
In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)

Appeal Nos.129 of 2012, 150 of 2012, 167 of 2012, 184 of 2012, 212 of 2012,
224 of 2012, 232 of 2012, 247 of 2012,252 of 2012, 253 of 2012& 53 of 2013

Dated: 12thMay, 2015

Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Justice Surendra Kumar, Judicial Member

In the matter of:

Appeal No. 129 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001
2. Andhra Pradesh Power Co-ordination Committee (Commercial),
Transmission Corporation of Andhra Pradesh Limited,
VidyutSoudha, Khairatabad,
Hyderabad -500049.
(Andhra Pradesh)
3. A.P. Eastern Power Distribution Company Limited,
P & T Colony, Seethammadhara,
Visakhapatnam -530 013.
(Andhra Pradesh)
4. A.P. Southern Power Distribution Company Limited,
H. No. 193-93 (M) Upstairs,
Renigunta Road, Tirupathi-517 501.
(Andhra Pradesh)
5. A.P. Northern Power Distribution Company Limited,
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506 004.
(Andhra Pradesh)
6. A.P. Central Power Distribution Company Limited,
Mint Compound, Near Secretariat,
Hyderabad -500 063.
(Andhra Pradesh)

7. Tamil Nadu Generation & Distribution Corporation Ltd. ,
(TANGEDCO) (Formerly TNEB),
800, Anna Salai, Chennai - 600002.
(Tamil Nadu)
8. Power Company of Karnataka Ltd. (PCKL),
(formerly KPTCL),
Cauveri Bhawan, Bangalore-560009.
(Karnataka)
9. Bangalore Electricity Supply Company Limited,
K.R. Circle, Bangalore - 560 001.
(Karnataka)
10. Mangalore Electricity Supply Company Limited,
Paradigm Plaza, Mangalore-575 001.
Karnataka.
11. Chamundeshwari Electricity Supply Company Limited,
927, L. J. Avenue, Saraswatipuram,
Mysore-570 009.
(Karnataka)
12. Gulbarga Electricity Supply Company Limited,
Station Road, Gulbarga-585 102.
(Karnataka)
13. Hubli Electricity Supply Company Limited,
P.B. Road, Nava Nagar, Hubli-580 025.
(Karnataka)
14. Kerala State Electricity Board,
Vaidyuthi Bhawan, Pattam,
Thiruvananthapuram- 695004.
(Kerala)
15. Electricity Department
Government of Puducherry,
58, Subhash Chandra Bose Salai-605001.

.....Respondents

Appeal No. 150 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

..... Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Madhya Pradesh Power Trading Company Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482008
(M.P.)
3. Maharashtra State Electricity Distribution Company Ltd.,
Pradashgad, Bandra (East),
Mumbai-400051.
4. Gujarat UrjaVikas Nigam Ltd.,
Sardar Patel VidyutBhawan, Race Course Road,
Vadodra-390 007.
5. Chattisgarh State Electricity Board,
P.O. Sundar Nagar, Danganiya,
Raipur-492913.d
6. Electricity Department,
Government of Goa,
VidyutBhawan,
Panaji, Goa-403 001.
7. Electricity Department,
Administration of Daman & Diu-396210.
8. Electricity Department,
Administration of Dadra and Nagar Haveli,
Silvassa-396230. Respondents

Appeal No. 167 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
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2. Uttar Pradesh Power Corp. Ltd (UPPCL),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001.
 3. BSES Rajdhani Power Ltd. (BRPL),
BSES Bhawan, Nehru Place,
New Delhi 110019.
 4. BSES YamunaPower Ltd., (BYPL).
Shakti Kiran Building,
Karkardooma, Delhi 110092.
 5. Tata Power Delhi Distribution Ltd.,
33 KV Substation, Hudson lines,
Kingsway Camp, Delhi-110009.
 6. New Delhi Municipal Council,
Palika Kendra, Parliament Street,
New Delhi - 110 001.
- Respondents

Appeal No. 184 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. DGM (SPA & TC),
Uttar Pradesh Power Corp. Ltd (UPPCL),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001.
(U.P.)
3. Superintending Engineer (RPPC),
Jaipur VidyutVitaran Nigam Ltd. (JVVN)
VidyutBhabanJanpath,
Jaipur-302005.
(Rajasthan)
4. Superintending Engineer (RDPPC),
Ajmer VidyutVitaran Nigam Ltd. (AVVN),

- Old Power House, HathiBhata,
Jaipur Road, Ajmer-305001.
(Rajasthan)
5. Superintending Engineer, (RPPC),
Jodhpur VidyutVitaran Nigam Ltd (JVVN),
New Power House, Industrial Area,
Jodhpur-342003.
(Rajasthan)
 6. The CEO,
Tata Power Delhi Distribution Ltd.(TPDDL),
33 KV Substation, Hudson lines,
Kingsway Camp, Delhi-110009.
 7. The CEO,
BSES Rajdhani Power Ltd. (BRPL),
BSES Bhawan, Nehru Place,
New Delhi 110019.
 8. The CEO,
BSES Yamuna Power Ltd.(BYPL),
Shakti Kiran Building,
Karkardooma, Delhi 110092.
 9. Chief Engineer (SP),
Himachal Pradesh State Electricity Board Ltd.(HPSEB),
Kumar Housing Complex Building-II,
VidyutBhavan,
Shimla-171004.
 10. Chief Engineer (SO & C),
Punjab State Power Corporation Ltd. (PSPCL),
220 KV Substation Ablowal, Patiala-147001.
 11. The Chief Engineer (commercial),
Haryana Power Purchase Center (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109.
 12. The Chief Engineer (commercial),
Power Development Department,
Govt. of Jammu & Kashmir,
Secretariat, Srinagar-19009.
 13. The Chief Engineer,
Power Department (Chandigarh),
Union Territory of Chandigarh,
Addl.OfficeBuilding,
Sector-9D, Chandigarh-16009.

14. Chairman Managing Director,
Uttarakhand Power Corporation Ltd. (UPCL),
UrjaBhawan, Kanawali Road,
Dehradun-248001.
(Uttarakhand)

.....Respondents

Appeal No. 212 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003,

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Uttar Pradesh Power Corp. Ltd (UPPCL),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001.
(U.P.)
3. Jaipur VidyutVitaran Nigam Ltd. (JVVN),
VidyutBhabanJanpath,
Jaipur-302005.
(Rajasthan).
4. Ajmer VidyutVitaran Nigam Ltd. (AVVN),
Old Power House, HathiBhata,
Jaipur Road, Ajmer-305001.
(Rajasthan)
5. Jodhpur VidyutVitaran Nigam Ltd (JVVN),
New Power House, Industrial Area,
Jodhpur-342003.
(Rajasthan)
6. Tata Power Delhi Distribution Ltd.(TPDDL),
33 KV Substation, Hudson lines,
Kingsway Camp, Delhi-110009.
7. BSES Rajdhani Power Ltd. (BRPL),
BSES Bhawan, Nehru Place,
New Delhi 110019.
8. BSES Yamuna Power Ltd., (BYPL).

Shakti Kiran Building,
Karkardooma, Delhi -110092.

9. Haryana Power Purchase Center (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109.
10. Punjab State Power Corporation Ltd (PSPCL),
The Mall, Patiala-147001.
11. Himachal Pradesh State Electricity Board Ltd. (HPSEB),
Kumar Housing Complex Building-II,
VidyutBhavan, Shimla-171004.
12. Development Commissioner (Power),
Power Development Department,
Govt. of Jammu & Kashmir,
Secretariat, Srinagar-19009.
13. Chief Engineer (Commercial),
Power Department (Chandigarh),
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9D, Chandigarh-16009.
14. Uttarakhand Power Corporation Ltd. (UPCL),
UrjaBhawan, Kanawali Road,
Dehradun-248001.

.....Respondents

Appeal No. 224 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

..... Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Transmission Corporation of Andhra Pradesh,
VidyutSoudha, Khairatabad,
Hyderabad -500049.
(Andhra Pradesh)

3. A.P. Eastern Power Distribution Company Limited,
P & T Colony, Seethammadhara,
Visakhapatnam -530 013.
(Andhra Pradesh)
4. A.P. Southern Power Distribution Company Limited,
H. No. 193-93 (M) Upstairs,
Renigunta Road, Tirupathi-517 501
(Andhra Pradesh)
4. A.P. Northern Power Distribution Company Limited,
Opp: NIT Petrol Pump,
Chaitanyapuri, Warangal-506 004.
(Andhra Pradesh)
5. A.P. Central Power Distribution Company Limited,
Mint Compound, Near Secretariat,
Hyderabad -500 063.
(Andhra Pradesh) Respondents

Appeal No. 232 of 2012

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
2. Uttar Pradesh Power Corp. Ltd (UPPCL),
Shakti Bhawan, 14, Ashok Marg, Lucknow - 22600.
3. Jaipur VidyutVitran Nigam Ltd. (JVVN),
VidyutBhawanJanpath,
Jaipur-302005 (Rajasthan).
4. Ajmer Vidyut Vitran Nigam Ltd. (AVVN),
Old Power House, HathiBhata,Jaipur Road,
Ajmer-305001 (Rajasthan).
5. Jodhpur VidyutVitran Nigam Ltd (JdVVN),
New Power House, Industrial Area,
Jodhpur-342003 (Rajasthan).

6. Tata Power Delhi Distribution Ltd. (TPDDL),
33 KV Substation, Hudson lines,
Kingsway Camp, Delhi-110009.
7. BSES Rajdhani Power Ltd. (BRPL),
BSES Bhawan, Nehru Place,
New Delhi 110019.
8. BSES Yamuna Power Ltd. (BYPL),
Shakti Kiran Building,
Karkardooma, Delhi 110092.
9. Haryana Power Purchase Center (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109.
10. Punjab State Power Corporation Ltd (PSPCL),
The Mall, Patiala-147001.
11. Himachal Pradesh State Electricity Board Ltd. (HPSEB),
Kumar Housing Complex Building-II,
VidyutBhavan, Shimla-171004.
12. Power Development Department,
Govt. of Jammu & Kashmir,
Secretariat, Srinagar-19009.
13. Power Department (Chandigarh),
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9D, Chandigarh-16009.
14. Uttarakhand Power Corporation Ltd. (UPCL),
UrjaBhawan, Kanawali Road,
Dehradun-248001. Respondents

Appeal No. 247 of 2012

NTPC Limited
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.
 2. Transmission Corporation of Andhra Pradesh,
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VidyutSoudha, Khairatabad,
Hyderabad -500049.
(Andhra Pradesh)

3. A.P. Eastern Power Distribution Company Limited,
P & T Colony, Seethammadhara,
Visakhapatnam -530 013.
(Andhra Pradesh)
4. A.P. Southern Power Distribution Company Limited,
D.No.19-13-65/A, Corporate Office,
Behind SrinivasaKalyanaMandapam,
KesavayanaGunta, Tirupathi - 517 503. (AP)
5. A.P. Northern Power Distribution Company Limited,
Opp: NIT Petrol Pump, Chaitanyapuri,
Warangal-506 004.
(Andhra Pradesh)
6. A.P. Central Power Distribution Company Limited,
SingareniBhavan, Red Hills,
Hyderabad (AP) - 500 044.
7. Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600002.
(Tamil Nadu)
8. Power Company of Karnataka Limited,
KPTCL Complex,
KaveriBhawan,
Bangalore - 560 009.
(Karnataka)
9. Bangalore Electricity Supply Company Limited,
K.R. Circle, Bangalore - 560 001.
(Karnataka)
10. Mangalore Electricity Supply Company Limited,
Paradigm Plaza, Mangalore-575 001
Karnataka
11. Chamundeshwari Electricity Supply Company Limited,
927, L J Avenue, Saraswatipuram,
Mysore-570 009.
(Karnataka)
12. Gulbarga Electricity Supply Company Limited,
Station Road, Gulbarga-585 102.
(Karnataka)

13. Hubli Electricity Supply Company Limited,
P.B. Road, Nava Nagar Hubli -580 025
(Karnataka)

14. Kerala State Electricity Board,
VaidyuthiBhawan,
Pattam, Trivandrum - 695004.

15. Electricity Department,
Government of Puducherry,
137, NSC Bose Salai,
Puducherry - 605 0011.

16. Electricity Department,
Govt. of Goa, VidyutBhavan,
Panaji, Goa -403001.....Respondents

Appeal No. 252 of 2013

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003..... Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd& 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.

2. Madhya Pradesh Power Trading Corporation Limited,
(successor of Madhya Pradesh State Electricity Board)
Shakti Bhawan, Vidyut Nagar,
Jabalpur - 482 008.

3. Maharashtra State Electricity Distribution Co. Ltd.,
(MSEDCL or Mahavitaran)
Prakashgad, Plot No. G-9, 5th Floor,
Bandra (East), Mumbai - 400051.

4. Gujarat UrjaVikas Nigam Limited,
BidyutBhawan, Race Course,
Vadodara-390 007.
(Gujarat).

5. Chhattisgarh Power Distribution Company Limited,
(Successor of Chhattisgarh State Electricity Board)
P.O. Sundar Nagar,
Danganiya, Raipur - 492913.

6. Electricity Department,

Govt. of Goa, VidyutBhavan,
Panaji, Goa -403001.

7. Administration of Daman & Diu,
Electricity Department,
Daman - 396210.

8. Administration of Dadar & Nagar Haveli,
Electricity Department,
U.T. Silvassa-396230.

.....Respondent

Appeal No. 253 of 2013

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.

2. Haryana Power Purchase Centre,
Shakti Bhawan, Sector-VI,
Panchkula, Haryana 134109.

.....Respondents

Appeal No. 53 of 2013

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi - 110003.

..... Appellant

Versus

1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001.

2. Uttar Pradesh Power Corp. Ltd (UPPCL),
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001.

3. Jaipur VidyutVitaran Nigam Ltd. (JVVN),
VidyutBhabanJanpath,
Jaipur-302005.
(Rajasthan)

4. Ajmer VidyutVitaran Nigam Ltd. (AVVN),
Old Power House, HathiBhata,

Jaipur Road, Ajmer-305001 (Rajasthan).

5. Jodhpur VidyutVitaran Nigam Ltd (JVVN),
New Power House, Industrial Area,
Jodhpur-342003 (Rajasthan).

6. Tata Power Delhi Distribution Ltd.,
33 KV Substation, Hudson lines,
Kingsway Camp, Delhi-110009.

7. BSES Rajdhani Power Ltd. (BRPL),
2nd Floor, B- Block,
BSES Bhawan, Nehru Place,
New Delhi 110019.

8. BSES Yamuna Power Ltd. (BYPL),
Shakti Kiran Building,
Karkardooma, Delhi 110092.

9. Haryana Power Purchase Center (HPPC),
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109.

10. Punjab Electricity Board (PSEB),
220 KV Substation Ablowal, Patiala-147001.

11. Himachal Pradesh State Electricity Board Ltd.(HPSEB),
Kumar Housing Complex Building-II,
VidyutBhaban, Shimla-171004.

12. Power Development Department,
Govt. of Jammu & Kashmir,
Secretariat, Srinagar-19009.

13. Power Department (Chandigarh),
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9D, Chandigarh-16009.

14. Uttarakhand Power Corporation Ltd. (UPCL),
UrjaBhawan, Kanwali Road,
Dehradun-248001.

..... Respondents

JUDGMENT

PERHON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

Appeal No. 129 of 2012

1. The Appeal No. 129 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated

07.05.2012 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 256 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity relating to Ramagundam Super Thermal Power Station, Stage III (500 MW) for the period from 01.04.2009 to 31.03.2014 in terms of CERC (Terms & Conditions of Tariff), Regulations 2009 (hereinafter referred to as the 'Tariff Regulations, 2009'). By this impugned order, the Central Commission has disallowed the claims of the appellant-NTPC regarding additional capital expenditure on the works i.e. Township Building and Ash-Silo 2 execution initiated before the cut off date as pre-defined in Regulation 3(11) of the Tariff Regulations, 2009 but could be completed and capitalised subsequently, additional capital expenditure for the period 01.04.2009 to 31.03.2014 involving activities which form part of the original scope of work including expenditure on BHEL Main Plant Turnkey work and construction of railway siding and locos and also additional capital expenditure to be incurred from time to time towards replacement/refurbishment of old assets, which capital expenditure is necessary for the efficient and effective operation of the generating stations.

Appeal No. 150 of 2012

2. The Appeal No. 150 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 28.05.2012 passed by the Central Electricity Regulatory Commission (for short, the 'Central Commission') in Petition No. 260 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant to the respondent nos. 2 to 8 from its Vindhyachal Super Thermal Power Station, Stage-III (1000 MW) for the period from 01.04.2009 to 31.03.2014 whereby the learned Central Commission has disallowed the additional capitalization in terms of Regulation 7 last proviso of Tariff Regulations, 2009 in respect of various items incurred/to be incurred during the tariff period 2009-14, capital expenditure incurred on environment system protection, online Carbon Dioxide (CO₂) Monitoring System etc., capitalization of expenditure of Merry Go

Round (MGR) Wagons and Elevators and expenditure incurred on the construction of boundary wall and road in Matwai area and certain plant and machinery cost. The Central Commission proceeded in interpreting the Tariff Regulations, 2009 to the effect that no additional capitalization is to be allowed except for those covered under Regulation 9 of the Tariff Regulations, 2009 and compensatory allowance provided in Regulation 19 (e) of the Tariff Regulations, 2009.

Appeal No. 167 of 2012

3. The Appeal No. 167 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 06.07.2012 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 255 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant-NTPC Ltd. to respondent nos. 2 to 6 from its National Capital Thermal Power Station Dadri, Stage I (840 MW) (for short, 'Dadri Station I') for the period from 01.04.2009 to 31.03.2014. By this impugned order dated 06.07.2012, the Central Commission has held that the capital expenditure shall be allowed in terms of Regulations 9 (2) and 19 (e) of the Tariff Regulations, 2009. The claim of the NTPC is that independent of the above two provisions, the capital expenditure is allowable under Regulation 7 last proviso of the Tariff Regulations, 2009. According to the appellant-NTPC, the Central Commission has not taken into consideration the entire amounts as per Regulation 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving the permissible interest on working capital.

Appeal No. 184 of 2012

4. The Appeal No. 184 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 13.07.2012 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 323 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and

supply of electricity of Feroz Gandhi Unchahar Tehrmal Power Station, Stage II (hereinafter called 'Unchahar Stage-II') for the period from 01.04.2009 to 31.03.2014. The learned Central Commission by the impugned order dated 13.07.2012 while determining the said tariff for the period 2009-14 has disallowed the claim of the NTPC regarding additional capital expenditure for the sewerage system and testing and commissioning of 11 KV circuit line only on the ground that deferred work after the cut off date of the generating station is not permitted to be capitalized in terms of Regulation 9(2) of the Tariff Regulations, 2009. According to the appellant-NTPC the Central Commission has failed to consider that these balance works are covered under the original scope of work and the Commission has not taken into consideration the entire amount as per Regulation 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving permissible interest on working capital. According to the appellant, the Central Commission has proceeded in interpreting the Tariff Regulations, 2009 to the effect that no additional capitalization is to be allowed except for those covered under Regulation 9 of the Tariff Regulations, 2009 and the Commission has not considered the implications of Regulation 7 read with Regulation 3(8) of the Tariff Regulations which clearly envisage in the last proviso for the additional capitalization in the case of an existing generating station. According to the NTPC even otherwise, a generating station existing for many years cannot possibly function without additional capitalization, such additional capital expenditure has been allowed in the past till 31.03.2009 considering that the capital expenditure needs to be incurred from time to time for sustained operation.

Appeal No.212 of 2012

5. The Appeal No. 212 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 02.08.2012 passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 254 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and

supply of electricity of Rihand Super Thermal Power Station, Stage-II (1000 MW) (hereinafter called, 'Rihand Station') for the period from 01.04.2009 to 31.03.2014 wherein the Central Commission has disallowed various claims of the appellant - NTPC for additional capitalization for the period 01.04.2009 to 31.03.2014 under Tariff Regulations, 2009. According to the appellant-NTPC, in the impugned order dated 02.08.2012, the Central Commission has disallowed the capitalization on the expenditure incurred on balance work on the ground that deferred works after the cut off date of the station is not permitted to be capitalized and that minor assets cannot be capitalized in terms of Regulation 9 (2) of the Tariff Regulations, 2009.

Appeal No. 224 of 2012

6. The Appeal No. 224 of 2012 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 27.08.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 257 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Simhadri Thermal Power Station, Stage -I (2 x 500 MW) to the respondent nos. 2 to 6 for the period from 01.04.2009 to 31.03.2014. The Central Commission by the impugned order has rejected the claim of the appellant-NTPC for additional capital expenditures incurred or to be incurred by the appellant during the said tariff period for admitting such additional capital expenditure under last proviso to Regulation 7 read with Regulations 5 & 6, independent of Regulation 9 (2) of the Tariff Regulations, 2009. According to the appellant, the rejection of additional capitalization of assets in a generating station which is operating on a sustainable basis initially for a useful life of 25 years and further when such additional capitalization had been consistently allowed at all times in the past including under the then existing Tariff Regulations, 2001 and Tariff Regulations, 2004 is arbitrary and illegal one because the Central Commission has wrongly interpreted the scope of the last proviso to Regulation 7 of the Tariff Regulations, 2009 and has wrongly disallowed the capitalization of the expenditure of Rs. 3980 lacs towards Wagon Tippler Package

and Rs. 3350 lacs towards procurement of locos and accessories. The Central Commission has merely stated that in the absence of Wagon Tippler package and locos & accessories also, the Simhadri Station I has been performing at desired levels. Further, the Central Commission has not allowed NTPC for exclusion of the value of assets which was de-capitalized in the books of accounts for accounting purposes during 2009-10 amounting to Rs. 36.84 lacs and also of expenditure towards MBOA/ash dyke works amounting to Rs. 824.93 lakh.

Appeal No. 232 of 2012

7. The Appeal No. 232 of 2012 has been filed under Section 111 of the Electricity Act, 2003 by the appellant (NTPC Limited herein) against the order dated 07.08.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 225 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Singrauli Super Thermal Power Station (2000 MW) for the period from 01.04.2009 to 31.03.2014 and rejected the claim of NTPC for admitting such additional capital expenditure under the last proviso to Regulation 2007 read with read Regulations 5 & 6 independent of Regulation 9 (2) of the Tariff Regulations, 2009. The Central Commission by the impugned order dated 07.08.2012 has also disallowed the additional capitalization of the expenditure of Rs. 100 crores towards Renovation and Retrofitting of ESP, Rs. 69.82 lac towards Ambient Air Quality Monitoring System (AAQMS) Package, Rs. 56.22 lac on Energy Management System Wagon Tippler Package, Rs. 9.78 lac towards Opacity Monitoring Equipment and Rs. 121.55 Cr. towards Ash Pond and Ash Handling System. The Central Commission has merely stated that the projected capital expenditure incurred can be met from the special allowance allowed for Stage -I units under Regulation 10 (4) of the Tariff Regulations, 2009 as these expenditures are not part of the Renovation and Modernisation. The Central Commission has also disallowed capitalization of expenditure incurred on Bio Methanation Plant amounting to Rs. 14.22 lac on the grounds that it is a minor asset. According to the appellant, the Central

Commission has calculated the interest on working capital without considering all the amounts as per Regulation 18 read with Regulation 19 of the Tariff Regulations, 2009.

Appeal No. 247 of 2012

8. The Appeal No. 247 of 2012 has been filed under Section 111 of the Electricity Act, 2003 by the appellant (NTPC Limited herein) against the order dated 31.08.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 278 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Ramagundam Super Thermal Power Station, Stage-I & II (2100 MW) for the period from 01.04.2009 to 31.03.2014. In the impugned order dated 31.08.2012, the Central Commission has held that the additional capital expenditure incurred or to be incurred by the appellant during the tariff period 01.04.2009 to 31.03.2014 can be admitted only if it is covered within the scope of Regulation 9 (2) of the Tariff Regulations, 2009 and that the last proviso to Regulation 7 dealing with additional capital expenditure of an existing generation station need to be read subject to Regulation 9 (2) of the Tariff Regulations, 2009. Accordingly, all capital expenditures which are not of the specific nature such as Ash Pond, Ash Dyke and Deferred Works, working as a result of change in law etc. specified in Regulation 9 (2) are not admissible at all. Accordingly, the Central Commission has rejected the claim of the NTPC for admitting such additional capital expenditure. According to the appellant, the Central Commission has wrongly interpreted the scope of the last proviso to Regulation 7 of the Tariff Regulations, 2009. Further, the Central Commission has disallowed the capital expenditure on number of assets describing them to be assets in the nature of minor assets observing that capital expenditure is covered within the scope of Compensatory Allowance provided under Regulation 19 (e) of the Tariff Regulations, 2009. According to the appellant-NTPC, the expenditure incurred by it on assets which are established for energy conservation or for safety system such as installation of Dry Ash Extraction System and consequent changes in the building structure, MVW Spray for augmentation for fire

fighting, installation of Fuel Gas Conditioning Units and similar other assets could not have been described as minor assets. According to the appellant, the Central Commission has wrongly held that the scope of Regulation 10 (4) of the Tariff Regulations, 2009 dealing with Special Allowance in lieu of Renovation and Modernization would apply to aspects such as Ash Pond and Ash Handling System and other assets which are covered by Regulation 9(2) of the Tariff Regulations, 2009, namely, those assets which are specifically permitted for additional capital expenditure after the cut off date at any time. The capital expenditure of the nature specified in Regulation 9 (2) are to be considered independent of Special Allowance provided for in Regulation 10 (4) of the Tariff Regulations, 2009 Renovation and Modernisation expenditure allowed under Regulation 10 of the Tariff Regulations, 2009. These expenditures are essentially as a result of the statutory provisions to be incurred after the cut off date at any time irrespective of whether there is any Renovation or Modernization Scheme etc. According to the appellant, the Central Commission has also not considered the scope of the Regulation 18 in regard to the quantum of Operation & Maintenance Expenditure to be included for calculating the interest on working capital to be determined hereunder. The expenditure provided for in Regulation 19 (e) of the Tariff Regulations, 2009 being in the nature of Operation & Maintenance Expenditure should be included in the Operation & Maintenance Cost for calculation of the interest on working capital.

Appeal No.252 of 2012

9. The Appeal No. 252 of 2012 has been filed under Section 111 of the Electricity Act, 2003 by the appellant (NTPC Limited herein) against the order dated 12.09.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 227 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Vindhyachal Super Thermal Power Station, Stage I (1260 MW) (hereinafter called 'Vindhyachal Stage I') for the period from 01.04.2009 to 31.03.2014. By the impugned order dated 12.09.2012, the Central Commission has disallowed the claims of the NTPC

regarding capital expenditure on the aspect of capital expenditure incurred on Acoustic leak detection system amounting to Rs. 312 lac without considering that the said work on Acoustic leak detection system was approved by the Central Electricity Authority (CEA) in the year 2001 itself and the work was started in the year 2007-08 and completed in the year 2009-10. Capital expenditure incurred on retrofitting of remote oil firing and safe flame scanning system amounting to Rs. 2100 lakhs has been disallowed only on the ground that there is no provision under Regulation 9 (2) of the Tariff Regulations, 2009 to consider the capitalization of this asset before the generating station completes 25 years of its useful life. According to the appellant-NTPC, the Central Commission has not taken into consideration the entire amount as per Regulations 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving the permissible interest on working capital. The Central Commission has proceeded for interpreting the Tariff Regulations, 2009 to the effect that no additional capitalization is to be allowed except for those covered under Regulation, 2009. The Central Commission has not considered the implications of Regulation 7 read with Regulation 3 (8) of the Tariff Regulations, 2009 which clearly envisage in the last proviso for the additional capitalization in the case of an existing generating station. Even otherwise, a generating station existing for many years cannot possibly function without additional capitalization.

Appeal No.253 of 2012

10. The Appeal No. 253 of 2012 has been filed under Section 111 of the Electricity Act, 2003 by the appellant (NTPC Limited herein) against the order dated 14.09.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 280 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Faridabad Gas Power Station (431.586 MW) for the period from 01.04.2009 to 31.03.2014. By the impugned order dated 14.09.2012, the Central Commission has disallowed the claim of the NTPC regarding capitalization of expenditure towards inert gas fire

extinguishing system amounting to Rs. 278 lac. According to the appellant-NTPC, the Central Commission has failed to consider that the expenditure on such aspects are required for the protection of environment and such expenditure has been incurred in pursuance of the approval of the Central Electricity Authority dated 18.02.2008. The Central Commission has disallowed the expenditure on the ground that the generating station would be eligible for Renovation & Modernization after the period of 2009-14 and NTPC can undertake such work during that time. By the impugned order dated 14.09.2012, the Central Commission has also disallowed the claim of the NTPC regarding the expenditure towards communication equipments amounting to Rs. 37.57 lacs and OS/tag license amount to Rs. 7.47 lacs during 2009-10. According to the appellant, the Central Commission has failed to consider that the communication equipments are required under ABT regime for faster decision making and increased communication and the O/s tag license are required for making plant parameters available on the PIOC compliant servers which are being utilized for better monitoring of plant operation parameters for safe and reliable operation of the generating station. According to the appellant, the Central Commission has wrongly proceeded in interpreting the Tariff Regulations, 2009 to the effect that no additional capitalization is to be allowed except for those covered under Regulation 9 of the Tariff Regulations, 2009. The Central Commission has not considered the implications of the last proviso to Regulation 7 read with Regulation 3 (8) of the Tariff Regulations, 2009 which envisage for additional capitalization in the case of an existing generation station.

Appeal No.53 of 2013

11. The Appeal No. 53 of 2013 has been filed under Section 111 of the Electricity Act, 2003 by the appellant (NTPC Limited herein) against the order dated 29.05.2012, passed by the Central Electricity Regulatory Commission (hereinafter referred to as the 'Central Commission') in Petition No. 221 of 2009 wherein the Central Commission has determined the tariff applicable for the generation and supply of electricity by the appellant from its Firoz Gandhi Unchahar Tehermal Power Station, Stage -I (420 MW) to the respondents 2 to 14 for the period from 01.04.2009 to 31.03.2014 and has not fully allowed the additional capitalization

claimed by the NTPC on the ground that NTPC can meet these expenses from the compensation allowances granted to the generating station under Regulation 19 (e), of the Tariff Regulations, 2009. The Central Commission has erred in interpreting the Tariff Regulations, 2009 in as much as the additional capitalization is not restricted on account of Regulation 19 (e), but is otherwise required to be considered on merits and after applying prudence check, the generating stations like NTPC required additional capital assets from time to time to be installed. Further, the Central Commission also did not take into consideration the process of implementation of the CEA approved scheme for the mid life Renovation & Modernization was only taken up during 2004-09 period. Most of the scheme got completed in 2009-10 & 2010-11 and accordingly capitalized in the tariff period 2009-14. Further, the Central Commission has not taken into consideration the entire amounts as per Regulations 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving the permissible interest on working capital.

12. Since all the aforesaid appeals involve the same issues, arising out of different generating stations of the appellant, namely, NTPC Ltd., we have heard them together and are now deciding them by this common judgment.

13. We have heard Mr. M.G. Ramachandran, learned counsel appearing for the appellant-NTPC Ltd. in all the aforesaid appeals. We have also heard Mr. R.B. Sharma, learned counsel appearing for the distribution licensee, BSES Rajdhani Power Ltd. and Mr. Pradeep Misra, learned counsel appearing for the U.P. Power Corporation Ltd. & M.P. Power Transmission Corporation Ltd., Ms. Shikha Ohri & Ms. Meghna Aggarwal, learned counsel appearing for Haryana Power Purchase Centre. We have also gone through the written submissions filed by the parties and perused the material available on record including the impugned orders.

14. The above noted 11 appeals arise out of the different orders passed by the learned Central Commission determining the tariff of the appellant-NTPC for the period from 01.04.2009 to 31.03.2014 for different generating stations of the

appellant-NTPC Ltd. In this batch of appeals, the following issues arise for our consideration:-

- (A) Additional Capitalization under 'Change in Law' as provided in Regulation 9 (2) (ii) of the Tariff Regulations 2009 (Appeal Nos. 150 of 2012, 167 of 2012, 212 of 2012, 232 of 2012, 247 of 2012, 253 of 2012 and 53 of 2013).
- (B) Additional Capitalization under 'Deferred works relating to ash pond or ash handling system' as provided in Regulation 9 (2) (iii) of the Tariff Regulations, 2009. (Appeal Nos. 129 of 2012, 232 of 2012 and 247 of 2012).
- (C) Additional Capitalization under 'modification in fuel receipt system due to non-materialization of coal linkage beyond the control of generating station', as provided in Regulation 9(2)(vii) of the Tariff Regulations, 2009. (Appeal No. 224 of 2012).
- (D) Additional capitalization of assets that are substantial in nature and are necessary for the functioning of the generating station but have been disallowed on grounds of being minor in nature. (Appeal No. 150 of 2012, 212 of 2012, 247 of 2012 and 53 of 2013).
- (E) Additional Capitalization traceable to 'Power to Relax' as provided under Regulation 44 of the Tariff Regulations, 2009. (Appeal No. 150 of 2012, 212 of 2012, 224 of 2012, 252 of 2012 and 253 of 2012).

15. The main grievances of the sole appellant, namely, NTPC Limited in this batch of appeals are as under:-

15.01. that the learned Central Commission has wrongly and illegally disallowed the claims of the appellant regarding additional capital expenditure on the works i.e. Township Building and Ash-Silo 2 execution 'initiated before the cut off date as pre-defined in Regulation 3 (11) of the Tariff Regulations, 2009 but could be completed after the cut off date and capitalized subsequently' for the period 01.04.2009 to 31.03.2014 involving activities falling within the original scope of

work including expenditure on BHEL Main Plant Turnkey work and construction of railway siding and locos and also additional capital expenditure to be incurred from time to time towards replacement/refurbishment of old assets, which capital expenditure is necessary for the efficient and effective operation of the generating stations.

15.02. that the learned Central Commission has wrongly disallowed the additional capitalization in terms of Regulation 7 last proviso of Tariff Regulations, 2009 in respect of various items incurred or to be incurred during the tariff period 2009-14, capital expenditure incurred on environment system protection, online Carbon Di Oxide (CO₂) Monitoring System etc., capitalization of expenditure of Merry Go Round (MGR) Wagons and Elevators and expenditure incurred on the construction of boundary wall and road in Matwai area and certain plant and machinery cost.

15.03. that the Central Commission has proceeded in interpretation of the Tariff Regulations, 2009 to the effect that no additional capitalization is to be allowed except for those covered under Regulation 9 of the Tariff Regulations, 2009 and compensatory allowance provided in Regulation 19 (e) of the Tariff Regulations, 2009. The Central Commission has wrongly held that the capital expenditure shall be allowed in terms of Regulation 9 (2) and Regulation 19 (e) of the Tariff Regulations, 2009. According to the appellant NTPC Ltd., these two provisions are quite independent and the capital expenditure is allowable under last proviso to Regulation 7 of the Tariff Regulations, 2009. Further, the Central Commission has wrongly not taken into consideration the entire amounts as per Regulation 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving the permissible interest on working capital.

15.04. that the Central Commission has wrongly disallowed the claim for additional capital expenditure for the sewerage system and testing and commissioning of 11 KV circuit line only on the ground that deferred work after the cut off date of the generating station is not permitted to be capitalized in terms of Regulation 9(2) of the Tariff Regulations, 2009. According to the appellant-NTPC the Central

Commission has failed to consider that these balance works are covered under the original scope of work and the Commission has not taken into consideration the entire amount as per Regulation 18 read with Regulation 19 of Tariff Regulations, 2009 for deriving permissible interest on working capital. According to the appellant, the Central Commission has proceeded in wrongly interpreting the Tariff Regulations, 2009 holding that no additional capitalization is to be allowed except those covered under Regulation 9 of the Tariff Regulations, 2009 and the Commission has not considered the implications of Regulation 7 read with Regulation 3 (8) of the Tariff Regulations, 2009 which clearly envisage in the last proviso of the former for additional capitalization in the case of an existing generating station. According to the appellant - NTPC even otherwise, a generating station has been existing for many years, say for 25-30 years, cannot possibly function without additional capitalization, such additional capital expenditure had been allowed in the past till 31.03.2009 considering that the capital expenditure needs to be incurred from time to time for sustained operation.

15.05. that the Central Commission, in the various impugned orders in these appeals, has disallowed additional capitalization of additional expenditure incurred on balance work on the ground that deferred works after the cut off date of the generating station is not permitted to be capitalized and that minor assets cannot be capitalized in terms of Regulation 9 (2) of the Tariff Regulations, 2009.

15.06. that the Central Commission has wrongly rejected the claim of the appellant NTPC Limited for additional capital expenditure incurred or to be incurred by the appellant during the said tariff period for admitting such additional capital expenditure under last proviso to Regulation 7 read with Regulations 5 & 6, independent of Regulation 9 (2) of the Tariff Regulations, 2009.

15.07. that the Central Commission has wrongly interpreted the scope of the last proviso to Regulation 7 of the Tariff Regulations, 2009 and has wrongly disallowed the capitalization of expenditure towards Wagon Tippler Package and towards procurement of locos and accessories mainly on the ground that in the absence of

Wagon Tippler package and locos & accessories also, the Simhadri Station I had been performing at desired levels. The Central Commission has not allowed NTPC for exclusion of the value of assets which was de-capitalized in the books of accounts for accounting purposes during 2009-10 and also of expenditure towards MBOA/ash dyke works.

15.08. that the Central Commission has wrongly rejected the claim of the NTPC for admitting such additional capital expenditure under the last proviso to Regulation 7 read with Regulations 5 & 6, independent of Regulation 9 (2) of the Tariff Regulations, 2009. The Central Commission has disallowed the additional capitalization of the expenditure towards Renovation and Retrofitting of ESP towards Ambient Air Quality Monitoring System (AAQMS) Package, Energy Management System, Wagon Tippler Package, Opacity Monitoring Equipment and Ash Pond and Ash Handling System by merely stating that the projected capital expenditure incurred can be met from the special allowance allowed for Stage -I unit under Regulation 10 (4) of the Tariff Regulations, 2009 as these expenditures are not part of the Renovation and Modernisation. Further, the Central Commission has also disallowed capitalization of additional expenditure incurred on Bio Methanation Plant on the grounds of its being a minor asset. Further, the Central Commission has wrongly calculated the interest on working capital without considering all the amounts as per Regulations 18 & 19 of the Tariff Regulations, 2009.

15.09. that the Central Commission has wrongly disallowed the claim of the appellant regarding capital expenditure incurred on acoustic leak detection system without considering that the said work was approved by the Central Electricity Authority (CEA) in the year 2001 itself and the said work was started in the year 2007-08 and completed in the year 2009-10. The capital expenditure incurred on retrofitting of remote oil firing and safe flame scanning system. It is alleged that there is no provision under Regulation 9 (2) of the Tariff Regulations, 2009 to consider the capitalization of this asset before the generating station completes 25 years of its useful life.

15.10. that the Central Commission has wrongly disallowed the claim of the NTPC regarding capitalization of expenditure towards inert gas fire extinguishing system on the ground that the generating station would be eligible for Renovation & Modernization after the period of 2009-14 and NTPC can undertake such work during that time. According to the appellant-NTPC, the Central Commission has failed to consider that the expenditure on such aspects are required for the protection of environment and such expenditure has been incurred in pursuance of the approval of the Central Electricity Authority dated 18.02.2008. The Central Commission has also disallowed the claim of the NTPC regarding the expenditure towards communication equipments and OS/tag license during 2009-10 without considering that the communication equipments are required under ABT regime for faster decision making and increased communication and the O/s tag license are required for plant parameters available on the PLOPC compliant servers which are being utilized for better monitoring of plant operation parameters for safe and reliable operation of the generating station.

15.11. that the Central Commission has not taken into consideration the process of the implementation of the CEA approved scheme for the mid life Renovation & Modernization was only taken up during 2004-09 period and most of the scheme got completed in 2009-10 & 2010-11 and accordingly capitalized in the tariff period 2009-14.

**ISSUE NO.A RELATING TO ADDITIONAL CAPITALIZATION UNDER
'CHANGE IN LAW'**

16. On this issue, the following contentions have been raised on behalf of the appellant.

16.01. that the capitalization under Regulation 9 (2) (ii) of the Tariff Regulations, 2009 was claimed by the appellant on the aspects of Energy Management Systems, Carbon Di Oxide (CO₂) Monitoring System, Obsolete Control Systems, ESP Field and Rapper Controllers, Solar Heating and Renovation and Retrofitting of ESP, Ambient Air Quality Monitoring System (AAQMS) Package, Energy Management System Wagon Tippler Package, Opacity Monitoring Equipment and Bio Methanation Plant,

Construction of New Canteen Building due to Installation of Dry Ash Extraction System, MVW Spray for Augmentation of Fire-fighting, Expenditure on Energy Conservation, Fuel Gas Analyzer, online Power Measurement System, Insert Gas Fire Extinguishing System&Chlorine Leak Detection System by giving details and necessity of each of these facilities which are mandatorily required in the different power projects of the appellant-NTPC but the learned Central Commission, in the impugned orders, has wrongly and illegally disallowed the same.

16.02. that the Central Commission has disallowed the expenditure on Energy Management Systems on the basis that the benefit of the reduction in auxiliary power consumption is not passed on to the beneficiaries during the period 2009-14 and so the said expenditure should be borne by the NTPC.

16.03. that the Energy Management System has been installed as per guidelines of Bureau of Energy Efficiency to monitor and to optimize the auxiliary power consumption.

16.04. that the Regulations of Central Electricity Authority also make it mandatory for installation of meters, enhanced energy efficiency in energy intensive core sectors is also the policy of the Government of India. Hence the disallowance on this basis is wrong.

16.05. that the Central Commission has failed to consider that the expenditure on Energy Management System has been considered and allowed by the Central Commission in other generating stations such as Vindhyachal Stage I, Thermal Power Station of the appellant and Rihand Stage II Generating Station of the appellant.

16.06. that the consideration of passing on the benefit to the beneficiaries is irrelevant and the claim would squarely fall within the ambit of 'Change in Law' Regulation 9(2)(ii) of the Tariff Regulations, 2009.

16.07. that the Central Commission has also wrongly disallowed the claim of on-line CO2 monitoring system in terms of Regulation 9 of the Tariff Regulations, 2009

on the ground that there is no reference of such asset in the Consent Order of the Ministry of Environment and Forest, Government of India.

16.08. that this system is necessary as an engineering practice for correct reporting and estimation (on annual basis) of SOX and SPM online.

16.09. that as per letter dated 03.02.2005 of the Central Pollution Control Board, all industries in the Singrauli area were required to carry out on line stack emissions monitoring for Particulate Matter, SO₂, NO_x. The Central Pollution Control Board vide letter dated 18.11.2010 addressed to NTPC also required the monitoring of this system.

16.10. that the expenditure incurred by NTPC is as per the Renovation and Modernisation Scheme approved by the CEA, namely, for replacement of obsolete control systems, ESP field and rapper controllers, which fall within the scope of Regulation 9(2)(ii) relating to Change in Law of Tariff Regulations, 2009. Since the ESP controllers were 18 to 20 years old and as a result of various communications with M/s BHEL and OEM, the electronic controllers were obsolete and to maintain the Suspended Particle Matter (SPM) level of the units, availability of all ESP field were required as per the applicable environmental laws. The appellant was required to undertake the replacement of the existing old system with new controllers. The control scheme essential for safe and secure operation of the plant like Furnace Safeguard Supervisory System (FSSS), Automatic Turbine Run up System (ATRS), Secondary Air Damper Control (SADC) etc. had to be replaced due to their being obsolete and spares were not available for the existing equipments, since the replacement of the above assets was necessary and such replacement on account of obsolescence cannot be attributable to any default, failure or reasons attributable to NTPC. Such capitalization has to be necessarily considered under Regulation 9(2)(ii) of Tariff Regulations, 2009.

16.11. that the Central Commission has wrongly proceeded on the basis that the above expenditure can be considered only after the useful life of 25 years under Regulation 10 of Tariff Regulations, 2009. Regulation 10 of the Tariff Regulations,

2009 deals with the Renovation and Modernisation Expenses and admissibility of capital expenditure incurred after the useful life of the generating station. Regulation 10 does not in any manner exclude the consideration of the capital expenditure under the scheme approved by the Central Electricity Authority such as incurring of expenditure on replacement of the aforesaid systems, ESP Fields and Wrapper Controller etc. towards sustenance of current performance levels prior to 25 years under the provisions of Regulation 9(2)(ii).

16.12. that the Solar Water Heating System was installed as a measure for providing electricity for signaling panel etc. at the MGR System and the said scheme cannot be rejected on the ground that it does not provide any benefit to the beneficiaries in the generation and sale of electricity. Such Solar Water Heating Systems are installed as a means for promoting non-conventional energy and also to produce electricity to be used in signaling process which would involve the use of electricity. Hence this expenditure should be allowed as the claim would squarely fall within the ambit of 'Change In Law'- Regulation 9 (2) (ii) of Tariff Regulations, 2009.

16.13. that the direction of law, as provided for under Regulation 9(2)(ii) are to be obeyed independent of the capital expenditure included under Regulation 10 of the Tariff Regulations, 2009 irrespective of whether there is a life extension or not or the period for which such life extension is done. Such expenditure would have to be considered and allowed even after the Renovation and Modernisation is completed as required by law. Such changes in law are on account of external factor not within the power or control of the utility. It can happen at any time.

16.14. that the capital expenditure on Energy Management System, Opacity Monitoring Equipment, Ambient Air Quality Monitoring System, Bio Methanation Plant etc. should have been allowed by the State Commission and disallowance of capital expenditure on these items on the ground that the same would be covered under the special allowance being allowed under Regulation 10 is not covered. All these expenses are to be allowed under Change In Law Regulation contained in

Regulation 9 (2) (ii) of Tariff Regulations, 2009. The NTPC had placed before the Central Commission vide affidavit dated 15.06.2011 the need for Thermal Power Plant to install or having the said system for different purposes but the learned Commission has not appreciated the same. The capital expenditure incurred on procurement of Bio Methanation Plant has been wrongly disallowed by the Central Commission on the ground that they are assets of minor nature and can be compensated under Regulation 19 (e) of the Tariff Regulations, 2009 because the installation of Bio-Methanation Plant was on account of the directions contained in law and, therefore, is to be allowed under Regulation 9 (2) (ii) dealing with Change in Law because such an asset cannot be said to be a minor asset. Accordingly, such expenditure cannot be said to be covered either under Regulation 10 (4) or under Regulation 19 (e) of the Tariff Regulations, 2009. Such expenditure, irrespective of the quantum are to be considered under Regulation 9 (2) (ii) of the Tariff Regulations, 2009.

16.15. that the replacement of obsolete equipments or systems and the replacement by the new work by NTPC was done as required by the Pollution Control Board and directions etc. and new work was undertaken without any replacement and the capitalization of such work does not come under the purview of R & M work as has been wrongly considered by the Central Commission. This work has already been started and it cannot be postponed for the period when it will become eligible for R & M on completion of 15 years and such expenditure should be considered under 'Change of Law' Regulation 9 (2) of the Tariff Regulations 2009.

16.16. that the Central Commission has wrongly held that NTPC has sought the capitalization of this expenditure during 2013-14 long after the approval of CEA.

17. Per contra, the submissions raised on behalf of respondents/beneficiaries are as under:-

17.01. that the appellant-NTPC claimed certain expenditure during 2013-14 towards inert gas fire extinguishing system stating that the said system is

necessary for the protection of the environment and pursuant to the Montreal protocol (ratified by India during 1992) aggressive measures are being taken by all countries for reducing the production and consumption of Chlorofluorocarbons (CFC). Accordingly, as per National Fire Protection Association Standard on Clean Agent Fire Extinguishing System (NFPA-2001), the Halon system is to be replaced with CO₂/Inert gas system and the CEA on 18.02.2008 had approved the fixed fire protection system using inert gas system for unit control room and control equipment room areas. The appellant claimed such expenditure on estimation basis only as the actual cost would be known only after the work is awarded. This expenditure was being claimed by the appellant under Regulation 9(2)(ii) of the Tariff Regulations, 2009, which provides as under:

“9.

2) The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject to prudence check:

.....

(ii) Change in law”

17.02. that the learned Central Commission observed that such expense was being claimed by the appellant in FY 2013-14, on the aforesaid basis without providing any explanation for the delayed capitalization of the expenditure. Further, such claim was being made under the ‘change in law’ provision of the Tariff Regulations, 2009 without demonstrating the need for such expenditure under the provisions of any statute. Hence, the learned Central Commission has correctly rejected this claim of the NTPC with the observations in para 27 of the impugned order dated 14.09.2012 in Petition No. 280 of 2009 (Appeal No. 253 of 2012).

17.03.that the additional capitalization under ‘Change In Law’ as provided under Regulation 9 (2) (ii) of the Tariff Regulations, 2009 in respect of Energy Management Systems, CO₂ Monitoring System, Obsolete Control System, EPS, Field, Rapper Controllers, Solar Heating, Renovation and Retrofitting of ESP, Ambient Air Quality Monitoring, Energy Management System, Opacity Monitoring Equipment, Bio Methanation Plant, Chlorine Leak Detection System, Ash Pond or

Ash Handling System, Plant and Machinery Items, Parking Shed etc., Construction of Gateman Cabin along with MGR, Chasis for Arial Platform, Cable Laying in Township for Expansion of Telephone Network, Bunkar Modification Work, Portable X-Ray Tube base Analyzer System, Pneumatically Powered Tube Beveling Machine and ION Chromatograph. The Energy Management System is used for reduction of auxiliary power consumption in the generating plant of the appellant. Under the Tariff Regulations, 2009 auxiliary power consumption is determined on the basis of normative value and any reduction in auxiliary power consumption will benefit the appellant alone. Merely because Bureau of Energy Efficiency has issued guidelines to monitor the auxiliary power consumption and the Regulations of the CEA to install meters, will not make it under the heading of 'Change in Law' and thus the capitalization in respect of this asset cannot be made for the purpose of tariff.

17.04.that even if the Central Commission has allowed such capitalization in respect of other stations, the incorrect decisions cannot be allowed in perpetuity, hence the Central Commission has rightly rejected this claim of the NTPC.

17.05. that the appellant - NTPC cannot get any benefit of CEA Notification dated 17.03.2006 as no benefit of this asset is available to the beneficiaries so far as the environmental clearance relating to CO₂ monitoring system relied upon by the appellant is concerned in respect of Vindhyanchal-IV and not in respect of Vindhyanchal-III. Neither there is any 'Change of Law', according to appellant's case, the Pollution Control Board has directed all the industries to carry out online stack monitoring as back as on 03.02.2005. Besides this, the Emission Regulations of the Pollution Control Board relied upon by the appellant are of 1996, hence there is no Change In Law. No benefit for installation of this asset will be given to the beneficiaries, hence this asset cannot be capitalized for the purpose of tariff.

17.06.Regarding Obsolete Control System, EPS, Field, Rapper Controllers, the appellant has claimed capitalization of this asset for the purpose of tariff. ESP controllers were 18-20 years old and as per environmental laws, the same are required to be changed. According to the appellant, under Regulation 10 of Tariff

Regulations, 2009, capital expenditure incurred after the useful life of generating stations i.e. 25 years can be taken into consideration. The Commercial Operation Date (COD) of the generating station is 01.12.1995 and since the useful life of the generating station has not expired, this expenditure has to be met under Regulation 19(e) of the Tariff Regulations, 2009. Since the beneficiaries will not get any benefit out of the said asset, the same cannot be capitalized for the purpose of tariff.

17.07. Regarding Solar Heating, there is no Change of Law for installation of solar water heating system only because non-conventional energy is to be promoted will not make it a change In law. The promotion of non-conventional use of energy came as back as in 2003 when the Act had been enforced. Hence, there is no force in the contention of appellant and this expenditure is to be met from O&M expenses.

17.08. Regarding Renovation and Retrofitting of ESP, Ambient Air Quality Monitoring System (AAQMS) Package etc.,the appellant has claimed additional capitalization for the said assets and these assets are in the nature of operation and maintenance expenses and hence cannot be capitalized. Besides this, the said expenditure will not give any benefit to the beneficiaries and the amount spent, which will not give any benefit to the beneficiaries, cannot be allowed to be capitalized for the purpose of tariff determination.

17.09. Regarding Renovation and Retrofitting of ESP, merely because the Pollution Control Board had issued letter dated 23.03.2010, the only direction was to achieve the standards in respect of PM Emissions and the same cannot fall under Change of Law. Besides this, the Central Commission has deferred the capitalization and not granted.

17.10. Regarding expenditure on Chlorine leak Detection System, no documentary evidence or justification has been submitted by the appellant. If this asset is a part of R&M giving benefit to the beneficiaries, in that case also, the appellant

has to justify the claim by producing the Cost Benefit Ratio to the Commission. Besides this, the asset can be capitalized only when such R&M Scheme are fully commissioned and not in piecemeal.

OUR DISCUSSION AND CONCLUSION ON ISSUE NO. 'A':-

18. We have, in the upper part of this judgment, cited in para 15 the grievances of the appellant NTPC in detail. We have deeply considered the rival contentions made on Issue No. 'A' relating to disallowance of additional capital expenditure regarding the various assets mentioned in Issue No. 'A' which are being claimed by the appellant under Change in Law as provided under Regulations 9 (2) and 19 (e) of the Tariff Regulations, 2009. The appellant challenged that observation of the Central Commission submitting that these two Regulations are quite independent and the capital expenditure is allowable under last proviso to Regulation 7 of the Tariff Regulations, 2009. The claim of the appellant-NTPC is that these balance works are covered under the original scope of work and the Commission has not considered the entire amount as per Regulation 18 read with Regulation 19 of the Tariff Regulations, 2009 for deriving permissible interest on working capital. Further the Central Commission, according to the appellant, has wrongly interpreted the Tariff Regulations, 2009 holding that no additional capitalization is to be allowed except those covered under Regulation 9 of the Tariff Regulations, 2009 without considering the implications of last proviso to Regulation 7 read with Regulation 3 (8) of Tariff Regulations, 2009 in the case of existing generating station.

19. Now, we deal with the relevant provisions provided in the Tariff Regulations, 2009:-

Regulation 3 (8) dealing with the definition of 'capital cost' provides that capital cost means the capital cost as defined in Regulation 7.

Regulation 7 Capital cost

(1) Capital cost for a project shall include:-

(a)

(b)

(c)

- (2) The Capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff.....
"last proviso"

[Provided also that in case of existing projects, the capital cost admitted by the Commission prior to 01.04.2009 duly trued up by excluding up-un-discharged liability, if any, as on 01.04.2009 and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff] (Substituted vide Second Amendment Regulations, 2011 w.e.f. 21.06.2011).

Regulation 3 (9) gives definition of Change in Law which is reproduced as under:-

'Change in law' means occurrence of any of the following events:

- i) The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law; or
- ii) Change in interpretation of any law by a competent court, Tribunal or Indian Governmental Instrumentality which is the final authority under law for such interpretation; or
- iii) Change by any competent statutory authority, in any consent, approval or license available or obtained for the project.

Regulation 18 deals with Interest on Working Capital and Regulation 19 deals with Operation & Maintenance Expenses.

20. We have tested the merits of contentions of the appellant on this issue in the light of the relevant provisions of the Tariff Regulations, 2009 and compared them with the impugned orders, which are being assailed before us in this batch of appeals.

21. Additional capital expenditure on the above said assets as claimed by the appellant under the said situations are not covered under the definition of Change

in law because the expenditure on the said assets can be claimed by the appellant NTPC only under Change in Law clause when the events are to be dealt with as a result of enactment, promulgation, amendment, modification or repeal of any law or change in the interpretation of any law by a competent court, Tribunal or Indian Governmental Instrumentality or Change in Law by a competent statutory authority, in any consent, approval or license available or obtained for the project. The learned counsel for the appellant has though tried to explain the said events to be covered under Change in Law but has really failed to demonstrate that such events leading to replacement of the said system or addition of the said assets have occurred. The Central Commission has rightly observed, in the impugned orders, that such expenses were being claimed by the NTPC in FY 2013-14 without providing any explanation for the delayed capitalization of the expenditure and such claim was being made under the 'change in law' by the appellant without demonstrating the need for such expenditure under the provisions of any statute. Further, under Tariff Regulations, 2009 auxiliary power consumption is determined on the basis of normative value and any reduction in auxiliary power consumption will benefit the appellant alone. Merely because Bureau of Energy Efficiency has issued guidelines to monitor the auxiliary power consumption and the Regulations of the CEA to install meters, will not bring it under 'Change in Law' and thus the capitalization in respect of this asset cannot be made for the purpose of tariff.

22. Without repeating the submissions of the respondents/beneficiaries provided in para no. 17.01 to 17.10 of this judgment, we find that the learned Central Commission has rightly disallowed the said claim of additional capital expenses by giving sufficient and cogent reasons. We make it clear that no Regulation of the Tariff Regulations can be read in isolation but the cumulative effect of the whole Regulations, scheme and purpose of the Regulations have to be considered, hence the Central Commission has rightly disallowed the said claims of the NTPC after analyzing the cumulative effect of various Regulations of Tariff Regulations, 2009 without leaving any ambiguity. We do not find any merit in any of the contentions of the appellant-NTPC. However, we agree to the findings

recorded by the Central Commission on Issue No. 'A'. Consequently, this Issue No. 'A' is decided against the appellant.

ISSUE B ADDITIONAL CAPITALIZATION UNDER 'DEFERRED WORKS RELATING TO ASH POND OR ASH HANDLING SYSTEM AS PROVIDED IN REGULATION 9 (2) (iii) OF THE TARIFF REGULATIONS, 2009

23. Appellant's contentions on this issue are as under:-

23.01. that the appellant claimed capitalization under Regulation 9(2)(iii) of the Tariff Regulations, 2009 before the Central Commission during 2009-10 on the ground that the work relating to Ash Pond and Ash Handling System is to augment the dry fly ash extraction and evacuation stating that the ash pond or ash handling system forms part of the original scope of work and the execution was started before the cut off date but the work could be completed and capitalised after the cut off date due to reasons beyond the control of NTPC.

23.02. that in Appeal No. 129 of 2012, since such capital expenditure was incurred by NTPC in respect of Ramagundam, Stage III which was declared under commercial operation on 25.03.2005 and, therefore, the deferred expenditure after the commercial operation date as well as after the cut off date are to be decided in terms of Regulation 18 (2) (v) of Tariff Regulations, 2004 which provides for that the capital expenditure actually incurred after the cut off date can be admitted by the Central Commission subject to prudent check if it is of the nature of deferred works relating to ash pond or ash handling system forming part of the original scope of works.

23.03. that even under Tariff Regulations, 2009, the capital expenditures in the nature of deferred works relating to ash pond or ash handling system forming part of the original scope of works are to be allowed after the cut- off date subject to prudence check by the Central Commission. The learned Central Commission has wrongly disallowed all the capital expenditure relating to ash pond and ash handling system on the ground that the expenditure incurred or projected to be

incurred is required to be met from the Special allowance admissible to the generating station towards R&M during life extension of the units/generating station.

23.04. that the Central Commission has wrongly disallowed the total expenditure claimed during the period 2009-13 towards Ash Pond & Ash handling system without appreciating the stand taken by the NTPC.

23.05. that the learned Central Commission has failed to consider the said submission of the appellant in the correct perspective and has wrongly observed that where the generating station comprises of two stages, namely, Stages I and II and the Ash pond and ash handling system is a common facility for both the stages, Stage-I (600 MW) has completed useful life of 25 years during May, 2010 and accordingly, the Stage-I units are entitled for Special allowance, as claimed by the appellant in terms of Regulation 10 of the 2009 Tariff Regulations, in lieu of Renovation & Modernization. Since the Special Allowance, in lieu of R&M includes the work of ash handling system, the additional capital expenditure claimed towards Ash handling system for Stage-I under Regulation 9(2)(iii) is not permitted.

23.06. that the capital expenditure on Ash Pond and Ash Handling System ought not to be disallowed on the ground that they are covered by the Special Allowances under Regulation 10 (4) for reasons that these expenditures are not part of the Renovation and Modernisation of the generating station/unit but are independent of the same. The expenditure on Ash Pond and associated infrastructure are for new Ash Pond and should be considered under Regulation 9 (2) (iii), namely, deferred works relating to Ash Pond or Ash Handling System.

23.07. that Regulation 9 (2) of Tariff Regulations, 2009 permitting the additional capital expenditure on specific aspects are to be considered and allowed irrespective of the Special Allowance given under Regulation 10 (4) as matters covered under Regulation 9 (2) are independent of expenditure for replacement of equipment etc under Renovation and Modernisation for extending useful life of the plant. Accordingly the Special Allowance is towards the continuous and progressive

maintenance and does not in any way include expenditure required for installation of new assets such as ash pond and the associated works.

23.08. that the Ash Pond and Ash Handling system are required afresh and can be established as new facilities. The existing Ash Pond and Ash Handling system cannot be modified, renovated or refurbished to handle progressively increasing quantum of ash in the extended life term of the project.

24. **Per contra**, the contentions of the respondents on this issue are as under: -

24.01. that the appellant has wrongly claimed the amount under deferred work. As per Tariff Regulations, 2009, no additional capitalization can be granted except three conditions mentioned in the Regulations. Any new work cannot be capitalized.

24.02. that the Central Commission has rightly held that the expenditure incurred by the appellant can be met by Special Allowance under Regulation 10(4) of the Tariff Regulations, 2009.

24.03. that the contention of the appellant that the Special Allowance is inadequate, in that case, cannot be accepted as the appellant has to challenge the Regulations and cannot claim the amount relating to ash pond or ash handling system under the deferred works.

24.04. that Renovation & Maintenance on completion of the useful life of the generating plant was incorporated for the first time under Regulation 10 of the Tariff Regulations, 2009. The purpose of which was to extend the life beyond useful life. The economic life of the plant is 25 years useful life. Physical or actual life of the plant can go well beyond 25 years depending on the quality of operation as well as maintenance of the plant.

24.05. Under Regulation 10 of Tariff Regulations, 2009, option is granted to the

generating company either to claim expenditure incurred on R&M or opt alternatively for a special Allowance under Regulation 10 to meet expenses including expenses on R&M. The appellant exercised its option to claim 'Special Allowance' as per Regulation 10.

24.06. That no provision for R& M before completion of the useful life of the generating plant in the Tariff Regulations, 2009 exists. Expenses, if any, can be met from the Compensation Allowance under Regulation 19(e) of Tariff Regulations, 2009.

24.07. that appellant NTPC is also aware that there is no provision for additional capitalization and accordingly it made all the claims under Regulations 5, 6 & 7 of Tariff Regulations, 2009.

24.08. that the appellant claimed that the investment is required for proper and effective working of the generating station as is apparent from the affidavit dated January, 2012. Subsequently, during arguments in this Appellate Tribunal, the appellant had changed the same claim under Change in Law provided under Regulation under Regulation 9 (ii) of the Tariff Regulations, 2009.

24.09. that the Central Commission has correctly ruled that the said expenditure is essential for successful and efficient operation of generating station and the same cannot be covered by Regulation 9(2) of the Tariff Regulations, 2009.

24.10. that since the generating station has not completed useful life of 25 years, hence the question of considering R&M scheme for extension of useful life under Regulation 10 does not arise.

OUR DISCUSSION AND CONCLUSION ON ISSUE NO. 'B'

25. This issue relates to additional capitalization under deferred works relating to ash pond or ash handling system as provided under Regulation 9 (2) (iii) of the

Tariff Regulations, 2009. We are unable to accept the contentions of the appellant that the work relating to ash pond or ash handling system is to augment the dry fly ash extraction and evacuation which formed part of the original scope of work, the execution of which was started before the cut off date but the work could be completed and capitalized only after the cut off date due to the reasons beyond the control of the appellant. For exercising power under Regulation 9 (2) (iii) of the Tariff Regulations, 2009 the capital expenditure incurred or projected to be incurred on deferred works relating to ash pond or ash handling system must be relating to the original scope of work after the cut off date and then only the Central Commission may, in its discretion, admit the same subject to prudence check. The learned Central Commission has disallowed the said expenditure relating to ash pond or ash handling system on the ground that the said expenditure incurred or projected to be incurred is required to be met from the special allowance admissible to generating station towards renovation and modernization during life extension of the units/generating station. We are not inclined to accept this contention of the appellant that the Central Commission has wrongly held that where the generating station consists of two stages, namely, Stage-I and Stage-II and the ash pond or ash handling system is a common facility for both the stages, Stage-I (600 MW) has completed useful life of 25 years during May, 2010 and accordingly, the Stage-I units are entitled for Special allowance under Regulation 10 (4) of the Tariff Regulations, 2009, in lieu of renovation & modernization. The Central Commission has rightly held that the said capital expenditure is not permissible under Regulation 9(2)(iii) of Tariff Regulations, 2009. We are totally rejecting this contention of the appellant that the capital expenditure for ash pond or ash handling system ought not to be disallowed on the ground that they are covered by the special allowance under Regulation 10 (4) of the Tariff Regulations, 2009 for reasons that these expenditures of renovation & modernization are not part of the generating station/unit but are independent of the same. Further, we cannot accept the contention of the appellant that special allowance towards continuous and progressive maintenance does not in any way include expenditure required for installation of new assets such as ash pond and the associated works.

We note that the appellant NTPC has wrongly claimed the additional expenditure relating to ash pond or ash handling system under deferred work. As per Regulation 9 (2) (iii) of the Tariff Regulations, 2009, no additional capitalization can be granted except the three conditions mentioned therein and any new work cannot be capitalized. The three conditions mentioned in the said provision are firstly the liability to meet the award of arbitration or for compliance of the order or decree of a Court, secondly change in law and thirdly deferred works relating to ash pond or ash handling system in the original scope of work. We uphold the view of the Central Commission that the expenditure incurred by the appellant on ash pond or ash handling system can be met by special allowance under Regulation 10 (4) of the Tariff Regulations, 2009. If the appellant finds that the special allowance is inadequate, in that case, the appellant is free to challenge the said Regulation in the competent Court or Writ Court but during the existence of the said Regulation 9 (2) (iii) of Tariff Regulations, 2009, the said claim relating to ash pond or ash handling system cannot be allowed under the deferred works in the original scope of works.

Under Regulation 10 dealing with Renovation & Modernization of Tariff Regulations, 2009 an option is granted to the generating company either to claim expenditure incurred on renovation & modernization or to opt alternatively for special allowance under Regulation 10(4) of the Tariff Regulations, 2009 to meet the expenditure including on renovation & modernization. Once the appellant has exercised its option to claim special allowance, then it cannot be allowed to claim the capital expenditure incurred or projected to be incurred on deferred works relating to ash pond or ash handling system in the original scope of work under Regulation 9 (2) (iii) of Tariff Regulations, 2009. We further find that there is no provision for renovation and modernization before completion of the useful life of the generating station in the Tariff Regulations, 2009 and expenses, if any, of such nature can be met from the compensation allowance under Regulation 19 (e) of Tariff Regulations, 2009.

In view of the above discussion, we do not find any force in the contentions of the appellant-NTPC and thus Issue No. 'B' is decided against the appellant-NTPC.

ISSUE 'C' ADDITIONAL CAPITALIZATION UNDER MODIFICATION IN FUEL RECEIPT SYSTEM DUE TO NON-MATERIALIZATION OF COAL LINKAGE BEYOND THE CONTROL OF GENERATING STATION AS PROVIDED IN REGULATION 9 (2) (vii) OF THE TARIFF REGULATIONS, 2009.

26. On this issue, the appellant has made following submissions:-

26.01. that the appellant -NTPC claimed expenditure for wagon tippler package and locos and accessories under Regulation 9 (2) of the Tariff Regulations, 2009 but the learned Central Commission has wrongly held that the requirement for installation of Wagon Tippler for the generating station is not justified and accordingly disallowed the claim on the said aspect.

26.02. The Central Commission has disallowed the said expenditure in respect of Simhadri Station, Stage I on the ground that the said station was performing at the desired levels even without installation of the said wagon tippler, package locos and accessories.

26.03. that initially the supply of coal from Bottom Opening Bottom Release (BOBR) was envisaged for the Simhadri Stage-I and the Detailed Project Report for this generating station had no provision for installation of wagon tippler. The space provision was kept in the plant yard for wagon tippler, if needed in future. Since January 2003, there was a shortage in coal by Railways because of non-availability of sufficient number of BOBR wagons and although the Railways had sufficient numbers of BOXN wagons, the generating station did not have facility to unload such type of wagons. For the unloading of BOXN wagons, it was necessary to install the wagon tippler. For the uninterrupted operation of the generating station, NTPC had installed wagon tippers & locos and accessories and under these circumstances, these expenditures are necessarily an additional capital expenditure which are beyond the reasonable control of NTPC and could not be avoided by it.

26.04 that Regulation 9 (vii) of Tariff Regulations 2009 (second amendment) provides that any modification in fuel receipt system due to non-materialization of coal linkage beyond the control of generating station can be allowed in tariff after prudence check.

26.05. that under similar need of augmentation of coal unloading facilities in other NTPC stations, the Central Commission has allowed the claim for Wagon Tippler & locos in Kahalgaon-I, Farakka-I & Vindhyachal-III Stations. There is no reason to delay the claim of NTPC in the Simadri generation station stage -I.

27. **Per contra**, learned counsel for the respondents have defended the impugned order on this issue saying that the findings recorded in the impugned order are based on correct and legal appreciation of the evidence and other material available on record.

OUR DISCUSSION AND CONCLUSION ON ISSUE NO. 'C'

28. We have considered the contentions of the appellant on Issue No. 'C' and have also gone through the findings of the Central Commission on this issue.

Regulation 9 (2) of the Tariff Regulations, 2009 provides as under:-

"The capital expenditure incurred or projected to be incurred on the following counts after the cut off day may, in its discretion, be admitted by the Commission, subject to prudence check:

.....

(vii) Any capital expenditure found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialisation of full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generation station."

29. Thus, a perusal of Regulation 9 (2) (vii) of the Tariff Regulations, 2009 shows that the capital expenditure incurred or projected to be incurred may be admitted by the Central Commission, in its discretion subject to the prudence check, if the

capital expenditure is found justified after prudence check necessitated on account of modifications required or done in fuel receipt system arising due to non-materialization of fuel coal linkage as a result of circumstances not within the control of the generating station.

30. We find that the claim of the appellant -NTPC on expenditure for Wagon Tippler package & locos and accessories under the said Regulation cannot be legally accepted and the learned Central Commission has correctly and legally held that the requirement for installation of the said system for the generating station is not justified. The Central Commission has rightly disallowed the said claim of the NTPC regarding expenditure for Wagon Tippler Package & locos and accessories system on the ground that the said station was performing well at the desired levels even without installation of the said system. Therefore, we decide this Issue No. 'C' against the appellant, namely, NTPC and uphold the finding recorded by the Central Commission on this issue.

ISSUE NO. 'D' RELATING TO DISALLOWANCE OF ADDITIONAL CAPITALIZATION ON THE GROUND OF THE ASSETS BEING MINOR IN NATURE

31. On this issue, the following contentions have been made on behalf of the appellant:-

31.01. that the said issue arises out of the scope of minor assets under Regulation 19 (e) of the Tariff Regulations, 2009. By its very nature, the minor assets deal with some not so consequential assets or assets of small nature such as Chairs, Tables etc. The term 'Minor Assets' can, by no stretch of imagination, cover the assets of significant nature such as Bio Methanation Plant, construction of Cabin along with Merry-go-Round (MGR) system, Chasis for aerial Platform at different locations of the power stations, portable X-ray Tube based Analyser System for Chemical Analysis of Metal, Pneumatically Powered Tube Beveling Machine, ION Chromatograph & Bunker Modification Work. In the impugned order, the Central Commission has proceeded to classify the above assets as minor assets and has disallowed the capital expenditure pertaining to the same.

31.02. that the Central Commission has not dealt with the nature of capital expenditure incurred by the NTPC and has only proceeded on the basis of abroad reasoning that they are minor assets. The Central Commission ought to have examined the nature of the

capital expenditure incurred by NTPC in the context of the normal operation of the generating station and ought not to have approached the issue in a narrow and pedantic manner without considering that during the past period such capital expenditure in various generating stations of the appellant were being allowed.

31.03. that no finding, with regard to scope of assets that can be covered under O&M Expenses, has been recorded in the impugned order. The O&M Expenses by its very nature involve only day to-day expenditure, the benefit of which does not last more than the tariff year for which the expenditure is incurred. Any expenditure incurred on capital assets which gives enduring benefit cannot be rejected on grounds that it is covered under the normal O&M Expenditure.

31.04. that the Central Commission has considered the claims on merits and concluded that the expenditure claimed on these assets is of minor works and cannot be allowed. This clearly establishes that the Central Commission would have allowed the claims if the Central Commission had accepted the justification on merits, notwithstanding the interpretation by the Central Commission on the scope of Regulations 5, 6, 7, 9 & 19(1)(e) of Tariff Regulations, 2009. Such consideration by the Central Commission on merits is clearly traceable to exercise of power to relax under Regulation 44 of Tariff Regulations, 2009.

31.05. that the expenditure for the Plant and Machinery items are necessary for successful running of the plant. The purchase orders for such items were placed before cut-off date i.e. 31.03.2009. Further, these Plants and Machinery items are necessary to have independent maintenance facilities for Vindhyachal Station-III and the Station could not have been running without the same as with every passing year, the maintenance requirement shall increase. The period of 20 months after station COD was not sufficient for identification of such items, their indenting, ordering and receipt of supplies within the cut-off date.

31.06. that the said expenditure claimed by the NTPC on these assets has been disallowed holding that these assets are in the nature of minor works and expenditure for the same has been disallowed in terms of the last proviso to Regulation 7 (2) of the Tariff Regulations, 2009.

31.07. that the learned Central Commission has disallowed the capitalization of expenditure for the parking shed, badminton hall, area development and horticulture

works, electronic weigh bridge, area lighting. The orders for such works were placed by NTPC before cut-off date but the execution had been delayed as these works have necessarily to be carried out after the main plant is ready and also because breaking the execution of all works in small packages results in substantial saving in capital cost and consequent tariff to the beneficiaries.

31.08. that the expenditure incurred in the aforesaid items are necessary for efficient operation of the generating stations and the said expenditure cannot be construed as minor assets to be excluded under Regulation 9 (2) of the Tariff Regulations, 2009. These capital expenditures are not covered by the provisions of Regulation 19 (e) of the Tariff Regulations, 2009.

31.09. that the Central Commission has wrongly held that the said expenditure is in the nature of O & M Expenditure and is required to be borne by the appellant from the normative O&M expenses allowed to the generating station. Holding this view, the expenditure claimed has been disallowed to be capitalized by the Central Commission. Some items are required to increase the healthiness of the system like boiler and some are necessary for preventing maintenance. The expenditure on some items is essential for predicting and correcting the chemical processing and the data developed is required for controlling environmental impact.

31.10. that the Central Commission has failed to appreciate that the above assets are not of minor nature but essential part of the generating station for its operation and such expenditure was necessary for controlling the environmental impact for the efficient operation of the generating station.

32. Per contra, the learned counsels for the respondents have defended the findings recorded on this issue by the Central Commission.

OUR DISCUSSION AND CONCLUSION ON THIS ISSUE NO. 'D'

33. We have deeply considered the contentions of the appellant in the light of the findings recorded on this issue in the impugned order. This issue relates to the scope of compensation allowance provided under Regulation 19 (e) of the Tariff regulations, 2009, which is reproduced as under:-

"19. OPERATION & MAINTENANCE EXPENSES

Normative operation and maintenance expenses shall be as follows, namely:

.....
.....

(e) In case of coal-based or lignite-fired thermal generating station a separate compensation allowance unit-wise shall be admissible to meet expenses on new assets of capital nature including in the nature of minor assets, in the following manner from the year following the year of completion of 10, 15 or 20 years of useful life:

Years of operation	Compensation Allowance (Rs. Lakh/MW/year)
0-10	Nil
11-15	0.15
16-20	0.35
21-25	0.65"

34. This Appellate Tribunal vide judgment, dated 27.1.2014, in Appeal No. 44 of 2012, captioned as NTPC vs. Central Electricity Regulatory Commission &Ors., while interpreting the Tariff Regulations, 2009, has observed as under:

"28. As we mentioned earlier, the Regulation 9 is a substantive Regulation for additional capitalization both for the existing projects and also for the new projects. According to learned counsel for the NTPC, any capital expenditure incurred in the existing thermal power station could be claimed as per the last proviso to Regulation 7 (2) and Regulation 9 would not govern this. We are unable to agree with the contention of the learned counsel for the NTPC for the following reasons:

Regulation 7 regarding capital cost covers both the existing as well as new power projects. Regulation 7(1) stipulates that the capital cost of a project would include the expenditure incurred or projected to be incurred upto the COD, capitalized initial spares subject to the specified ceiling and additional capital expenditure determined under Regulation 9. This would apply to the existing projects which achieved COD before 1.4.2009 and new projects which attain COD on or after 1.4.2009. Regulation 7(2) stipulates that the capital cost as admitted by the Commission after prudence check shall form the basis for determination of tariff. This also applies to both the existing and new projects. The 1st and 2nd proviso to Regulation 7(2) deal with prudence check of capital cost. 3rd, 4th, 5th and 6th proviso to Regulation 7(2) deal with capital cost of hydro projects. The 7th proviso deals with the ceiling of determination of tariff on the basis of provision in power

purchase agreement or transmission service agreement. The last proviso only indicates that in case of existing projects, the capital cost admitted by the Commission prior 1.4.2009 duly tried up by excluding un-discharged liabilities and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission shall form the basis for determination of tariff. **The last proviso does not say that any additional capital expenditure incurred or projected to be incurred by the generating company in the existing power stations for successful and efficient plant operation could be permitted.** Further, the capital cost as defined in Regulation 7(1) does not show that it would include the additional capital expenditure for existing projects as determined under the last proviso to Regulation 7 (2). The definition of capital cost only includes the capital cost upto the COD as admitted by the Central Commission, capitalized initial spares and additional capital expenditure determined under Regulation 9. Thus, the additional capitalization even in case of an existing power station can be considered by the Central Commission as per the provisions of Regulation 9 only.

29. We do not find merit in the contention of Shri M.G. Ramachandran, learned counsel for the NTPC that the additional capitalization has to be allowed for the existing power stations as per the last proviso to Regulation 7(2) and Regulation 9 regarding additional capitalization only pertains to new power projects and does not deal with existing projects except to a limited extent provided in Regulation 9(2). Therefore, we are of the view that the additional capitalization in case of existing power projects whose cut- off date is achieved after 1.4.2009 and new power projects within the original scope of work has to be admitted by the Commission subject to prudence check under Regulation 9(1). Similarly the capital expenditure after the cut-off date for both existing power stations and new projects has to be decided by the Commission according to Regulation 9(2). There is nothing in Regulations 7 & 9 which would indicate that Regulation 9 is generally applicable only to the new projects and last proviso to Regulation 7(2) would be applicable to the existing projects for deciding additional capitalization.

38. According to ShriRamachandran, learned counsel for NTPC, Regulation 9 does not specify that besides Regulation 9(1) and (2) no other additional capitalization shall be admissible. Even in terms of Regulation 5 and 6, there is no limitation of the additional capitalization being only limited to Regulation 9 and not covering any other aspect. We are not able to accept the above contention of ShriRamachandran because firstly, Regulation 9 is a substantive provision for additional capitalization. Secondly, Regulation 7(1) clearly indicates that the capital cost will include the capital expenditure incurred or projected to be incurred upto the CoD, capitalized initial spares subject to the specified ceiling and additional capital expenditure determined under Regulation 9. There is no other component of additional capitalization other than that provided for in Regulation 9 which has to be included in the capital cost as per Regulation 7(1). Thirdly, the explanation given in Statement of Reasons for 2009 Tariff Regulations and Statement of Reasons for amendment dated 21.6.2011 clearly indicate that the Central Commission had not agreed to provide for additional capital

expenditure on new works not within the original scope and expenditure on minor assets but instead provided for compensation allowance under Regulation 19(e). Fourthly, the Regulation 5 and 6 provides for application to be made by the generating company for determination of tariff including the claim for additional capital expenditure and truing up of capital expenditure including the additional capital expenditure upto 31.3.2014 in the next tariff period. These Regulations do not provide for as to how the additional capitalization will be allowed. How the additional capitalization has to be admitted by the Commission is specified only under Regulation 9.

39. In view of above, the first issue is decided as against the Appellant.

48. We find that Regulation 18 provides that the working capital shall cover inter alia, maintenance spares @ 20% of O&M expenses specified in regulation 19 and operation & maintenance expenses for one month. Sub-clause (a) of Regulation 19 specifies the normative O&M expenses for coal based generating stations given in terms of Rs. lakh/MW. The norms for O&M expenses are not based on a percentage of the capital cost. Sub-clause (b) of Regulation 19 provides for O&M expenses allowed for certain old thermal power projects of NTPC and DVC. The compensation allowance provided in Regulation 19(e) is to meet the expenses on new assets of capital nature. Therefore, we find no merit in the contention of NTPC for inclusion of compensation allowance in normative O&M expenses for computing the working capital requirement. Thus, we do not find any infirmity in the impugned order of the Central Commission in not including the compensation allowance in the O&M expenses while computing the working capital requirement".

35. This Appellate Tribunal while interpreting the Regulation 9 of the Tariff Regulations, 2009 in its judgment dated 11th April, 2014 in Appeal No. 188 of 2013 titled NTPC Limited Vs. Central Electricity Regulatory Commission &Ors., held as under:

"The Appellant cannot legally question or challenge the interpretation of Regulation 7 & 9 of the Tariff Regulations, 2009 which has already been settled or answered by this Appellate Tribunal vide judgment dated 27.01.2014 in Appeal No. 44 of 2013. This Tribunal in its judgment dated 27.01.2014 has clearly observed that additional capitalization has to be allowed only according to Regulation 9 of Tariff Regulations, 2009 which will apply to both existing and new power projects. We also affirm the same view of this Tribunal as recorded in our judgment dated 27.01.2014 in Appeal No. 44 of 2012".

36. This Appellate Tribunal vide its judgment dated 8th May, 2014 in Appeal No. 173 of 2013 in the matter of NTPC Ltd. Vs. CERC & others has observed as under:-

"27.SUMMARY OF FINDINGS

(i) The learned Central Commission has not committed any illegality or perversity in disallowing the additional capital expenditure on purchase of generator transformer during tariff period 2009-14 on the ground that new generator transformer will only be used as a spare.

(ii) The learned Central Commission has also not committed any illegality or perversity in disallowing the additional capital expenditure on Energy Monitoring System (EMS) and balance Civil Works during 2009-14, on the ground that this is not covered under the purview of Regulation 9 (2) of Tariff Regulations, 2009. The Central Commission has correctly interpreted the Regulations 7 & 9 of Tariff Regulations, 2009. The Central Commission's view to these Regulations is justifiable and proper and we also agree to the same interpretation.

(iii) The expenditure on additional capital expenditure on purchase of additional locos and wagon is not permissible under Regulation 9(2)(vii). "

37. According to the contentions of the appellant, NTPC, the minor assets deal with some not so consequential assets or assets of small nature such as chairs, tables etc. The term 'Minor Assets' can, by no stretch of imagination, cover the assets of significant nature such as Bio Methanation Plant, construction of Cabin along with Merry-go-Round (MGR) system, Chasis for aerial Platform at different locations of the power stations, portable X-ray Tube based Analyser System for Chemical Analysis of Metal, Pneumatically Powered Tube Beveling Machine, ION Chromatograph & Bunker Modification Work etc.

38. We do not find any merit in the contentions of the appellant because the Central Commission has rightly proceeded to classify the said assets as minor assets and has rightly and correctly disallowed capital expenditure pertaining to the said items. We are further unable to agree to the contention of the appellant that the Central Commission has not dealt with the nature of capital expenditure incurred by the NTPC and has only proceeded on the basis of broad reasoning classifying them as minor assets. Further we fail to accept the contention of the NTPC on this issue that the Central Commission ought to have examined the nature of the capital expenditure incurred by NTPC in the context of the normal operation of the generating station and ought not to have approached the issue in a narrow and pedantic manner without considering that the said capital expenditure in the past period was being allowed for various generating stations of the appellant. We are further unable to agree to the contention of the appellant that the O & M expenses, by its very nature, involve only day to day expenditure, the benefit of which does not last more one tariff year for which

the expenditure is incurred and the expenditure incurred on capital assets which gives enduring benefit, cannot be rejected on ground that it is covered under the normal O&M Expenditure. We hold that the learned Central Commission, in the impugned order, has rightly disallowed the said expenditure mentioned in the above part of this issue holding that these assets are in the nature of minor works and expenditure for the same is disallowed in terms of last proviso to Regulation 7 (2) of the Tariff Regulations, 2009. This contention of the appellant that such works were placed by the appellant before the cut off date but the execution had been delayed as these works have necessarily to be carried out after the main plant is ready and also because breaking the execution of all works, small packages results in substantial saving in capital cost and consequent tariff to the beneficiaries is though lucrative but cannot be accepted considering the Regulation 9(2) and Regulation 19(e) of the Tariff Regulations, 2009.

39. We agree to the view taken by the learned Central Commission in the impugned order that the said expenditure is in the nature of O & M expenditure and is required to be borne by the appellant-NTPC from the normative O & M expenses allowed to the generating station. Accordingly, the State Commission has rightly disallowed the said expenditure to be capitalized. In this view of the matter, the issue No. 'D' is decided against the appellant as the contentions of the appellant are without merits.

ISSUE NO. 'E' RELATING TO POWER TO RELAX UNDER REGULATION 44 OF THE TARIFF REGULATIONS, 2009

40. On this issue, the following contentions have been made on behalf of the appellant:-

40.01. that the capitalization claimed by the appellant has been wrongly disallowed on the ground that the appellant has not been able to provide the requisite justification/details and not simpliciter that the claims are not admissible within the scope of Regulation 9(2) read with Regulation 7. This clearly establishes that the Central Commission would have allowed the claims if the Central Commission had accepted the justification on merits. Such consideration by the Central Commission on merits is clearly traceable to the exercise of "power to relax" provided under Regulation 44 of the Tariff Regulations, 2009.

40.02. that even if the claim was initially made by the appellant under Regulations, 5, 6 & 7 of the Tariff Regulations, 2009 and not under Regulations 44 but the same does not by

itself vitiate the powers of the Central Commission to grant the necessary relief so long as the power does exist and can be traced to a source available in law, i.e, the 'power to relax' under Regulation 44 of the Tariff Regulations, 2009 as held in the cases of P.K Palanisamy Vs. N. Arumugham and Anr. (2009) 9 SCC 173; Ram Sunder Ram Vs. Union of India (2007) 13 SCC 255 & N. Mani Vs. Sangeetha Theatre (2004) 12 SCC 278.

41. Per contra, the contention of the respondents/beneficiaries on this issue is that the appellant NTPC also claimed expenditure on certain amount during 2009-10 for communication equipments and the said expenditure was claimed by the appellant under Regulations 5, 6 & 7 of the Tariff Regulations 2009 and not under Regulation 44. Regulation 5 of Tariff Regulations, 2009 deals with 'determination of tariff', Regulation 6 with 'Truing up of Capital Expenditure and Tariff' and Regulation 7 with 'Capital Cost'. A new case is being pleaded before this Appellate Tribunal under Regulation 44 for exercise of 'power to relax' by the Central Commission and the same deserves to be rejected because the learned Central Commission has correctly observed that ABT regime was implemented in the Northern Region with effect from 01.12.2002 and the expenditure was claimed only during 2009-10, after a long gap of six years. The appellant failed to provide any reasons for the inordinate delay in seeking capitalization of the said expenditure and the learned Central Commission has correctly rejected the said claim with certain observations in para no. 29 of the impugned order dated 14.09.2012 in Petition No. 280 of 2009 (Appeal No. 253 of 2012).

OUR DISCUSSION AND CONCLUSION ON ISSUE NO. E

42. On consideration of the rival contentions of the parties, we do not find any merit in the contentions of the appellant on this issue because the said claim was initially made by the appellant-NTPC under Regulations 5, 6 & 7 of the Tariff Regulations, 2009 and not under Regulation 44 dealing with "Power to Relax" of Tariff Regulations, 2009. Thus, the appellant/petitioner did not seek the invocation of power to relax of the Central Commission as provided under Regulation 44 of the Tariff Regulations, 2009, hence the Central Commission did not consider the same. This is not a fit case warranting the Central Commission to invoke power to relax under Regulation 44 of the Tariff Regulations, 2009.

Regulation 5 of Tariff Regulations, 2009 deals with the determination of tariff, Regulation 6 thereof deals with truing up of capital expenditure and tariff and Regulation 7 deals with capital cost. An attempt has been made by the appellant to plead that the Central Commission should have exercised the power to relax as provided under Regulation 44 of Tariff Regulations, 2009, which is not acceptable to us in the facts and circumstances of these Appeals. The Central Commission has correctly observed, in the impugned orders, that ABT regime was implemented in the Northern Region with effect from 01.12.2002 and the said expenditure was claimed only during 2009-10, after a long gap of six years and the appellant failed to provide any reasons for the inordinate delay in seeking capitalization of the said expenditure. There are certain conditions laid down under Regulation 44 of the Tariff Regulations, 2009, on fulfilment of which conditions only the Central Commission can exercise Power to Relax and not otherwise. In the instant matters, the said conditions are not fulfilled, hence we do not think it proper to direct the Central Commission to consider to exercise its Power to Relax in accordance with Regulation 44 of the Tariff Regulations, 2009. Thus, all the contentions made on behalf of the appellant on this issue are sans merits and are liable to be rejected. Consequently, this Issue No.'E' is decided against the appellant-NTPC as we do not find it to be a fit case for invoking the Power to Relax under Regulation 44 of the Tariff Regulations, 2009

43. In view of the above, since all the issues have been decided against the appellant in this batch of Appeals, all these Appeals are bound to be dismissed.

ORDER

All the Appeals being numbered 129 of 2012, 150 of 2012, 167 of 2012, 184 of 2012, 212 of 2012, 224 of 2012, 232 of 2012, 247 of 2012, 252 of 2012, 253 of 2013 & 53 of 2013 are hereby dismissed as being without any merit and the

impugned orders under this batch of Appeals are hereby upheld. No order as to costs.

Pronounced in open Court on this 12th day of May, 2015.

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

/ REPORTABLE/NON-REPORTABLE

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