

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

OP No. 1 OF 2025 & IA No. 1403 OF 2025 & IA No. 499 OF 2026 & IA No. 568 OF 2026 & IA No. 602 OF 2026 & IA No. 717 OF 2026 & IA No. 1404 OF 2025 & IA No. 1532 OF 2025 & IA No. 1610 OF 2025 & IA No. 1747 OF 2025 & IA No. 172 OF 2026 & IA No. 245 OF 2026 & IA No. 309 OF 2026

Dated: 20th April, 2026

Present : Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

In Suo-Moto action under Section 121 of the EA Petitioner(s)
Versus

Forum of Regulators & Ors. Respondent(s)

Counsel on record for the Petitioner(s) : Anushree Bardhan
Shikha Ohri
for App. 1

Counsel on record for the Respondent(s) : Poorva Saigal
Shubham Arya
Pallavi Saigal
Reeha Singh
Rishabh Saxena
Harshvardhan Singh
Shirin Gupta
for Res. 1

C.K. Rai
Shiva Singh
Anuradha Roy
Vinay Kumar Gupta
for Res. 2

C.K. Rai
for Res. 3

Anand K. Ganesan
Swapna Seshadri
Utkarsh Singh
Sneha Singh Baghel
for Res. 4

Dhananjaya Mishra
for Res. 5

Sahil Chandra
for Res. 6

Ravi Kishore
for Res. 7

Rutwik Panda
Anshu Malik
for Res. 8

Gargi Kumar
for Res. 9

Abiha Zaidi
for Res. 10

Pratibhanu Singh Kharola
for Res. 11

Sethu Ramalingam
S. Shivshankari
for Res. 12

Pradeep Misra
for Res. 13

C.K. Rai
Shiva Singh
Anuradha Roy
Vinay Kumar Gupta
for Res. 14

Somanadri Goud Katam
for Res. 15

Shlok Chandra
for Res. 16

Suparna Srivastava
for Res. 17

Mandakini Ghosh
for Res. 18

Gaichangpou Gangmei
Arjun D Singh
Yimyang Longkumer
Maitreya Mahaley
for Res. 19

Aishwarya Subramani
Harsha V Rao
Anand K. Ganesan
for Res. 20

Suriti Chowdhary
Anuj Bhave
Abiha Zaidi
Pritam Raman Giriya
for Res. 21

Mandakini Ghosh
for Res. 22

Anish Roy
for Res. 23

Farrukh Rasheed
for Res. 24

Rohini Prasad
for Res. 25

Sriram Krishna
Anupama Dhurve
for Res. 26

Shri Venkatesh

Suhael Buttan
Nihal Bhardwaj
Abhishek Nangia
Kartikay Trivedi
Surbhi Kapoor
Shivam Kumar
Punyam Bhutani
Nikunj Bhatnagar
Tarang Saraogi
Ananya Dutta
Shryeshth Ramesh Sharma
Kanika Chugh
Priya Dhankar
Mohit Mansharamani
Mohit Gupta
Indu Uttara
Harsh Vardhan
Vedant Choudhary
Adarsh Singh
Drishti Rathi
Ashutosh Kumar Srivastava
Akash Lamba
Siddharth Nigotia
Vineet Kumar
Manu Tiwari
Kunal Veer Chopra
Tanishka Khatana
Aashwyn Singh
Aniket Kanhaua
Manav Bhatia
for Res. 27

C.K. Rai
Anuradha Roy
Vinay Kumar Gupta
Shiva Singh
for Res. 28

Surabhi Pandey
for Res. 29

Abiha Zaidi
Suriti Chowdhary
Pritam Raman Giriya

Anuj Bhave
for Res. 30

Vishrov Mukerjee
Janmali Gopal Rao Manikala
Nishtha Kumar
Yashaswi Kant
Pratyush Singh
Damodar Solanki
Priyanka Vyas
Juhi Senguttuvan
Anumeha Smiti
Garima Adlakha
Sai Snigdha Nittala
Snehal Upadhyay
for Res. 31

Amit Kapur
Anupam Varma
Rahul Kinra
Aditya Gupta
Aditya Ajay
Girdhar Gopal Khattar
Isnain Muzamil
Adamyia Ojha
Yash Srivastava
Vaibhav Sharma
for Res. 32

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Rahul Kinra
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Aditya Ajay
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Isnain Muzamil
Adamyia Ojha
Yash Srivastava
Vaibhav Sharma
for Res. 33

Shri Venkatesh
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Kanika Chugh

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Drishti Rathi
for Res. 34

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Kunal Veer Chopra
Punyam Bhutani
Vedant Choudhary
Tarang Saraogi
Manav Bhatia
Drishti Rathi
for Res. 37

S. Vallinayagam

for Res. 38

ORDER

**1. JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION
(JSERC): R-25.**

Post the matter on **29.04.2026.**

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

sk/mc

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Hon`ble Mr. Virender Bhat, Judicial Member

In the matter of:

In Suo-Moto action under Section 121 of the EA Petitioner(s)

Versus

- 1 The Secretary**
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Central Electricity Regulatory
Commission
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- 2 The Secretary**
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- 3 The Secretary**
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- 4 **The Secretary**
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- 8 **The Secretary**
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- 9 **The Secretary**
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13 The Secretary**Himachal Pradesh Electricity****Regulatory Commission (R -13)**

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14 The Secretary

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16 The Secretary

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21 The Secretary

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26 The Secretary

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- 27 The Secretary**
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- 28 The Secretary**
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- 29 The Secretary**
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- 30 The Secretary**
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- 31 The Secretary**
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32 The Chief Executive Building,
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33 The Chief Executive Officer
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34 Tata Power Delhi Distribution Limited (R -
34)
NDPL House, Hudson Lines
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Counsel on record for the Petitioner(s) : Anushree
Bardhan
Shikha Ohri
for App. 1

Counsel on record for the Respondent(s) : Poorva Saigal
Shubham Arya
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Nikunj
Bhatnagar
Kunal Veer
Chopra
Punyam Bhutani
Vedant
Choudhary
Tarang Saraogi
Manav Bhatia
Drishti Rathi
for Res. 37

ORDER

1. In this order, we shall deal with following issue which had arisen during the previous hearings of this petition;

“Whether the action of Delhi Electricity Regulatory Commission (hereinafter referred to as “DERC” or the “Commission”) initiating the process of the audit of the distribution companies of Delhi by Comptroller and Auditor General (CAG) is legally permissible.”

2. We shall also be dealing with the application bearing IA No. 568 of 2026 of DERC seeking extension of time by three months for commencing the liquidation of regulatory assets of Delhi Discoms in terms of the judgement dated 6th August, 2025 of the Hon’ble Supreme Court in Writ Petition (C) 104 of 2014 & batch (hereinafter referred to as “RA Judgement”).

3. We have heard Mr. Buddy Ranganadhan, Learned Senior Counsel, Mr. Amit Kapur as well as Mr. Shri Venkatesh, Learned Counsels for Delhi Discoms. We also heard Mr. S.V. Raju, Learned ASG, Mr. Sitesh

Mukherjee, Learned Senior Counsel along with Ms. Abhia Zaidi on behalf of DERC.

4. We may note that in the RA judgement, the apex court held that disproportionate increase and long pending regulatory assets depict a regulatory failure which has serious consequences for all stake holders and the ultimate burden being only on the consumer. It also held that ineffective and inefficient functioning of the regulatory commissions coupled with acting under the dictation of the State Governments lead to regulatory failure. Ultimately, the court directed that the regulatory commissions must provide the trajectory and road map for liquidation of existing regulatory assets which will include a provision for dealing with carrying cost. It directed that existing regulatory assets must be liquidated in a maximum period of four years starting from 1st April, 2024 taking Rule 23 as a guiding principle. However, this period of four years was, later on, increased to seven years on an application filed in this regard by the Discoms.

5. At the same time, the Hon'ble Supreme Court directed regulatory commissions to undertake strict and intensive audit of the circumstances in which distribution companies have continued without recovery of regulatory assets.

6. It appears that in pursuance to the said directions of the Hon'ble Supreme Court, DERC sent a communication dated 16th January, 2026 to the office of CAG with the request to inform the Commission about the decision of CAG with regards to the conducting of audit of Discoms in Delhi. Vide communication dated 19th January, 2026, the office of CAG drew attention of the Commission to the directions issued by the Hon'ble Delhi High Court in Writ Petition (C) 895 of 2011 & batch dated 30th October, 2015 and asked the Commission to send a formal and reasoned proposal from the Lt. Governor, NCT of Delhi in this regard citing public interest involved as well as scope of audit. Vide another communication dated 20 January, 2026, the office of CAG requested DERC for valid entrustment under Section 20(1) of the Comptroller and Auditor General (Duties, Powers and Conditions of service) Act, 1971 (hereinafter referred to as "CAG Act"). Accordingly, DERC sent various communications to the Secretary, Department of Power, Govt. of NCT of Delhi with the request for approval of intensive audit of Delhi Discoms by CAG. Finally, the Secretary, Department of power, Govt. of NCT of Delhi vide its letter dated 5th March, 2026 conveyed the approval of Lt. Governor of Delhi to DERC for entrustment of intensive audit of Delhi Discoms for FY 2007-2008 to 2024-25 to CAG.

7. When this factum about approval of the Lt. Governor of Delhi for intensive audit of Delhi Discoms by CAG was informed to us by the Learned Counsels for the Commission during the hearing on 6th March, 2026, Learned Counsels for Delhi Discoms submitted that the same would not be in line with the directions issued by the Hon'ble Supreme Court in order dated 6th August, 2025 in RA Judgement and also would be in contravention of the judgement dated 30th October, 2015 by Delhi High Court in W.P. (C) 895 of 2011 vide which an earlier endeavour of Government of NCT of Delhi to get the intensive audit of Delhi Discoms conducted by CAG was quashed. Accordingly, we directed DERC not to proceed with the audit of Delhi Discoms in pursuance to the letter dated 5th March, 2026 issued by the Secretary, Department of Power, Govt. of NCT of Delhi. It is in this backdrop that the issue, which we are considering, has arisen.

8. Learned Counsels appearing for Delhi Discoms would submit that the Hon'ble Supreme Court in the RA judgement, did not specify that the strict and intensive audit of the Discoms shall be got conducted by CAG and, therefore, the attempt of DERC to get the Delhi Discoms audited by CAG would fundamentally alter the RA judgement. It is argued that Section 20 of CAG Act does not permit audit at the instance of Electricity

Regulatory Commission and contemplates initiation of such an audit, if at all, by the State Government or Central Government. It is pointed out that a similar attempt was made by DERC in the year 2010 to get the Discoms audited by CAG which was held impermissible by Delhi High Court in judgement dated 30th October, 2015 in W.P.(C) 895 of 2011 & batch. It is argued that satisfaction about “involvement of public interest” by the Hon’ble Lt. Governor is mandatory pre-condition before granting approval for audit by CAG under Section 20 of the CAG Act but in the instant case none of the communications exchanged between CAG, Govt. of NCT Delhi and DERC demonstrate any such satisfaction. Thus, it is argued that the action of DERC in proceeding to get the strict and intensive audit of Delhi Discoms conducted by CAG is neither warranted nor permissible.

9. On behalf of DERC, it was argued by the Learned ASG as well as Shri Sitesh Mukherjee, Ld. Senior Counsel that the proposed audit of Delhi Discoms by CAG is not an option but flows directly from the directions given by the Hon’ble Supreme Court in RA judgement and is rooted in public interest. It is pointed out that Hon’ble Supreme Court in the said judgement has held that the disproportionate and long pending regulatory assets harm consumers and places sectoral governance in peril and, therefore, audit of CAG is meant to uncover the circumstances

in which discoms continued functioning for so many years without recovery of regulatory assets. It is further pointed out this Tribunal vide order dated 14th January, 2026 passed in this very O.P. acknowledged the possibility of CAG conducted audit as a primary option before falling back to a chartered accountant and, therefore, there is no legal infirmity in the endeavour of DERC in getting the audit of discoms conducted by CAG. Learned ASG submitted that the judgement of the High Court in W.P (C) 895 of 2011 & batch has no applicability to the instant case for the reason that the High Court, in that judgement, rejected the proposed audit of Delhi Discom by CAG on two points i.e. the audit by CAG would not serve any public interest and the discoms were not given reasonable opportunity of hearing before ordering audit by CAG. He would submit that none of these grounds are available to the Delhi Discoms in this case as the audit is not being conducted by the Government to question tariff but is being carried out in terms of the RA judgement for implementation of the directions given by the Hon'ble Supreme Court and therefore such an audit involves public interest. As regards the opportunity of hearing to the Delhi Discoms before ordering CAG audit, it is submitted by Ld. ASG that Delhi Discoms were present before the Hon'ble Supreme Court and were heard extensively before the passing of RA judgement and have also

been participating in the proceedings of this petition since the date it was registered by this Tribunal and, therefore, sufficient opportunity of hearing has been afforded to them before ordering CAG audit. It is argued that the objection of the Delhi Discoms to such audit is totally mis-conceived.

10. We have given our thoughtful consideration to the rival submission made on behalf of the Delhi Discoms and the DERC by their respective Counsels/Ld. Senior Counsels/Ld. ASG.

11. It is axiomatic that the Hon'ble Supreme Court, while directing the Regulatory Commissions to conduct strict and intensive audit of the discoms vide RA judgement, has nowhere specified that such audit must be entrusted to CAG. Therefore, we do not find any merit in the submissions of the Ld. ASG that audit by CAG flows directly from the directions issued by the Apex Court in this said judgement.

12. Powers and duties of CAG have been set out in Article 149 of the Constitution of India which is extracted herein below :-

“149. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that

behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the provinces respectively.”

(Emphasis supplied)

13. The scope and meaning to be ascribed to the words “body or authority” appearing in this constitutional provision had come up for consideration before the Delhi High Court in W.P. (C) 895/211 United RWAs Joint Action Vs. Union of India & Ors. In the judgement dated 30.10.2015 delivered in this batch of writ petitions (hereinafter referred to as “RWA judgement”), the High Court held that the powers of the CAG under Article 149 read with CAG Act cannot be restricted only to the body or authority which satisfy the test under Article 12 of the Constitution i.e. which are the instrumentalities of State or discharge sovereign functions of the State. We extract the relevant portion of the judgement hereunder :-

“E. It thus follows that the powers of the CAG under Article 149 read with the CAG Act cannot be restricted only to that body or authority which satisfies the test of Article 12 of the Constitution of India.

F. Independently of the above also, we do not find it in the fitness of the constitutional scheme to so limit the powers of the CAG.

L. The Constitution of India, as of any other country, though capable of amendment is not expected to be amended as per the exigency of the time from time to time

and is to be interpreted as a living document to satisfy the needs and requirements of the changing and evolving times. Once CAG is found to be the fourth pillar of the Union of States that is India, constituted to perform duties and exercise powers in relation to the accounts of the Union and of the States and of any other authority or body, the expanse of its powers cannot be stifled and limited. Mode and manner in which the governments govern and administer the State is ever evolving. Soon after the framing of the Constitution of India, it was felt that the government, for proper governance, needs to have its hand and control in each and every major industry and business. The same, over the times has not found favour and we today have transformed to public-private partnerships where the government works in partnership with private persons, with the extent of participation of the government varying from venture to venture. DISCOMs subject matter of present petition are an example thereof. We are of the opinion that to limit the meaning of the words "authority or body" under Article 149 as is contended by the

petitioners, to only those which satisfy the criteria of Article 12 of the Constitution may deprive one of the four limbs of the Union from exercising powers and duties in relation to accounts of an authority or body as may be required as per exigencies from time to time.

M. It is significant that Article 149 though extends the jurisdiction of CAG besides in relation to the accounts of the Union and the States also in relation to the accounts of any other body or authority but the extent to which CAG is to exercise such jurisdiction has been left to be prescribed by law to be made by Parliament. Thus, unless the Parliament has made a law in that respect, CAG would not be in a position to perform any duty or exercise any power in relation to accounts of any authority or body. The same allays the fears expressed by the petitioners, of the words "body or authority" if not restricted to the meaning as under Article 12 of the Constitution, vesting the CAG with power over accounts also of private companies. CAG would not have any jurisdiction or domain over the accounts of

private companies till a provision therefor has been made by law of Parliament. Such law when made would remain amenable to challenge if any thereto.”

14. Thus, it has been held that words “body or authority” occurring in Article 149 of the Constitution of India are of wide amplitude and extend to “private body and authority” also. Accordingly, these would cover the Delhi Discoms also.

15. The circumstances in which CAG can audit a private body or authority and the extent to which such power can be exercised by the CAG have been specified in Section 20 of the CAG Act which is quoted hereinbelow:-

“20. Audit of accounts of certain authorities or bodies

(1) Save as otherwise provided in section 19, where the audit of the accounts of any body or authority has not been entrusted to the Comptroller and Auditor-General by or under any law made by Parliament, he shall, if requested so to do by the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, undertake the audit of the accounts of such body or

authority on such terms and conditions as may be agreed upon between him and the concerned Government and shall have, for the purposes of such audit, right of access to the books and accounts of that body or authority: Provided that no such request shall be made except after consultation with the Comptroller and Auditor-General.

[\(2\)](#) The Comptroller and Auditor-General may propose to the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, that he may be authorised to undertake the audit of the accounts of any body or authority, the audit of the accounts of which has not been entrusted to him by law, if he is of opinion that such audit is necessary because a substantial amount has been invested in, or advanced to, such body or authority by the Central or State Government or by the Government of a Union territory having a Legislative Assembly, and on such request being made, the President or the Governor or the Administrator, as the

case may be, may empower the Comptroller and Auditor-General to undertake the audit of the accounts of such body or authority.

(3) *The audit referred to in sub-section (1) or sub-section (2) shall not be entrusted to the Comptroller and Auditor-General except where the President or the Governor of a State or the Administrator of a Union territory having a Legislative Assembly, as the case may be, is satisfied that it is expedient so to do in the public interest and except after giving a reasonable opportunity to the concerned body or authority to make representations with regard to the proposal for such audit.”*

16. Perusal of this statutory provisions would reveal that CAG is not authorised or competent to exercise its power & jurisdiction to audit upon every private body or authority. Its sub section (1) provides that only such body or authority would become amenable to audit by CAG which are directed to be so audited by the President/Governor/Administrator. As per the proviso to sub-Section (1), such direction can be issued only in consultation with CAG. Further, the terms of reference of such audit have

to be as per mutual agreement of the State/Central Govt., as the case may be, and the CAG.

17. Sub Section (3) of Section 20 is very material which specifies the requirements to be satisfied for entrusting the audit of a private body or authority to CAG thereby circumscribing the power of President/Governor/Administrator to do so. As per this sub section, the audit must be expedient in the public interest and can be directed only after affording an opportunity of being heard to such body or authority.

18. Therefore, what needs to be examined in this case is whether these twin requirements are fulfilled for entrustment of audit of the Delhi Discoms to CAG.

19. Ld. ASG and the Ld. Senior Counsel for DERC vehemently argued that since the proposed audit of Delhi Discoms flows directly from the Hon'ble Supreme Court judgement in RA case and is meant to undercover the circumstances in which the discoms continued functioning for so many years without recovery of regulatory assets, such audit is rooted in public interest.

20. We are unable to agree.

21. As per sub section (3) of Section 20 of the CAG Act, the President/Governor/Administrator must be satisfied that it is expedient in

public interest to direct audit of a private body or corporate by CAG. No material has been placed on record on behalf of DERC to show that the Lt. Governor of Delhi had gained satisfaction about involvement of public interest before according approval of for intensive audit of Delhi Discoms by CAG, as conveyed by the Secretary, Department of Power. Govt. of NCT of Delhi to DERC vide communication dated 5th March, 2026. Nothing in this regard can be found in the said letter dated 5th March, 2026. Even the DERC has not stated in any communication to Govt. of Delhi or CAG that such audit of Delhi Discoms is in public interest. It appears that in pursuance of the directions given by the Hon'ble Supreme Court in RA judgement, the DERC made up its mind to entrust the strict & intensive audit of Delhi Discoms to CAG, unmindful of the requirement under Section 20(3) of the CAG Act, and upon being asked by CAG it sought approval of the Lt. Governor of Delhi for the same in a routine manner just by citing the RA judgement of the Hon'ble Supreme Court and the Lt. Governor too accorded approval for such audit in a very cavalier manner without enquiring whether or not does it involve "public interest".

22. Even otherwise also, we do not see any "public interest" involved in the entrustment of audit of Delhi Discoms to CAG. We may note at the cost of repetition that the Hon'ble Supreme Court in RA Judgement,

directed the Regulatory Commissions to undertake strict & intensive audit of the circumstances in which the discoms have continued without recovery of the regulatory assets, upon noting that long pending regulatory assets depict regulatory failure which may be the result of ineffective and inefficient functioning of the Regulatory Commissions. So, the audit has to be as regards the circumstances in which the discoms have been in a position to carry on their operation without realization of regulatory assets for such a long time. It cannot be construed as an intensive enquiry into the entire accounts & financial affairs of the discoms as is done by Income Tax authorities, Enforcement Directorate etc.

23. Further, it also needs to note that the Hon'ble Supreme Court in the said judgement has given a fixed timeline of four years (later on increased to seven years) w.e.f. 01.04.2026 for liquidation of existing regulatory assets. The existing regulatory assets of Delhi Discoms are very well known to the DERC. These have to be liquidated within a period of seven years. The extent of the regulatory assets or their liquidation is neither related to nor dependant of the intensive audit of the discoms. It is nowhere observed by the Hon'ble Supreme Court in the said RA Judgement that the outcome of intensive audit of the discoms will have any bearing on the extent of the regulatory assets or the process for their

liquidation. It will also not affect any increase in tariff which will be necessitated for liquidation of regulatory assets of the Discoms.

24. Hence, we do not find it expedient in public interest to entrust the strict & intensive audit of the Delhi Discoms to CAG.

25. On this aspect, we also find the following paragraph of the RWA judgement of Delhi High Court very apposite :-

“83. We are also of the view that merely because the DERC has not equipped itself with the wherewithal to exercise the powers which have been vested in it under the laws, rules, regulations licence aforesaid is no reason to fall back to the procedures and modalities prescribed in the pre-regulator regime. Such an exercise under the powers under the earlier state of affairs, would today be a useless exercise. It is also not as if DERC is not capable of equipping itself with the wherewithal for digging into the accounts, particularly expenses of DISCOMs which the DISCOMs are accused of inflating. We find DERC to have, in exercise of its Regulation making power, framed the DERC (Appointment of Consultants) Regulations, 2001. DERC thus, if does not have an internal mechanism in this regard, though is required to have, can

appoint appropriate accountants as consultants to investigate the allegations against the DISCOMs.

26. The DERC is, therefore, competent to appoint appropriate accountants/chartered accountants to carry out the intensive audit of the Delhi Discoms as mandated in the RA judgement by the Apex Court.

27. As regards the second requirement under Section 20(2) Viz. the entrustment of the audit of a private body or authority must be preceded by an opportunity to such body or authority to represent against such audit, is concerned, the impugned action of DERC falls foul on this score also. Manifestly, the discoms have not been heard at any point of time either by the DERC or by the Govt. of NCT of Delhi before entrusting their audit to CAG.

28. The argument of the Ld. ASG that since the discoms had been heard by the Supreme Court extensively before passing RA judgement and have been participating in the proceedings of this petition before this Tribunal since its inception, which constitutes sufficient opportunity of hearing as required under section 20(3) of CAG Act, is on the face of it sans any merit. Perusal of the RA judgement would clearly reveal that this aspect of having an audit of the circumstances in which the discoms continued for a long time without liquidation of regulatory assets, was not

discussed or deliberated upon during the hearing of the writ petitions. It appears that while writing the judgement and the considering the facts & circumstances of the case, the Hon'ble Court thought it necessary to direct such audit of the discoms. Manifestly, the discoms had not been heard on this aspect before issuing such direction. There was no reason or occasion for this Tribunal to hear the discoms on this aspect as the DERC had not proceeded to entrust their audit to CAG under any direction/order passed by this Tribunal.

29. We also note that in the RWA judgement, the Delhi High Court has held that consultation with CAG and agreement between CAG and the State Govt. about the Terms and Conditions of audit must precede before the body or authority proposed to be audited must be given an opportunity to represent against such audit proposal. The relevant extracts from the judgement are as follows:-

“(XIX) Thus, before the body or authority proposed to be audited under Section 20 is given an opportunity to represent against the proposal, there must be a consultation with the CAG and upon CAG agreeing to the audit, terms and conditions thereof should have been agreed.

XXIII) The mere fact that CAG accepted the terms and conditions of audit contained in the directive issued under Section 20(1) cannot be a substitute for the legislative requirement of arriving of an agreement between the concerned government and CAG and which agreement has to be arrived at before an opportunity to represent there against is given to the body or authority to be audited; it is well high possible, the body or authority proposed to be audited may not have any objection to an audit of a limited nature; thus, the opportunity to represent against has to be against a concrete proposal arrived at after an agreement between the concerned government and CAG; we, in this regard reiterate that though Article 149 required the Parliament to by law lay down the functions and duties which CAG is to perform in relation to accounts of any body or authority but the Parliament, vide Section 20 has empowered the Administrator/concerned Government to, in agreement with CAG, formulate the functions the and duties which CAG may perform in relation to the said

accounts; the body or authority with respect whereto such power is exercised, if not entitled to know from law, is certainly entitled to know the functions and duties which are proposed to be performed in relation to its accounts.

(XXIV) We are further of the view that there can be no reasonable opportunity to represent against without disclosing to the DISCOMs the public interest in which it was deemed expedient to direct audit of DISCOMs; the nature and content of the representation would be dependent on the reason for which audit is proposed; for instance, representation against an audit on the ground of whether privatisation of electricity distribution in Delhi has served the objectives thereof would be different from representation against audit for tariff determination; we have already noticed above that CAG refused to include in the terms of reference the unbundling of DVB on the ground of the same having already been subject matter of audit report of earlier years; the nature of

representation against such audit would have been entirely different.

(XXV) We are strengthened in our view of the opportunity to represent being required to be given after consultation and agreement under Section 20(1), also from the placement of sub-sections of Section 20; while consultation and agreement are provided for in subsection (1), giving of opportunity to represent against is provided for in sub-section (3), as a rider thereto.”

30. In the instant case, the broad and tentative scope, objectives and expected audit product were submitted by the DERC to secretary, Ministry of Power, Govt of NCT of Delhi vide letter dt 02/02/2016. It is not clear from the record whether CAG had agreed to these broad terms of audit. However, the fact remain that no opportunity of hearing was given to discoms to represent against these terms & scope of audit. Even the DERC has failed to disclose to the discoms the ‘public interest’ in which it was found expedient to entrust audit to CAG and therefore, there was no opportunity for the discoms to represent against such audit.

31. Thus we are constrained to hold that the discoms were not given any opportunity to make representation with regards to the proposed audit by CAG.

32. The reference of Ld. ASG to the order dt. 14/01/2026 passed in this very OP also is misplaced. Ld. ASG argued that in the said order, this Tribunal acknowledged the possibility of audit of discoms by CAG. We extract hereunder the relevant portion of the order dt. 14/01/2026:-

“The order of the Supreme Court dated 06.08.2025 does not obligate the DERC to have an intensive audit conducted only by the CAG or by an Auditor appointed by them. Several State Regulatory Commissions have, in compliance with the orders of the Supreme Court dated 06.08.2025, appointed Chartered Accountants to conduct the intensive audit. Nothing prevented the DERC from doing so likewise. While the delay on the part of the DERC in appointing the auditor for conducting the intensive audit does not appear to be justified, we deem it appropriate to permit the DERC, in compliance with the orders of the Supreme Court dated 06.08.2025, to initiate the process for appointment of auditor(s), for

conducting the intensive audit, within two weeks from today. We make it clear that, in case the CAG chooses not to conduct an audit or appoint an auditor or refrains from intimating the DERC in this regard within one week from today, the DERC shall proceed and initiate the process for appointment of a suitable Chartered Accountant, to conduct the intensive audit in terms of the Supreme Court order dated 06.08.2025, within two weeks from today.”

33. It is limpid that power and authority of CAG to conduct audit of the discoms has nowhere been discussed in this order. It was left to the discretion of CAG whether or not to accept the proposal and it was expected that the CAG would act as per the statutory provisions i.e. section 20 CAG Act. At the same time, we have said in the order that Supreme Court order does not obligate DERC to entrust the strict and intensive audit to only CAG. We have reiterated the same observation in subsequent order dt. 11/02/2026 also. These orders can not be taken to mean that this Tribunal permitted audit of the discoms by CAG in contravention of the statutory provisions.

34. Shri Sitesh Mukherjee, Learned Senior Counsel appearing for the Commission had also argued that this Tribunal cannot, in the proceedings of this O.P. registered under Section 121 of the Electricity Act, 2003, examine the legality and validity of any action of the DERC or the State Government. He would submit that Section 121 confers supervisory jurisdiction of this Tribunal and does not confer power of judicial review to it. It is submitted that Section 121 applies only where there is a failure by the Commission to perform its statutory functions, which is not the case herein as the Commission, in fact, is carrying forward the audit process in terms of the RA judgement of the Hon'ble Supreme Court and, therefore, this Tribunal cannot examine the correctness or otherwise such action of DERC.

35. We have noted the submissions of the Learned Senior Counsel with utmost dismay and only to be rejected. This Tribunal has registered this O.P. under Section 121 in pursuance to the directions issued by the Hon'ble Supreme Court in RA judgement in order to monitor the implementation of the directions (v) and (vi) contained in paragraph 71 of the judgement. One of these directions to be monitored by this Tribunal is the initiation of strict and intensive audit of the regulatory commissions

into the circumstances in which distribution companies had continued without recovery of regulatory assets.

36. When the Hon'ble Supreme Court has directed this Tribunal to monitor the implementation of above referred directions contained in para 71 of the RA judgement, it is implicit that this Tribunal must ensure that these directions are complied with by the Regulatory Commission in tune with relevant Rules/Regulations/Statutory provisions. Once it is found that while complying with these directions, regulatory commissions have contravened any Rules, Regulations or Statutory provisions, this Tribunal is duty bound to intervene and ensure that there is no violation of any statutory provision in complying with the directions of the Hon'ble Supreme Court.

37. It is the submissions of the Learned Senior Counsel himself that under Section 121, this Tribunal is conferred with supervisory jurisdiction over the regulatory commissions. This would include the power of this Tribunal to examine the functions of the regulatory commissions and to intervene wherever regulatory commission is found to violate any statutory provision. In the RA judgement also, the Hon'ble Supreme Court has observed that by engrafting Section 121 in the statute, the Parliament has empowered this Tribunal with an important jurisdiction and powers which

are intended to ensure that in the functioning of the Regulatory Commissions, there is efficiency in administration, expertise through human resource, integrity through transparency and accountability and responsibility through review audit and assessment. It has been held that for enforcing these values, Section 121 empowers this Tribunal to issue such orders, instructions and directions as is deem fit to the Regulatory Commissions for performance of their statutory functions under the Act. It has also been held that under Section 121, this Tribunal has the power and duty to issue directions to Regulatory Commissions when they fail to comply with the Act, Rules or Regulations, fail to perform their statutory functions and duties, or perform the same negligently, improperly or poorly. Such directions are intended to secure compliance in letter and spirit, the provisions of the Electricity Act.

38. Hence, when this Tribunal finds that DERC in directing audit of the Delhi Discoms has contravened the statutory provisions i.e. Section 20 of the CAG Act, this Tribunal cannot remain a mute spectator. This Tribunal is not expected to endorse each action of the Commission without examining their legality/correctness. That would be against the spirit of engrafting Section 121 in the statute. This Tribunal is duty bound

to act and pass directions to ensure that the functions of the Regulatory Commissions are in line with the relevant statutory provisions.

39. Hence, for these reasons we are unable sustain the action of DERC in entrusting the strict and intensive audit of the Delhi discoms as per the RA judgement dt. 06/08/2025 of the Hon'ble Supreme Court to CAG as the same is in contravention of the statutory provisions namely section 20 of the CAG Act. We, therefore, uphold the objection raised to such audit by the discoms and quash the approval to such audit accorded by the Ld. Governor of Delhi vide communication dt. 05/03/2026.

40. The DERC is directed to appoint any chartered accountant within one week from today with specific direction to conclude the strict and intensive audit of the Delhi discoms in terms of the RA judgement dt. 06/08/2025 of the Hon'ble Supreme Court within three months thereafter.

IA No. 568 of 2026
(Extension of time)

41. In the said application, DERC has sought extension of time till 30th June, 2026 for issuance of true up order for the FY 2023-24 till 1st July 2026 for commencement of liquidation of regulatory assets.

42. We have heard Learned Counsel for Commission as well as Learned Counsels for Delhi Discoms on this application as well.

43. It is submitted on behalf of the Commission that true up petitions for FY 2023-24 were filed by TPDDL on 30th October, 2024 and by BRPL & BYPL on 25th November, 2024. However, BRPL & BYPL filed revised petition thereafter vide additional affidavit dated 26th December 2025 seeking to modify certain parameters. Vide order dated 24th March, 2026 the Commission held that the revised true up petitions filed by these two discoms not maintainable and accordingly, the Commission has to proceed with the true up petitions filed originally by these two discoms on 25th November, 2024. It is submitted that various requisite steps are required to be followed before issuing the true up order which would include inviting objections/suggestions from stake holders with a minimum period of 21 days, forwarding these objections/suggestions to discoms for their response, conducting of public hearing, prudence checks/verifications of the data supplied by discoms and final preparations/issuance of the true up order. It is submitted in the estimation of the Commission, approximately three months time will be required in this entire exercise and, therefore, it would not be possible to issue true up order before 30th June, 2026.

44. It is further submitted that the true up order for the FY 2023-24 to be issued will crystalize the final quantum of regulatory assets as on 31st

March, 2024 and only thereafter, the process of liquidation can be commenced. It is further submitted that even after the three months extension, if the liquidation of regulatory assets is commenced on 1st July, 2026 the entire regulatory assets amounting to Rs.38,552 crores (subject to revision upon true up of FY 2023-24) can be completed well within period of 7 years stipulated by the Hon'ble Supreme Court.

45. It is on these grounds that extension of time till 1st July, 2026 is sought for commencement of process of liquidation of regulatory assets.

46. The application is vehemently opposed by the Delhi Discoms. It is argued that as of now there is no legal impediment to DERC to commence liquidation of regulatory assets and any subsequent true up order passed for the FY 2023-24 will be adjusted prospectively. It is further pointed out during the hearing of MA No. 1701 of 2025 before Hon'ble Supreme Court, the Commission had stated that recovery of regulatory assets would be commenced w.e.f. 1st April, 2026 and on such representation of the Commission, paragraph 71(5) of the RA judgement was modified vide order dated 28th October, 2025. It is further pointed out that vide affidavits dated 25th September, 2025 and 5th January, 2026 filed before this Tribunal in this petition, the Commission had undertaken to pass true up order for FY 2023-24 by 31st March, 2026 and to commence

liquidation of regulatory assets w.e.f. 1st April, 2026 which fact is recorded in the order dated 6th November, 2025 and 2nd December, 2025 passed in this petition by this Tribunal. It is also pointed out that the Commission had given an undertaking to the Hon'ble Delhi High Court also in WP(C) No. 3470 of 2024 that true up tariff orders would be passed by May, 2025 and an application seeking to be relieved from such undertaking filed by the Commission was dismissed by the High Court vide order dated 12th March, 2026.

47. It is further pointed out that in so far as the true up petitions filed by TPDDL for FY 2023-24 is concerned, the same is within the statutory timelines but the Commission has committed inordinate delay in passing any order on the same for 17 months and the same is still pending before the Commission. It is prayed that directions may be issued to the Commission to ensure due and timely implementation of the RA judgement of the Hon'ble Supreme Court.

48. We concur the submissions on behalf of the Delhi Discoms that even in the absence of any true up order for the FY 2023-24 there is no impediment before the Commission in starting recovery of regulatory assets. Concededly, the amount of regulatory assets is known to the Commission which has been quantified at Rs.38,552 crores in para No.

21 of the application itself, even though provisionally. We are also of the opinion that the true up order to be passed for FY 2023-24 would not have any significant impact upon the quantum of regulatory assets which have to be liquidated as per the RA judgement of the Hon'ble Supreme Court.

49. We find it evident that the Commission has been delaying the liquidation of regulatory assets for one reason or the other thereby permitting increase in the amount of regulatory assets day by day which would place additional burden upon the end consumers of the electricity in NCT of Delhi. We do not see any cogent and plausible reason which is preventing the Commission to commence the liquidation of regulatory assets. The entire conduct of the Commission in this regard appears to be malafide and needs to be deprecated. The Commission has been holding back its hands on the regulatory assets despite giving repeated undertakings and assurances in this regard to the Hon'ble Supreme Court, to the Delhi High Court and to this Tribunal the details of which have been noted herein above, as pointed by the Learned Counsels for Delhi Discoms.

50. In view of the same, we find the request of the Commission for extension of time till 1st July, 2026 for commencement of liquidation of

regulatory assets totally unreasonable and unacceptable. The request, is therefore, hereby rejected.

51. We direct the Commission to commence the process of liquidation of regulatory assets as per the RA judgement of the Hon'ble Supreme Court within three weeks from today positively.

52. However, considering the statutory procedure to be followed for issue the true up order, time upto 30.06.2026 is granted for passing true up order of FY 2023-24.

53. The IA hereby stands disposed of with these directions.

Pronounced in the open court on this 20th day of April, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

✓

REPORTABLE / NON-REPORTABLE

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