also for hearing the stay matter.
- (g) It is necessary to mention here that the plea of the DISCOMs for implementation of the Tribunal's order and to relate it to the disposal of the present proceedings is really not relevant. As has been elaborately discussed in para 7 of this order the present proceeding derives its legitimacy from the order of the Commission dtd.12.05.2011 in Case No. 35/2005. It was mentioned in para 65 of that order that the Commission could initiate action either under Section 19 or 24 of the Act, 2003 in case the DISCOMs failed to comply with the directions spelt out in para 64 of the order. Failure to reduce distribution and commercial loss is one of the reasons for initiating proceedings for revocation of distribution license. This

proceeding under Section 19 has been initiated for a number of reasons spelt out in Section 19 such as consistent violation of the directions of the Commission, violation of licensing conditions and finally on account of irreversible financial unviability of the licensee. Non-implementation of the directions of the appellate Tribunal relating to the earlier tariff orders at this stage has no bearing on the present proceedings which have been initiated after having been satisfied that the conditions prescribed in Section 19 are attracted in the present case.

29. Legal hurdle in collecting revenue

Hon'ble High Court of Orissa in WP(C) No. 8409/2011 dated 31.03.2011 had stayed the Retail Supply Tariff Order of the Commission for the Financial Year 2011-12 since the beginning of its implementation. The Hon'ble Court however vacated the complete stay of their order on 30.03.2012. Pursuant to this the Commission directed the DISCOMs to recover the arrear electricity dues arising out of such stay in eight monthly instalments in its letter dated 05.07.2012. Accordingly, the distribution licensees were required to collect that arrear amount from the consumers as per the said directions of the Commission. The argument of the Licensees that such arrear should be adjusted in bulk supply dues of GRIDCO is fallacious as GRIDCO has no duty and responsibility for

collecting electricity dues from the consumers. This argument of DISCOMs is therefore without any basis and is an attempt to shirk its responsibility of managing their own affair.

30. Legal Issues

It is necessary to analyse certain important legal issues arising out of this proceeding.

(I) Issue of making Reliance Infra a party to the proceeding

- (i) During the course of hearing Reliance Infra which subsequently took over BSES and became majority shareholder in the DISCOMs contended that OERC should not have made Reliance Infra a party to this proceeding. They wanted that the Commission should have made a distinction between the licensee company and the shareholders and for the acts of omission and commission; OERC may proceed against the licensee but not the shareholders.
- (ii) This argument is too technical and is not acceptable on the facts of this particular proceeding. Ownership of a company changes completely or partially through the instrumentality of sale of shares. As a majority share holder, provisions of Section 17(3) of the Electricity Act, 2003 and Section 21(2) of Electricity Reform Act, 1995 have been violated by

Reliance Infra by not taking prior permission of the Commission. They are also responsible for non-incorporation of relevant clauses of Shareholders Agreement in the Articles of Association (AoA) of the DISCOMs. In this connection, issues raised during the hearing with regard to maintenance of Central Services Office by three DISCOMs at Bhubaneswar may be recalled. Reliance Infra cannot have it both ways – they want to exercise control over the functioning of the DISCOMs through the Central Services Office but at the same time they want to take shelter under the veil of incorporation by making assertion that it is the DISCOM and not the shareholders who should be proceeded against for their act of omission and commission. Fifty one percent shares of BSES which was subsequently taken over by Reliance Infra purported to have been divested in favour of their group companies but irrespective of the numbers of shares held by Reliance Infra its stranglehold over all the DISCOMs continues as a matter of fact and cannot be ignored by the Commission. The Commission is in fact, examining the conduct of licensee DISCOMs, but Reliance Infra is a successor to Reliance Energy Limited which took over M/s. BSES whose association with licensee

DISCOMs without prior written consent of the Commission is unsustainable in law and void on account of Section 21(2) read with Section 21(5) of the Orissa Electricity Reform Act, 1995 and this finding has to be recorded in presence of Reliance Infra.

(iii) The Reliance Infra has further contended that Hon'ble ATE in its judgement in Appeal No. 75 of 2005 dated 13.12.2006 held that OERC could enforce license conditions and statutory provisions against the three distribution licensees but the same will not confer jurisdiction on the Commission to issue direction to Shareholders simpliciter. In this regard, it may relevant to note that Hon'ble ATE in the said order dated 13.12.2006 at para 41 have observed the following:

“41. Before parting with the Appeal we would like to point out that the Appellant as well as Respondents have taken up the responsibility of serving the consumers and this is not defeated on hyper-technicalities We do expect that the Appellant REL and contesting Respondents continue to strive for the common purpose of servicing consumers and the discussions, now being held in this behalf may be utilized to settle the disputes to the interest of Reform in the State of Orissa.”

It is quite clear that the Honbl'e ATE has observed that the Parent company Reliance Infra has the responsibility of serving the consumers of Odisha and this is not frustrated by hyper-technicalities. The repeated contention of the Reliance Infra that it

should not be part of the proceeding is, therefore, misleading. Had Reliance Infra been validly a holding company of licensee-DISCOMs with prior consent in writing of the Commission, it would not have been allowed to disown responsibility of serving the consumers of Odisha.

(II) Issue of Shareholder Agreement

- (i) DISCOMs were 100% subsidiary of GRIDCO which were granted distribution licences by OERC on 31.03.1999. On 01.04.1999 GRIDCO divested 51% of the share in favour of BSES Ltd. through a competitive bidding process and also after getting satisfied about the following technical and financial criteria.

Technical/Commercial Criteria

The minimum technical/commercial criteria required to be satisfied by any company submitting a Statement of Qualification (SOQ) (or by the Technical Member in the case of a consortium) are as follows:

- 3 years' experience in operating and managing sub-transmission systems with voltage levels of at least 33kV and connected distribution systems at lower voltage levels; and

- A customer base for such systems of at least 100,000 customers.

Financial Criteria

The minimum financial criteria required to be satisfied by any company submitting a Statement of Qualification (SOQ) (or by the Financial Member in the case of a consortium) are as follows:

- Turnover in the last financial year of each such company as set out in its latest audited financial statements I of at least US \$100 Million or its equivalent; and
 - Gross assets at the latest balance sheet date as set out in its latest audited financial statements of at least US\$100 Million or its equivalent.
- (ii) BSES and GRIDCO signed a Shareholders Agreement (SHA) and it was stipulated that necessary clauses of Shareholders Agreement will be incorporated in the Articles of Association of the licensee company. Thereafter, M/s. BSES Ltd. diluted its shares over a period of years in favour of what is loosely now called Reliance Group companies, but the very ownership of licensee-DISCOMs' shares by BSES

has been void for want of prior written consent of the Commission under Section 21(2) read with 21(5) of the Orissa Electricity Reform Act, 1995.

(iii) The embargo on transfer of shares was partially removed on 21.03.2002 by insertion of Article 9A(1) in Articles of Association (AoA) whereby transfer of shares to Group Companies was permitted and group company was defined as a company, its holding company, its subsidiaries and other subsidiaries of the holding company.

(iv) In this connection the following legal issues emerge:

- a) whether necessary provisions in Shareholder Agreement have been incorporated into the Articles of Association (AoA) of the licensed company;
- b) whether shares were transferred by BSES/Reliance Infra to companies who fulfilled the technical and financial criteria as per the original bid document;
- c) whether transfer has been made to group companies as prescribed in Article 9 A (1) Articles of Association;
and
- d) whether the transfer of shares were hit by Section 17(3) of the Electricity Act, 2003 read with Section 21

of the Orissa Electricity Reform Act, 1995 as much as part ownership of the utility has been transferred to other companies by way of sale of shares without permission of the Commission.

- (v) A number of queries seeking clarification on these legal issues were sent to the DISCOMs as well as GRIDCO and Government of Odisha.

31. Reply of the Licensees

- i) The transfer of shares has been effected by following provisions of Companies Act, 1956. The same has been vindicated in a proceeding before Principal Bench of Company Law Board (CLB).
- ii) Provisions of Shareholders Agreement (SHA) has been duly incorporated in Articles of Association (AoA).

32. Reply of GRIDCO

- i) GRIDCO has not received any satisfactory reply from BSES (now R-Infra) and the DISCOMs regarding subsequent sale of shares. They were quite evasive about the status of the transferee companies – whether those are group companies or not.
- ii) Necessary provisions of Shareholders Agreement (SHA) have been incorporated in Articles of Association (AoA).

- iii) Commission was in full knowledge of divestment/privatisation in 1999 and granted licence to the DISCOMs which amounts to deemed approval under Section 21(2) of the Orissa Electricity Reform Act, 1995.
- iv) Regarding transfer of share to group companies, the judgement of Company Law Board (CLB) in favour of the licensees was contested by GRIDCO before Orissa High Court but was subsequently withdrawn as a part of settlement package relating to NTPC Bond decided in Case No.107 of 2011.
- v) GRIDCO is not aware whether BSES has taken any permission from OERC under Section 21(2) of Orissa Electricity Reform Act, 1995 while divesting its share in favour of other companies.

33. Reply of Government of Odisha

The divestment of 51% share of GRIDCO in favour of BSES was ratified by Government of Odisha after obtaining necessary approval from the state cabinet. OERC granted distribution licence to the companies on 31.03.1999 which shows that Commission have acknowledged such transfer of distribution business of GRIDCO to private companies. Therefore, OERC was completely aware of the process of disinvestment.

34. Findings of the Commission on the legal issues

- i) The assertion that all the relevant clauses of Share Holders Agreement have been incorporated in Articles of Association is factually wrong. The following clauses in Share Holders Agreement have not been incorporated in Articles of Association of the DISCOMs.

a. Purpose of disinvestment

“2. Purpose

2.1 The Investor recognises that GRIDCO’s principal objectives in selling a majority stake in NESCO to the Investor are to:

2.1.1. Improve the quality of service to customers by improving the security and reliability of the supply system and make available electricity at a competitive price;

2.1.2 Improve operational efficiencies and reduce losses;

2.1.3 Contribute to the increased economic growth in Orissa through the provision of superior electricity supply;

2.1.4 Attract private investment into the distribution business;”

b. Support by Investor

“5.6 The Investor undertakes to provide to WESCO (DISCOMs) the technical resources and capability as may be reasonably necessary to enable the Business to operate efficiently.

c. Financing by Investor

8.1 If WESCO (DISCOMs) requires further financing, it shall use and the Investor shall procure that it uses, all reasonable endeavours to obtain such finance from a third party lender on reasonable commercial terms without breaching covenants in WESCO’s loan documentation at the time of such further financing provided always that nothing shall oblige a Shareholder to provide any guarantee or security in respect thereof.

8.2 if and to the extent that it is not possible to obtain debt finance in accordance with clause 8.1 or by any other reasonable means, then such further financing may be sought by an issue of ordinary share capital at a price agreed with the Auditors as being a fair and reasonable price. Any such issue of ordinary share capital shall be

offered on a pre-emptive basis to the existing Shareholders and subject to clause 3.2 shall include a right of renunciation by Shareholders.”

Thus the present Articles of Association suffers from serious legal infirmity as it is not in accordance with the Shareholders Agreement. These unperformed parts of Shareholders Agreement (i.e. default in incorporating these clauses on Articles of Association) have continued in force as of now because of Clause 25 of the said agreement. This Clause clearly stipulates that the unimplemented provisions of Shareholders Agreement will continue to remain in force notwithstanding the termination of the Agreement under Clause 15. Therefore, the important provisions of Shareholders Agreement which are not incorporated in Articles of Association continue to be a legal obligation for incoming shareholders.

- ii) Failure to incorporate these important legal and operational issues mentioned in the Shareholders Agreement into Articles of Association clearly indicates serious violation and dilution of the original legal arrangement with regard to privatisation of the DISCOMs. This has given the present licensees an unauthorised handle to abdicate their responsibility with regard to infusion of

capital, improvement of quality of service, improvement of operational efficiency and reduction of loss. The purpose of disinvestment was consciously built into the Shareholders Agreement so as to make these obligations a legal duty of the investors. This has been defeated by the dubious and clever act of omission and stratagem by not incorporating it in the Articles of Association.

- iii) Regarding transfer of shares by Licensees to so called group companies, the replies of licensee DISCOMs have all along been evasive, even though Company Law Board has affirmed such transfers as per Company law, it has refrained from pronouncing on the validity of the transfers as per Electricity Law and has not made any investigation into the matter as per Electricity Law. The licensee DISCOMs were asked on a number of occasions to furnish the audited balance sheet of the transferee companies as on the date of transfer of shares. It appears that the transfer of shares have been carried out by the holding company of the licensee DISCOMs and it is not clear whether the Board of Directors of the licensee DISCOMs have approved and carried through the process of transfer. The licensee-DISCOMs were asked on a number of occasions to furnish audited balance sheets of the transferee

companies as on the date of transfer of shares and PAN and CIN of the transferee companies, so that the Commission could make independent enquiry into the matter. This has been stalled systematically by the licensee-DISCOMs by non disclosure of relevant information which is in their possession. Final opportunity was given to the licensee-DISCOMs on the last date of hearing (05.09.2014) to furnish these information along with written submission within 15 days and only then the audited accounts of the transferee companies as on the date of transfer were submitted. From analysis of those audited accounts, we find that the following transferee companies are not group companies as envisaged in Article 9A(1) of the Articles of Association.

Table – 16
Transfer of shares to Non Group Companies

| Sl. No. | Transferor Company | Transferee company | Year of Transfer | Observation | Whether Transferee company is a Group Company |
|----------------|---------------------------|-------------------------------------|-------------------------|--|--|
| 1. | BSES Limited | Power Surfer Interactive India Ltd. | 2002 | 49.97% shares were held by BSES Holdings Pvt. Ltd. and Power Surfer Interactive India Ltd. holds 50% of the shares of BSES Holding Pvt. Ltd. | No |
| 2. | BSES Limited | BSES Management Services Pvt. Ltd. | 2003 | BSES Management Services Pvt. Ltd. holds 50% of the shares of BSES Holdings Pvt. Ltd. | No. |
| 3. | BSES Limited | BSES Holdings Pvt. Ltd. | 2003 | During the year 50% of the shares were held by BSES Ltd. and those shares were transferred to BSES Management Services Pvt. Ltd. Another 50% shares were held by Power Surfer Interactive India Ltd. | No. |

The above table shows that as per audit report submitted, shares have been transferred to at least three non-group companies contrary to Article 9A(1) of the Articles of Association.

iv) We now proceed to analyze the legality of the transfers of shares.

Our legal analysis is based on following legal postulates:

- Most of the transfer of shares have taken place when Section 21 of the Orissa Electricity Reform Act, 1995 was in full force before commencement of the Electricity Act, 2003.
- The Electricity Act 2003, has enacted Section 17, which runs thus:

‘Section 17. (Licensee not to do certain things): --- (1) No licensee shall, without prior approval of the Appropriate Commission, -

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee:

Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month’s notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or

otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.'

- Upon coming into force of Electricity Act, 2003 on 10th June 2003, Section 21 of the Orissa Electricity Reform Act, 1995 has been saved by Section 185(3) of the Electricity Act, 2003. Section 21 of the Orissa Electricity Reform Act, 1995 runs thus:

“Restriction on Licensees and Generating Companies

(1) *No licensee or Generating Company shall, at any time, without the previous consent in writing of the Commission, acquire by purchase or otherwise the license or the undertaking of, or associate himself with, so far as the business of generating, transmitting, distribution or supply of energy is concerned, any other licensee or person generating, transmitting, supplying, or intending to generate, transmit or supply electricity:*

Provided that before applying for such consent, the licensee shall give not less than one month notice of the application –

(a) to the Commission; and

(b) xxxxxxxxx

(2) *The licensee shall not, at any time, assign his licence or transfer his undertaking, or any part thereof, by sale, mortgage, lease exchange or otherwise without the previous consent in writing of the Commission.*

(3) *Any person to whom the provisions of Section 44 of the Electricity (Supply) Act, 1948 applies shall be required to obtain consent from the Commission instead of from the Board as provided under that Section.*

- (4) *A holder of a supply or transmission licence may, unless expressly prohibited by the terms of its licence, enter into arrangements for the purchase of electricity from (a) the holder of a supply licence which permits the holder of such licence to supply energy to other licensees for distribution by them; and (b) any person or Generating Company with the consent of the Commission.*
- (5) *Any agreement; relating to any transaction of the nature described in Subsections (1), (2), (3) or (4) unless made with, or subject to such consent as aforesaid, shall be void.”*

There is no inconsistency between Section 21 of the Orissa Electricity Reform Act and Section 17 of the Electricity Act, 2003. Both the provisions stand together.

- Though Article 9A(1) of the Articles of Association confines transfer of shares to Group companies, Electricity Laws such as Section 21 of Orissa Electricity Reform Act, 1995, and Section 17 of the Electricity Act, 2003, and Clause 5.2 of the license condition specified under Section 15 of the Orissa Electricity Reform Act, 1995 and Section 14 of the Electricity Act, 2003 impose an embargo on transfer of shares by licensee-DISCOMs to any person (Company) without prior written consent or prior written approval of the Commission as the case may be; it is immaterial whether any transferee company is a group company or not.

- GRIDCO was the distribution licensee upto 31st March 1999 and from 1st April 1999, GRIDCO has ceased to be the distribution licensee and NESCO, WESCO and SOUTHCO have become valid distribution licensees to do electricity supply business in their respective areas.
- Acquisition Agreement dated 31.03.1999 whereby the licensee DISCOMs subjected themselves to associate themselves with BSES as the holding company controlling the management of the DISCOMs is hit by Section 21(1) of the Orissa Electricity Reform Act, 1995 in as much as the DISCOMs were already licensees vide Preamble “Whereas (G)” of the said Acquisition Agreement. Section 21(5) of the Orissa Electricity Reform Act, 1995 renders such Acquisition agreement void and *non est* in the eyes of law for want of prior consent in writing of the Commission. Transfer of shares, if any, by the licensee-DISCOMs or by GRIDCO directly pursuant to the said void Acquisition Agreement is also void. As per Section 108 of the Companies Act 1956, then in force, the share transfers for the purpose of acquisition by BSES has to be effected through instruments of transfer as between the DISCOMs and BSES and registration thereof with the

DISCOMs with the Registrar of Companies. If any such step has been taken, the acquisition process would amount to the licensee-DISCOMs associating with BSES as a holding company. Thus BSES is not a holding company in respect of NESCO, WESCO and SOUTHCO without the consent of the Commission. Subsequent transfers of shares of licensee DISCOMs by BSES to Reliance Energy and then to Reliance Infra even if validly done, do not constitute these transferee companies into holding company.

- The licences in favour of the DISCOMs (NESCO, WESCO and SOUTHCO) were granted by Order dated 31.03.1999 and came into effect on 01.04.1999 though their applications for license were pending before the Commission since 27.03.1998 after they were registered as companies under the Companies Act, 1956 on 19.11.1997. BSES executed share acquisition agreement on 31.03.1999 when the DISCOMs were granted licences which was to come into force on 01.04.1999. Thus the acquisition agreement was calculated to defeat the provisions of law in Section 21(1) read with Section 21(5) of the Orissa Electricity Reform Act, 1995. The acquisition

agreement is therefore hit by Section 23 of the Contract Act, 1872 and is accordingly void under the said provision.

- Any transfer of shares in favour of other companies could only be effected by the licensee distribution companies (NESCO, WESCO and SOUTHCO). GRIDCO has no authority to impose BSES as a holding company by direct transfer of shares of DISCOMs to BSES even though GRIDCO may have been the 100% shareholder of the DISCOMs at the material time.
- If any transfer is made by the licensee distribution companies to any other company, be it a Group company or not, would attract Section 21(2) of the Orissa Electricity Reform Act 1995, firstly because it amounts to transfer of the licensees' undertaking 'otherwise' than through sale, mortgage, lease or exchange, and secondly because assignment of the licensee DISCOMs licence for as held in *International Cotton Corporation v. Bank of Maharashtra* [1971 (41) Comp Cas226] which defined an undertaking to mean 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade' and *Yellamma Cotton and Silk Mills Co. Ltd* [AIR 1969 Karnataka 280]

where it was held that an undertaking was not in its real meaning, anything which may be described as tangible piece of property like land, machinery and equipment, and that it was an activity which in commercial or in business parlance meant an activity engaged with the view to earn profit. By transferring the shares, the licensee DISCOMs are transferring part of the undertaking. Also, by transferring the shares, the licensee DISCOMs are assigning the licences covertly. Assign is a term wider than transfer, and covers covert entrustment of managing power to the assignee. Such construction is warranted by purposive interpretation inasmuch as these provisions are intended to prevent dilution of regulatory powers of the Commission.

- v) Section 21 of the Orissa Electricity Reform Act, 1995 as well as Section 17 of Electricity Act, 2003, are intended to ensure regulatory control of the OERC. These provisions should not be so interpreted as to dilute such regulatory control. Interpretation ought to effectuate the intention of the Legislature and not defeat or subvert such intention. The violation of statutory provision is serious and it makes the continuance of the majority share holders in the DISCOM legally untenable and abinitio void.

vi) The original bid documents at the time of grant of licenses to the licensee DISCOMs stipulated very stringent technical and financial criteria to ensure that serious players with proven experience in distribution business enter the distribution field in Odisha. No such criteria has been followed when BSES and/or licensee-DISCOMs have diluted their shares in favour of companies whose credentials are unknown. This has paved the way for entry of non-serious players. Thus there is a close relationship between the shoddy performance of the DISCOM licensees and the flawed legal arrangement through which it functions.

35. The following table shows the transfer of shares prior to 2003 which is squarely hit by the mischief of Section 21 of the Orissa Electricity Reform Act 1995:

Table – 17
Transfer of Shares

| Name of The Transferor | Name of The Transferee Company | Date of Transfer |
|-------------------------------|--|-------------------------|
| BSES Ltd. | Power Surfer Interactive (India) Limited | 31.03.2002 |
| | BSES Kerala Power Limited | 31.03.2002 |
| | BSES Andhra Power Limited | 31.03.2002 |
| | BSES Infrastructure Finance Limited | 31.03.2002 |
| | BSES Telecom Limited | 31.03.2003 |
| | BSES Management Services Pvt. Limited | 31.03.2003 |
| | BSES Holdings Private Limited | 31.03.2003 |

Replies of GRIDCO and Government of Odisha on this critical issue has been largely evasive. According to them the overall analysis of events preceding the divestment indicates that the Commission was fully aware

of the impending privatisation. It has been argued during the course of hearing that permission under Section 17(3) of Electricity Act, 2003 and Section 21 etc. is deemed to have been granted by the Commission. These arguments are not acceptable and it is an attempt to justify the serious act of omission on the part of GRIDCO. Prior approval as envisaged in the statutory provisions mentioned above is not an empty formality; there is a very significant purpose behind this enactment. The Commission as a professional statutory regulatory body as distinguished from the executive can examine whether the transfer is as per law and it is in the larger public interest and whether it will help the electricity sector as a whole. Entry of non-serious players with no proven track record in licensing business can be prevented and the tariff implication arising out of such transfer can be ascertained. The glaring deficiency with regard to Shareholders Agreement, non-fulfilment of technical and financial criteria, unauthorised entry of non-group companies could have been prevented if subjected to proper scrutiny by the Commission.

36. Though the proceeding for revocation of Licences were initiated under Section 19 of the Act, the Commission have consciously made a very elaborate discussion regarding the violation of Section 17 (3) of the Act. The Commission is of the view that there is a close connection between the violation in Section 17 and the violation spelt out in Section 19 of the

Act. Discussion of legal issues in Para 34 & 35 proves beyond doubt that the present shareholding pattern in Licensee DISCOMs is legally void. The purpose of privatisation as per original mandate was to infuse capital, better technology and trained manpower so as to reduce technical and commercial loss so as to make the Licensee DISCOMs commercially viable. These objectives which are of paramount commercial importance were made into legally enforceable obligation by incorporating those in the Shareholder Agreements which were to be incorporated subsequently into the Articles of Association of the relevant company. Since the entry of majority shareholder through dubious route is not legally sanctioned, the present management does not feel obliged to discharge its responsibilities as a licensee. The Commission is of the considered view that the present arrangement is legally flawed and anachronistic which cannot be allowed to continue any further by jeopardising public interest.

37. In view of the discussion made above, including the findings, it is held that the DISCOMs attract provisions contained in Section 19 of the Electricity Act, 2003 as follows.

Violation under Section 19 (1) (a)

- (a) The Licensees have made wilful and prolonged default in doing several things which are required by him under this Act and Rules and Regulations made thereunder which are enumerated below:

- Persistent default in payment of Bulk Supply Price (BSP) dues thereby jeopardizing the continuous power supply to the State consumers. (Refer Para 14)
- Wilful default of escrow arrangements with GRIDCO by not collecting revenue from large chunk of consumers and depositing the same in the escrow account. (Refer Para 14)
- Default in discharging the payment of dues as per Securitisation order dated 01.12.2008 vide Case No. 115/2004. (Refer Para 15)
- Not clearing the dues of NTPC bond of Rs.198.45 cr. vide Commission order in Case No. 107/2011. (Refer Para 20)
- Not depositing terminal liabilities of the employees in the corpus fund as per the direction of the Commission. (Refer Para 22)

Violation under Section 19 (1) (b)

- (b) The Licensees have broken the terms and conditions of his Licence as mentioned below the breach of which renders the licence liable for revocation vide Clause 13 of the License Conditions.
- Violation of successive tariff order of the Commission from FY 2008-09 to 2011-12 (Refer Para 26 (I)).

- Violation of directions of the Commission in Case No. 93, 94, 95 & 96/2011. (Refer Para 26 (II))
- Violation of directions of the Commission in performance review for the period FY 2010-11, 2011-12, 2012-13, 2013-14 and various directions for energy audit (Refer Para 26 (III) & 16).

Violation under Section 19 (1) (c)

(c) The DISCOMs have failed within the period fixed by the Commission to show to the satisfaction of the Commission that they are in a position fully and efficiently to discharge the duties and obligation imposed on them by their licences such as

- Wilfully not doing energy audit to find out actual level of distribution loss and hiding actual information from the scrutiny of the Commission to gain undue advantage. (Refer Para 16)
- Not doing proper repair and maintenance of line and substation by spending much less amount than what was approved by the Commission in successive Retail Supply Tariff (RST) orders thereby putting the quality and continuity of the power supply to the consumers at grave risk. (Refer Para 17)

- Not collecting electricity dues from the large numbers of consumers resulting in higher tariff for the paying consumers. (Refer Para 18)
- Violation of contractual agreement with regard to escrow arrangement. (Refer Para 21)
- Not making capital investment for the improvement of the network and not been able to arrange counterpart funding for CAPEX programme thereby making the network unsustainable in view of growth of consumer base. (Refer Para 23)

Violation under Section 19 (1) (d)

(d) The financial conditions of the licensees are such that they are unable fully and efficiently to discharge the duties and obligation imposed on them by their licence such as:

- As per audited accounts the DISCOMs have posted huge cumulative loss in their balance sheet resulting in negative net-worth. The negative net-worths have debarred the licensees to mobilise counterpart funding by getting loans from financial institutions required for capital expenditure. (Refer Para 12 & 13)

- Defaulting in payment of dues of the bulk supplier. (Refer Para 14)

Licences can be revoked if one of the conditions prescribed in Section 19 of the Act is satisfied. But in the present case which is one of the rarest of rare case where all the conditions described in Section 19 of the Act are satisfied.

In view of the above, position of facts and law explained, the following Licences granted to the Licensees:

NESCO - Licence No. 3/1999, dated 31.03.1999;

WESCO - Licence No. 4/1999, dated 31.03.1999;

SOUTHCO - Licence No. 2/1999, dated 31.03.1999; and

NESCO, WESCO & SOUTHCO – in Case No. 21/2006 dated 27.10.2006 are, hereby, revoked under Section 19 of the Electricity Act, 2003 with immediate effect, i.e., from 4th March, 2015.

Necessary arrangements after such revocation as contemplated under Section 20 of the Act are being specified through a separate order.

Let this order be communicated to NESCO, WESCO, SOUTHCO, GRIDCO and Government of Odisha and be put up in the Commission's website.

38. The case is accordingly disposed of.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson

APPOINTMENT OF ADMINISTRATOR

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Case No. 55/2013

In the Matter of: **Revocation of Licences issued to NESCO, WESCO
& SOUTHCO under Section 19 of the Electricity
Act, 2003 in Case No. 55/2013 dated 04.03.2015**

AND

In the Matter of: **Appointment of Administrator under Section 20
(d) of the Electricity Act, 2003.**

ORDER

Date of Order : 04.03.2015

The Commission in their Order dated 04.03.2015 in Case No. 55/2013 have revoked the Licences of NESCO, WESCO and SOUTHCO (Distribution Companies) under Section 19 of the Electricity Act, 2003.

2. Consequent upon such revocation and considering the situation at hand due to such revocation of Licences of NESCO, WESCO & SOUTHCO and also keeping in view, the salient objectives and purpose of the Electricity Act, 2003 the Commission now in exercising powers conferred on it under Section 20 (d) of the Electricity Act, 2003 vests the management and control of NESCO, WESCO and SOUTHCO utilities along with their assets, interests and rights with Chairman-Cum-Managing Director, GRIDCO (CMD, GRIDCO) in order to ensure the

maintenance of continued supply of electricity in the Northern, Western and Southern Zone (area of supply of NESCO, WESCO and SOUTHCO) in the interest of consumers and the public interest at large. This is an interim arrangement under Section 20 (d) of the Electricity Act, 2003.

3. The Commission directs that the management and control of the utilities of NESCO, WESCO and SOUTHCO with all the assets, interests and rights shall vest with Chairman-Cum-Managing Director, GRIDCO with immediate effect and he shall manage the electricity supply activities in the revoked licensed area of NESCO, WESCO and SOUTHCO respectively till further orders of the Commission.
4. CMD, GRIDCO shall function under the supervision and control of the Principal Secretary, Department of Energy, Government of Odisha as far as the administration of the Distribution Utilities are concerned.
5. The Commission may also give such further directions from time to time if it considers necessary for the smooth conduct of electricity supply business in the revoked licensed area as stated above. CMD, GRIDCO shall be entitled to constitute such committees composed of such persons, as he considers appropriate, including but not limited to those who are currently directors of utilities, to be of assistance or guidance to him in the discharge of his functions.
6. In particular, it is further directed and clarified that

- (1) CMD, GRIDCO shall be designated as “Administrator of NESCO, WESCO and SOUTHCO utilities” under the supervisory control of Principal Secretary, Department of Energy, Government of Odisha as far as Administration of NESCO, WESCO and SOUTHCO utilities are concerned.
- (2) CMD, GRIDCO will have all the powers for management of NESCO, WESCO and SOUTHCO utilities and business and as such all the functions including financial functions shall be taken over by him.
- (3) All existing employees and executive staff attached to the utilities of NESCO, WESCO and SOUTHCO shall function under the direction and administrative control of Administrator and shall be accountable to him. Administrator may as deemed proper may delegate certain functions to officers of the utilities.
- (4) Administrator of NESCO, WESCO and SOUTHCO utilities shall submit such periodic administrative report to the Commission, as the Commission direct and the report shall include –
 - i. Measures taken for maintaining continued supply of electricity in an efficient and safe manner to consumers in licensed area.

- ii. Maintenance of bulk purchase of power according to requirements.
 - iii. Steps taken for regular payment of salaries to employees, so as to avoid breakdown of services relating to power supply to consumers.
 - iv. Measures taken for efficient collection of revenue.
 - v. Measures taken for maintenance of infrastructure of power supply to consumers in the distribution utility area.
 - vi. Immediate commencement of Consumer Indexing and Energy Audit.
 - vii. Immediate steps both technical and administrative to reduce AT&C loss in the utility areas.
- (5) The Central Service Office of NESCO, WESCO and SOUTHCO operating at Bhubaneswar shall be disbanded forthwith and the utilities as mentioned above shall not remit any fund to the Central Service Office located at Bhubaneswar.
- (6) The utilities shall shift their registered office to their respective headquarters.
- (7) The MD/CEO of the DISCOMs shall cease to be the employees of utilities/licensees and all of their functions with regard to licensed

activities shall be dispensed with on the day the administrator takes over the utilities. The Administrator shall assume all the functions of MD/CEO.

- (8) Any person who is not a regular employee of DISCOMs/utilities and has come from other organisation on deputation or secondment shall be repatriated. Their services shall immediately be dispensed with and the administration shall ensure that no payment is made to them by the utilities after this order.
- (9) All the data bases relating to licensed functions including consumer details, billing, collection, network and asset details, financial transaction shall be taken over by the Administrator both from the CSO Office at Bhubaneswar and Corporate offices at respective Headquarters.
7. A copy of this order be communicated to the parties (NESCO, WESCO & SOUTHCO Utilities), CMD, GRIDCO and the Principal Secretary, Department of Energy, Government of Odisha, CEO, CSO (NESCO, WESCO & SOUTHCO) and be put up on the notice board of the Commission and on its website for general information.

Sd/-
(A. K. Das)
Member

Sd/-
(S. P. Swain)
Member

Sd/-
(S. P. Nanda)
Chairperson