

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

Appeal Nos. 134, 141 and 193 of 2013

Dated: 7th December, 2015

**Present: Hon'ble Mrs Justice Ranjana P Desai, Chairperson
Hon'ble Mr.T Munikrishnaiah, Technical Member**

In the matter of:

Appeal No. 134 of 2013

IN THE MATTER OF:

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 Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226001, Uttar Pradesh.
3. Jaipur Vidyut Vitaran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur 302005.

4. Ajmer Vidyut Vitaran Nigam Ltd.
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer-305 004
5. Jodhpur Vidyut Vitaran Nigam Ltd.
New Power House, Industrial Area,
Jodhpur-342003
6. Tata Power Delhi Distribution Ltd.
Grid Substation, Hudson Road,
Kingsway Camp, Delhi-110009
7. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place,
New Delhi-110019.
8. BSES Yamuna Power Ltd.
Shakti Kiran Building,
Karkardooma, Delhi-110092
9. Haryana Power Purchase Centre
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109
10. Punjab State Power Corporation Ltd,
The Mall, Patiala-147001
11. Himachal Pradesh State Electricity Board Ltd.
Kumar Housing Complex Building-II,
Vidyut Bhawan, Shimla- 171004.
12. Power Development Department,
Govt. of Jammu & Kashmir,
Secretariat, Srinagar-190 009
13. Power Department (Chandigarh)
Union Territory of Chandigarh,
Addl. Office Building,
Sector-9 D, Chandigarh-160 009

14. Uttarakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun-248001

.....**Respondents**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Ms. Poorva Saigal
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Ms. Swagatika Sahoo
Mr. Avinash Menon

Counsel for the Respondent(s) : Mr. R.B. Sharma for R-7
Mr. Pradeep Misra for R-2
Mr. Manoj Kr. Sharma for R-2
Mr. Alok Shankar for TPDDL
Mr. M.S. Ramalingam for R-1
Mr. Shashank Pandit for R-2
Mr. M.K. Pandey for R-1
Mr. Aditya Mukherjee for R-8
Mr. Ashish Gupta
Mr. Vaibhav Choudhry for R-6
Mr. Daleep Kr. Dhayani
Mr. Gaurav Wadera
Mr. Gopal Jain
Mr. Parth
Mr. Suraj Singh

Appeal No. 141 of 2013

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. West Bengal State Electricity Distribution Company Limited
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City
Kolkata – 700 091
3. Bihar State Power Holding Company Limited
(erstwhile Bihar State Electricity Board)
Vidyut Bhawan, Bailey Road
Patna – 800 001
4. Jharkhand State Electricity Board,
Engineering Building,
HEC, Dhurwa, Ranchi – 834004
5. GRIDCO Limited
24, Janpath,
Bhubaneswar – 751007
6. Damodar Valley Corporation
DVC Towers, VIP Road
Kolkata-700054
7. Power Department
Govt. of Sikkim, Kazi Road,
Gangtok, Sikkim-737101
8. Tamilnadu Generation and Distribution Company Limited
NPKRP Maaligail,
144, Anna Salai, Chennai – 600002
9. Electricity Department
Union Territory of Puducherry
58, Subhash Chandra Bose Salai
Puducherry-605001

10. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001
11. Power Development Department (J&K)
Govt. of J&K Secretariat,
Srinagar-190 009
12. Power Department
Union Territory of Chandigarh
Addl. Office Building
Sector-9D, Chandigarh- 160 009
13. Madhya Pradesh Power Trading Corporation Limited
Shakti Bhawan, Vidyut Nagar
Jabalpur – 482008
14. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course, Baroda – 390007
15. Electricity Department
Administration of Daman & Diu(DD)
Daman-396 210
16. Electricity Department
Administration of Dadra and Nagar Haveli (DNH)
Silvassa, via VAPI-396 230
17. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019
18. BSES Yamuna Power Limited
Shakti Kiran Bldg., Karkardooma
Delhi-110092

19. Tata Power Delhi Distribution Ltd
(erstwhile North Delhi Power Limited)
Grid Substation Hudson Road
Hudson Road, Kingsway Camp
New Delhi-110009
20. Maharashtra State Electricity Distribution Company Limited
'Prakashgad', Bandra (East),
Mumbai-400051

....Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Ms. Poorva Saigal,
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Ms. Swagatika Sahoo
Mr. Avinash Menon

Counsel for the Respondent(s) : Mr. R.B. Sharma for R-4,5&17
Mr. Pradeep Misra for R-10
Mr. Manoj Kr. Sharma for R-10
Mr. Alok Shankar for TPDDL
Mr. M.S. Ramalingam for R-1
Mr. Shashank Pandit for R-10
Mr. Suraj Singh
Mr. M.K. Pandey for R-1
Mr. Vaibhav Choudhry for R-19
Mr. Daleep Kr. Dhayani
Mr. Gaurav Wadera
Mr. Dhaleep
Mr. Gopal Jain
Mr. Parth for TPDDL

Appeal No. 193 of 2013

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. West Bengal State Electricity Distribution Company Limited
Vidyut Bhawan, Block-DJ,
Sector-II, Salt Lake City
Kolkata – 700 091
3. Bihar State Power Holding Company Limited
(erstwhile Bihar State Electricity Board)
Vidyut Bhawan, Bailey Road
Patna – 800 001
4. Jharkhand State Electricity Board,
Engineering Building,
HEC, Dhurwa, Ranchi – 834004
5. GRIDCO Limited
24, Janpath,
Bhubaneswar – 751007
6. Damodar Valley Corporation
DVC Towers, VIP Road
Kolkata-700054

7. Power Department
Govt. of Sikkim, Kazi Road,
Gangtok, Sikkim-737101
8. Tamilnadu Generation and Distribution Company Limited
NPKRP Maaligail,
144, Anna Salai, Chennai – 600002
9. Electricity Department
Union Territory of Puducherry
58, Subhash Chandra Bose Salai
Puducherry-605001
10. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14, Ashok Marg,
Lucknow – 226001
11. Power Development Department (J&K)
Govt. of J&K Secretariat,
Srinagar-190 009
12. Power Department
Union Territory of Chandigarh
Addl. Office Building
Sector-9D, Chandigarh- 160 009
13. Madhya Pradesh Power Trading Corporation Limited
Shakti Bhawan, Vidyut Nagar
Jabalpur – 482008
14. Gujarat Urja Vikas Nigam Limited
Sardar Patel Vidyut Bhawan
Race Course, Baroda – 390007

15. Electricity Department
Administration of Daman & Diu(DD)
Daman-396 210
16. Electricity Department
Administration of Dadra and Nagar Haveli (DNH)
Silvassa, via VAPI-396 230
17. BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110019
18. BSES Yamuna Power Limited
Shakti Kiran Bldg., Karkardooma
Delhi-110092
19. Tata Power Delhi Distribution Ltd
(erstwhile North Delhi Power Limited)
Grid Substation Hudson Road
Hudson Road, Kingsway Camp
New Delhi-110009
20. Maharashtra State Electricity Distribution Company Limited
'Prakashgad', Bandra (East),
Mumbai-400051

....Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Ms. Poorva Saigal,
Ms. Ranjitha Ramachandran
Ms Anushree Bardhan
Ms. Swagatika Sahoo

Counsel for the Respondent(s):Mr. R.B. Sharma for R-4,5 &17
Mr. Pradeep Misra for R-2 & R-10
Mr. Manoj Kr. Sharma

Mr. Alok Shankar for TPDDL
Mr. M.S. Ramalingam for R-1
Mr. Shashank Pandit
Mr. Suraj Singh
Mr. M.K. Pandey
Mr. Daleep Kr. Dhayani for R-2
Mr. K.S. Dhingra for R-1

JUDGMENT

Per Hon'ble T Munikrishnaiah, Technical Member

Appeal No. 134 of 2013

1. The Appeal No. 134 of 2013 under Section 111 of the Electricity Act, 2003 has been filed by the Appellant (NTPC Limited herein) against the order dated 22-04-2013 passed by the Central Electricity Regulatory Commission (hereinafter called as the 'Central Commission') in Review Petition No. 22 of 2012, filed in Petition No.261 of 2009 relating to the determination of tariff for Rihand Super Thermal Power Station Stage-I (1000MW), for the period from 01.04.2009 to 31.03.2014 and supply of electricity to Respondent Nos. 2-14. The Rihand station with total capacity of 1000 MW comprises of two units 500 MW each. The date of commercial operation of these units are:

Unit	COD
Unit-1	01.01.1990
Unit-2	01.01.1991

The Central Commission has disallowed capital expenditure incurred under R&M Schemes duly approved by the Central Electricity Authority (CEA); capital expenditure on Online Sox, Nox, CO₂, CO monitoring flue gas; capital expenditure on non R&M capital addition and non-consideration of compensation allowance under Regulation 19 (e) for calculation of cost of maintenance spare requirements and calculation on interest on working capital under Regulation 18.

Appeal No. 141 of 2013

2. The Appeal No. 141 of 2013 under Section 111 of the Electricity Act, 2003 has been filed by the appellant (NTPC Limited herein) against the order dated 03.05.2013 passed by the Central Electricity Regulatory Commission (herein after called the 'Central Commission') in Review Petition No.19 of 2012 filed in Petition No.245 of 2009 relating to the determination of Generation tariff for Kahalgaon Super Thermal Power Station, Stage-1 (840 MW) and supply

electricity to Respondent Nos. 2 to 20 for the period from 01.04.2009 to 31.03.2014. The Khalagaon Station comprises of four units each 210 MW. The commercial date of operation of these four units are as under:

Unit	COD
Unit-1	01.01.1995
Unit-2	01.04.1995
Unit-3	01.02.1996
Unit-4	01.08.1996

The Central Commission by the Impugned Order dated 03.05.2013 disallowed capital expenditure towards procurement of 10 nos. of Wagons amounting to Rs. 367.00 lakhs; disallowance of Rs. 125.00 lakhs towards capital expenditure on condenser on-line tube cleaning system; disallowance of exclusion from de-capitalization of 9 wagons and disallowance of compensation allowance for calculation of maintenance of spares.

Appeal No. 193 of 2013

3. The Appeal No. 193 of 2013 under Section 111 of the Electricity Act, 2003 has been filed by the Appellant (NTPC Limited herein) against the order dated 14.06.2013 passed by the Central Electricity Commission in Review Petition No.

24 of 2012, filed in Petition No. 222 of 2009 relating to determination of generation tariff for Farakka Super Thermal Power Station, Stage-I-II (1600 MW) for the period from 01.04.2009 to 31.03.2014 and supply of electricity to Respondents 2 to 20. The Farakka STPS comprises of three units of 200 MW each and two units of 500 MW. The date of commercial operation of these units are as follows:

Unit	COD
Unit-1	01.11.1986
Unit-2	01.10.1987
Unit-3	01.09.1988
Unit-4	01.07.1996
Unit-5	01.04.1995

The Central Commission by the Impugned Order dated 19.06.2013 disallowed capital expenditure on procurement of 35 nos. of Wagons amounting to Rs. 1260 lakhs during 2011-12, disallowance of Rs. 10.19 lakhs and 6.11 lakhs capital expenditure on Township Metering Package and SAP license during 2009-10, disallowance of capital expenditure of Rs. 15.84 crores towards R&M expenditure approved by the Central Electricity Authority, disallowance of capital expenditure of Rs. 4556.00 lakhs during the year 2013-14

towards strengthening of Merry Go Round (MGR) track, and disallowance of compensation allowance for calculation of maintenance spares.

4. Since all the aforesaid appeals involve similar issues, arising out of different generating stations of the Appellant, NTPC Ltd., we have heard them together and are now deciding them by this common order.
5. We have heard Mr. M.G. Ramachandran, Learned Counsel appearing for the Appellant, NTPC Ltd., in aforesaid Appeals. We have also heard Mr. R.B. Sharma, Learned Counsel appearing for the Distribution Licensees and Mr. Pradeep Misra, Learned Counsel for the Distribution Licensee (Uttar Pradesh Power Corporation Ltd. – Respondent No. 10)
6. We have also gone through the Written Submissions filed by the parties and perused the material available on record including the Impugned Orders.
7. The above three Appeals arise out of different orders passed by the Learned Central Commission determining the tariff of

the Appellant, NTPC Ltd., for the period 01.04.2009 to 31.03.2014 for the generating stations, namely, Rihand Super Thermal Power Station, Kahalgaon STPS and Farakka STPS Stage 1&II.

8. The following issues arise for our considerations.

Issue I: Whether the Central Commission erred in not allowing the capital expenditure towards the CEA approved renovation and modernization scheme amounting to Rs. 95.81 crores with respect to Rihand STPS? **(Appeal No. 134 of 2013).**

Issue No. II: Whether the Central Commission erred in disallowance of capital expenditure towards other CEA approved R&M scheme like SOX and NOX, CO₂ and CO Monitoring Flue gas amounting to Rs. 0.58 crores? **(Appeal No. 134 of 2013).**

Issue No. III: Whether the Central Commission erred in disallowing the capital expenditure of Rs. 1.77 crores towards non R&M capital addition scheme/other capital works which includes installation of Cenpeep instruments, township metering, instruments for energy audit, solar water heater, solar PV lights, online energy meters and replacement of ABT meters? **(Appeal No. 134 of 2013).**

Issue No. IV: Whether the Central Commission erred in disallowance for calculation of maintenance of spare requirement and calculation on interest on working capital? **(Appeal No. 134 of 2013).**

Issue No. V: Whether the Central Commission erred in disallowance of capital expenditure towards procurement of 10 Nos. Wagons amounting to Rs. 367 lakhs during 2010-11 on the ground that this expenditure is not covered under

the purview of Regulation 9(2) of Tariff Regulations 2009? **(Appeal No. 141 of 2013).**

Issue No. VI: Whether the Central Commission erred in disallowance of capital expenditure amounting to Rs. 125 lakhs during 2011-12 on the installation of condenser on line tube cleaning system on the ground that there is no provision under Regulation 9(2) for capitalization of this asset after the cut-off date? **(Appeal No. 141 of 2013).**

Issue No. VII: Whether the Central Commission erred in disallowance of exclusion from de-capitalization of 9 Wagons? **(Appeal No. 141 of 2013).**

Issue No. VIII: Whether the Central Commission erred in disallowance of compensation allowance for calculation of maintenance of spares? **(Appeal No. 141 of 2013).**

Issue No. IX: Whether the Central Commission erred in disallowance of capital expenditure towards procurement of 35 Nos. Wagons amounting to Rs. 1260 lakhs during 2011-12? **(Appeal No. 193 of 2013).**

Issue No. X: Whether the Central Commission erred in disallowance of capital expenditure on Township Metering Package and SAP license capitalization amount to Rs. 10.19 lakhs and Rs. 6.11 lakhs, respectively during 2009-10? **(Appeal No. 193 of 2013).**

Issue No. XI: Whether the Central Commission erred in disallowance of capital expenditure towards R&M scheme approved by the Central Electricity Authority amounting to Rs. 15.84 crores for the period 2009-13 with respect to Farakka STPS? **(Appeal No. 193 of 2013).**

Issue No. XII: Whether the Central Commission erred in disallowance of capital expenditure towards strengthening of Merry Go Round (MGR) track amounting to Rs. 4556.00 lakhs during the year 2013-14? **(Appeal No. 193 of 2013).**

Issue No. XIII: Whether the Central Commission erred in disallowance of compensation allowance for calculation of maintenance spares? (**Appeal No. 193 of 2013**).

9. **Our Consideration and Discussion on these Issues**

9.1 Let us consider the relevant Regulation of the Central Electricity Regulatory Commission (Tariff Regulations) Regulations 2009.

9.2 Let us now refer to the definition of the terms “Additional Capitalization”, “Cut-Off Date” and “useful life” of the generating units.

Sub Regulation 3 of the Regulation-3 provides for the definition of Additional Capitalization. The same is as follows:

“3. Definitions

“3. “additional capitalisation” means the capital expenditure incurred or projected to be incurred, after the date of commercial operation of the project and admitted by the Commission after prudence check, subject to provisions of Regulation 9”.

The reading of the above definition would make it clear that the additional capitalization of capital expenditure incurred or projected to be incurred after the

commercial operation date of the project, is subject to the provisions of Regulation-9.

9.3 Let us now see the definition of “cut-off date” in sub Regulation 11 of Regulation-3.

(11) “Cut-off date” means 31st March of the year closing after two years of the year of commercial operation of the project, and in case the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st March of the year closing after three years of the year of commercial operation”.

Regulation 3(42) Useful Life:

In relation to a unit of a generating station and transmission system from the COD mean the following, namely:

- a) Coal-based/lignite-fired thermal generating stations:
25 years*
- b) Gas/Liquid fuel-based thermal generating stations:
25 years.*

9.4 The cogent reading of these definitions would make it evident that Regulation 3(3) clearly provides that any additional capitalization permissible either before or after the “cut-off date”, shall be subject to the provisions of Regulation-9 of the Central Commission Tariff Regulations, 2009.

9.5 Let us now refer to the Regulation-7 and Regulation-9 of the Tariff Regulations, 2009, as amended on 21.6.2011:

“7. Capital Cost

(1) *Capital Cost for a project shall include: (a) The expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan–*

(i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or

(ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;

(b) Capitalized initial spares subject to the ceiling rates specified in regulation 8; and

(c) Additional capital expenditure determined under regulation 9:

Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.

(2) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff;

*..... **Provided also that in case of the existing projects, the capital cost admitted by the***

Commission prior to 1.4.2009 duly trued up by excluding un-discharged liability if any, as on 1.4.2009 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.

“9. Additional Capitalisation:

(1) *The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and upto the cut-off date may be admitted by the Commission, subject to prudence check;*

(i) *Un-discharged liabilities.*

(ii) *Works deferred for execution.*

(iii) *Procurement of initial capital spares within the original scope of work, subject to the provisions of Regulation 8.*

(iv) *Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and*

(v) *Change in law: Provided that the details of works included in the original scope of work along with estimates of expenditure, un-discharged liabilities and the works deferred for execution shall be submitted along with the application for determination of tariff.*

(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;

(i) **Liabilities to meet award of arbitration or for compliance of the order or decree of a court;**

(ii) **Change in law;**

- (iii) **Deferred works relating to ash pond or ash handling system in the original scope of work;** In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;
- (iv) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system; Provided that in respect of sub clauses;
- (v) Any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air conditioners, voltage stabilizers, refrigerators, coolers, fans washing machines, heat convectors, mattresses, carpet etc., brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009;
- (vi) In case of gas/liquid fuel based open/combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 years of operation from its COD

and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations;

Provided that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed;

(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 generating station; and

(viii) Any un-discharged liability towards final payment/withheld payment due to contractual exigencies for works executed within the cut-off date, after prudence check of the details of such deferred liability, total estimated cost of package, reason for such withholding of payment and release of such payment etc.,”

9.6 8. Initial Spares:

(i) Coal-based/lignite-fired thermal generating stations	- 2.5%
(ii) Gas Turbine/Combined Cycle thermal generating stations	- 4.0%
(iii) Hydro generating stations	- 1.5%
(iv) Transmission system	
(a) Transmission line	- 0.75%
(b) Transmission Sub-station	- 2.5%
(c) Series Compensation devices and HVDC Station	-3.5%

Provided that where the benchmark norms for initial spares have been published as part of the benchmark norms for capital cost under first proviso to clause (2) of Regulation 7,

such norms shall apply to the exclusion of the norms specified herein.

9.7 10. Renovation and Modernization.

- (1) *The generating company or the transmission licensee, as the case may be, for meeting the expenditure on renovation and modernization (R&M) for the purpose of extension of life beyond the useful life of the generating station or a unit thereof or the transmission system, shall make an application before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, record of consultation with beneficiaries and any other information considered to be relevant by the generating company or the transmission licensee.*

Provided that in case of coal-based/lignite fired thermal generating station, the generating company, may, in its discretion, avail of a 'special allowance' in accordance with the norms specified in Clause (4), as compensation for meeting the requirement of expenses including renovation and modernization beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be considered and the applicable operational norms shall not be relaxed but the special allowance shall be included in the annual fixed cost:

Provided also that such option shall not be available for a generating station or unit for which renovation and modernization has been undertaken and the expenditure has been admitted by the Commission before commencement of these regulations, or for a generating station or unit which is in a depleted condition or operating under relaxed operational and performance norms.

- (2) *Where the generating company or the transmission licensee, as the case may be, makes an application for approval of its proposal for renovation and modernization, the approval shall be granted after due consideration of reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors as may be considered relevant by the Commission.*
- (3) *Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on the estimates of renovation and modernization expenditure and life extension, and after deducting the accumulated depreciation already recovered from the original project cost, shall form the basis for determination of tariff.*
- (4) *A generating company on opting for the alternative in the first proviso to clause (1) of this regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/year in 2009-10 and thereafter escalated @ 5.72 every year during the tariff period 2009-14, unit-wise from the next financial year from the respective date of the completion of useful life with reference to the date of commercial operation of the respective unit of generating station:*

Provided that in respect of a unit in commercial operation for more than 25 years as on 01.04.2009, this allowance shall be admissible from the year 2009-10.

9.8 18. Interest on Working Capital:

- (1) The working capital shall cover:
- (a) *Coal-based/lignite-fired thermal generating stations*
- (i) *Cost of coal or lignite and limestone, if applicable, for 1½ months for pithead generating stations and two months for non-pit-head generating stations,*

for generation corresponding to the normative annual plant availability factor;

- (ii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil.*
- (ix) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 19.*
- (iv) Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor, and*
- (v) Operation and maintenance expenses for one month.*

Regulation 18(3) Rate of interest on working capital shall be normative basis and shall be considered as follows:

- (i) SBI short-term Prime Lending Rate as on 01.04.2009 or on 1st April of the year in which the generating station or a unit thereof or the transmission system, as the case may be, is declared under commercial operation, whichever is later, for the unit or station whose date of commercial operation falls on or before 30.06.2010.*
- (ii) SBI Base Rate plus 350 basis points as on 01.07.2010 or as on 1st April of the year in which the generating station or a unit thereof or the transmission system, as the case may be, is declared under commercial operation, whichever is later, for the units or station whose date of commercial operation lies between the period 01.07.2010 to 31.03.2014.*

“Regulation 19. Operation and 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”.

10. Let us examine the issues one by one duly considering the Central Commission Tariff Regulations, 2009 specified above:

Issue I: Whether the Central Commission erred in not allowing the capital expenditure towards the CEA approved renovation and modernization scheme amounting to Rs. 95.81 crores with respect to Rihand STPS? (Appeal No. 134 of 2013)

Issue No. XI: Whether the Central Commission erred in disallowance of capital expenditure towards R&M scheme approved by the Central Electricity Authority amounting to Rs. 15.84 crores for the period 2009-13 with respect to Farakka STPS? (Appeal No. 193 of 2013).

Since above two Issues are similar in nature and hence these two issues are taken up together.

Following are the submissions made by the Appellant on these issues:

10.1 that the Central Commission erred in not allowing the capital expenditure towards the CEA approved R & M scheme amounting to Rs. 95. 81 Crores and 15.84 crores on the ground that the expenditure under R & M schemes cannot be considered under the provisions of Regulation 9 (2) (ii) of the Tariff Regulations, 2009 , since the generating station has not completed useful life of 25 years.

10.2 that the Central Commission failed to consider that these R&M works has been undertaken in pursuance to the approved schemes of CEA dated 26.09.2008 during the life of the generating station and towards sustenance of its performance and to meet operational targets. Accordingly these expenditures are not covered under Regulation 10 of the Tariff Regulations, 2009. Further life of number of equipments of capital nature of power plant is less than 25 years and some of them need replacement because of

obsolescence or premature failure. The Central Commission ought to have considered the claims for additional capitalization under Regulation 7.

10.3 that the Central Commission erred in holding that NTPC is entitled for compensation allowance in terms of Regulation 19(e) to meet expenses on new assets of capital nature including in the nature of minor assets after completion of 10 years of useful life up to 25 years and not for additional capitalization. The Central Commission has failed to consider that the expenditure on such R & M schemes are substantial in nature and are not covered under compensation allowances provided under Regulation 19 (e). The regulation dealing with the compensation allowance is in the context of minor assets and the like and it does not deal with the additional capitalization of substantial nature. The compensation allowance has no relevance to the additional capitalization of a substantial nature incurred by the generating company from time to time. The Central Commission should therefore have allowed the additional

expenditure incurred by NTPC towards CEA approved R&M Scheme.

10.4 that the Central Commission erred in holding that Regulation 19(e) should be admissible to meet the expenses of new assets of capital nature generally, when the Central Commission has specifically held that Regulation 19(e) only covers the expenses on new assets in the nature of minor assets and does not include expenditure (a) on account of design deficiencies etc. which do not occur in the normal course; (b) on Environment Action Plan; and c) on account of change in law, The above itself establishes that number of additional capitalization not covered by the above and not included in Regulation 9 and is only covered in Regulation 7 and needs to be given effect to.

10.5 that the compensation allowance has been given considering the vintage of the generating stations and has nothing to do with the claim for additional capitalization by NTPC.

11. **Per Contra**, the following are the submissions made by Counsel of the Respondents, Mr. R.B. Sharma on behalf of Distribution Companies (R 4,5,7).

11.1 that the alleged claim of the Appellant was rejected by the Commission as the alleged claim of the Appellant does not fall under Regulation 9(2) of the Tariff Regulations, 2009. The relevant para of the impugned order dated 20.04.2012 in Petition No. 239 of 2009 rejecting the claim is quoted below;

“22. The submissions of the parties have been considered. The additional capital expenditure claimed for capital assets for different Renovation & Modernization schemes approved by CEA as indicated in Serial nos.1 to 32 in the table under para 19 above cannot be considered under the provisions of Regulation 9(2) (ii) of the 2009 Tariff Regulations, since the generating station has not completed useful life of 25 years. In terms of provisions of Regulation 10 of the 2009 Tariff Regulations, the expenditure on Renovation and Modernization for the purpose of extension of life of the generating station beyond the useful life would be applicable only after completion of useful life of 25 years. Moreover, the petitioner is entitled for compensation allowance in terms of Regulation 19(e) of the 2009 Tariff Regulations to meet expenses on new assets of capital nature including in the nature of minor assets after completion of 10 years of useful life up to 25 years. In view of this, the capitalization of expenditure for Renovation & Modernization schemes as indicated in serial nos.1 to 32 of the table under paragraph 19 above, along with its de-capitalization is not allowed.”

11.2 that as may be perused from the above, alleged claim of the Appellant does not fall under Regulation 9(2) of the Tariff Regulations, 2009.

11.3 that the entire claim is for different Renovation and Modernization schemes before completion of the useful life and hence the claim is also not permissible under Regulation 10. Thus, the alleged claim of the Appellant is unfounded and the Hon'ble Tribunal in its Judgment dated 27th January 2014 in Appeal No. 44 of 2013 has clearly brought out that the claim of additional capitalization is required to be allowed according to Regulation 9 of the Tariff Regulations 2009 and not in accordance with Regulations 5, 6, & 7 as has been claimed by the Appellant in its Petition before the Commission.

12. Submissions made by the Counsel of the Respondent No. 10.

12.1 that the additional capital expenditure claimed for capital assets for different Renovation & Modernization schemes approved by CEA as indicated in Serial nos.1 to 32 in the table under Para 19 above cannot be considered under the provisions of Regulation 9(2) (ii) of the 2009 Tariff

Regulations, since the generating station has not completed useful life of 25 years.

12.2 that in terms of provision of Regulation 10 of the 2009 Tariff Regulations, the expenditure on Renovation and Modernization for the purpose of extension of life of the generating station beyond the useful life would be applicable only after completion of useful life of 25 years. Thus, the Respondent submits that the expenditure on this issue should not be allowed and the decision of the Central Commission is correct.

13. Our consideration and conclusion on these issues

13.1 The contention of the Appellant is that the Central Commission disallowed the capital expenditure towards the CEA approved Renovation and Modernization scheme amounting to Rs. 95.81 crores in Appeal No. 134 of 2013 determined by the Central Commission in the Tariff Order dated 22.04.2013 relating to Rihand Super Thermal Power Station, Stage-1 and also disallowed the expenditure of Rs. 15.84 crores on capital expenditure towards R&M schemes

approved by the CEA amounting to Rs. 15.84 crores for the period from 2009-2013 pertains to Farakka Super Thermal Power Station in the Appeal No. 193 of 2013.

13.2 Further, the Appellant contested that the Central Commission failed to consider that the R&M Schemes approved by CEA on 26.09.2008 are for sustenance of its current performance and efficiency levels in view of enhanced norms notified by the Central Commission from time to time and for meeting other statutory requirements and deserved to be considered under Regulation 9(2)(ii) Change in Law.

13.3 The Regulation 10 of the Tariff Regulations 2009 deals with the Renovation and Modernization with respect to coal-based thermal power generating stations, specified in Para 9.7.

13.4 According to the above Regulation, the generating companies or transmission licensee for meeting the expenditure for the purpose of extension of life beyond useful life of the generating station, the Generator is eligible

to incur expenditure on Renovation and Modernization schemes for extension of useful life of the generating station after completion of the useful life of the generating station.

13.5 As per the Central Commission's Tariff Order Regulations, 2009, in case of coal-based/lignite fired thermal generating station, the generating company, may, in its discretion, avail of a 'special allowance' in accordance with the norms specified in Clause (4), as compensation for meeting the requirement of expenses including renovation and modernization beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be considered and the applicable operational norms shall not be relaxed.

13.6 According to Regulation 10(4), a Generating Station on opting for the alternative in the first proviso to Clause (1) of this Regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/year in 2009-10. And thereafter escalated @ 5.72% every year during the tariff period 2009-14.

Provided that in respect of a unit in commercial operation for more than 25 years as on 01.04.2009, this allowance shall be admissible from the year 2009-10, whereas these generating stations are within 25 years of useful life from the date of commercial operation and hence the Appellant cannot claim under this Regulation also.

13.7 The Central Commission has rightly disallowed these expenditures and the relevant part of the Impugned Order is as under:

(a) The submissions of the parties have been considered. The additional capital expenditure claimed for capital assets for different Renovation & Modernization schemes approved by CEA as indicated in Serial Nos. 1 to 32 in the table under para 19 above cannot be considered under the provisions of Regulation 9(2) (ii) of the 2009 Tariff Regulations, since the generating station has not completed useful life of 25 years. In terms of provisions of Regulation 10 of the 2009 Tariff Regulations, the expenditure on Renovation and Modernization for the purpose of extension of the generating station beyond the useful life would be applicable only after completion of useful life of 25 years. Moreover, the petitioner is entitled for compensation allowance in terms of Regulation 19(e) of the 2009 Tariff Regulations to meet expenses on new assets of capital nature including in the nature of minor assets after completion of 10 years of useful life up to 25 years. In view of this, the capitalization of expenditure for Renovation & Modernization schemes as indicated in serial nos. 1 to 32 of the table under paragraph 19 above, along with its de-capitalization is not allowed.

13.8 Further, this Tribunal's Judgment in Appeal Nos. 129 of 2012 and 44 of 2012, the relevant part of this Judgment is as under:

“In our opinion, the claim of NTPC could not be covered under any of the provisions of the Regulations 9 for additional expenditure and, therefore, we do not find any infirmity in the findings of the Central Commission in this regard in the Impugned Order”

13.9 Further, Judgment in Appeal No. 44 of 2012 dated 27 January 2014 stated as under:

(i) Additional capitalization from the date of commissioning of the power plant/generating units till the cut-off date, as provided in Regulation 9 (1).

(ii) Additional capitalization after the cut-off date on certain specific aspects including change in law as provided in Regulation 9 (2).

13.10 After going through the Tariff Regulations, 2009 of Central Commission, the Impugned Order of the Central Commission and Judgment of this Tribunal, we do not find any infirmity in disallowing the expenditure met by the Appellant in respect of CEA approved schemes. Further, the Appellant is entitled for compensation allowance in terms of Regulation 19(e) of the 2009 Tariff Regulations to meet expenses on new assets of capital nature including in

the nature of minor assets after completion of 10 years of useful life up to 25 years.

13.11 Accordingly, these issues are decided against the Appellant (NTPC) and the Central Commission's decision in the Impugned Order is affirmed.

14. Issue No. II: Whether the Central Commission erred in disallowance of capital expenditure towards other CEA approved R&M scheme like SOX and NOX, CO₂ and CO Monitoring Flue gas amounting to Rs. 0.58 crores? (Appeal No. 134 of 2013)

The following are the submissions made by the Appellant:

14.1 that the Central Commission erred in disallowing the capital expenditure towards other CEA approved R&M schemes claimed under change in law of Rs 0.58 crores on Sox and Nox, CO₂, CO monitoring in flue gas which is for monitoring of the operation of generating units and to obtain feedback of proper combustion into furnace. The emission of CO, Nox and Sox causes environmental pollution and, therefore, there was a need to install a system for achieving optimization by monitoring combustion in the Boiler. The

Central Commission ought to have exercised the powers of relaxation to allow additional capital expenditure on this item under change in law provisions contained in Regulation 9 (2) (ii) also.

14.2 that the Central Commission has failed to appreciate that existing CODEL, UK made Sox and CO₂ analyzer electronic modules have become obsolete. Spare and maintenance support is not available from OEM. Moreover provision for measurement of CO and Nox is not available. Therefore it is necessary to install on line Sox, Nox, CO₂ and CO monitoring system in flue gas of the both the units.

15. **Per Contra**, the following are the submissions made by the Counsel of the Respondent -7:

15.1 that the Appellant has claimed that the Commission has disallowed the capital expenditure of Rs. 0.58 Crore on Sox and Nox, Co₂, CO monitoring in flue gases. The alleged claim of the Appellant was rejected by the Commission as the alleged claim of the Appellant does not fall under Regulation 9(2) of the Tariff Regulations, 2009.

16. **Per Contra**, the following are the submissions made by the Counsel of the Respondent No. 10.

16.1 that the Counsel of the Respondent submitted that the Regulations of the Central Electricity Authority towards these expenditures will not cover under Regulation 9(2)(ii) of the Tariff Regulations, 2009, as claimed by the Appellant. Moreover, these issues do not provide any direct benefit to the beneficiaries of the generation station. In view of this, the capitalization of the expenditure is not allowed by the Central Commission in the Impugned Oder.

17. **Our considerations and conclusion on these issues**

17.1 The contention of the Appellant is that the emission of CO₂, NOX and SOX causes environmental pollution and therefore there was a need to install a system for achieving optimization by monitoring combustion in the boiler. Further, the Appellant contested that the Central Commission did not allow the expenditure under Regulation 9(2)(ii).

17.2 The Central Commission proceeded in interpreting the Tariff Regulations 2009 to the effect that no capitalization is to be

allowed except for those covered under Regulation 9 of the Tariff Regulations, 2009. The Central Commission rejected the claim for online CO2 Monitoring System as there was no reference of this work/asset in the environmental consent order referred to by NTPC and the relevant part is quoted below:

“The Petitioner’s claim for expenditure of Rs. 0.58 crores under this head towards on-line CO2 monitoring system in terms of the Environmental consent order of the Ministry of Environment & Forests, Government of India, has been examined in view of the clarification submitted vide affidavit dated 08.04.2010 and no reference of this work/asset has been found in the said environmental consent order referred to by the Petitioner. Hence, the expenditure is not allowed for capitalization under this head.”

17.3 This Appellate Tribunal in its Judgment dated 27.01.2014 in Appeal No. 44 of 2012 affirmed the order of the Central Commission and decided against the Appellant.

17.4 In our opinion, the claim of the Appellant would not be covered under any of the provision of Regulation 9 of the Tariff Regulations 2009 of the Central Commission towards expenditure incurred on additional capitalization. Further, these assets do not provide any direct benefit to the beneficiaries of the generating station.

17.5 Thus, the Central Commission rejected the claim for online CO2 Monitoring System as there was no reference of this work/asset in the environmental consent order referred by NTPC.

17.6 Thus, we find that there is no infirmity in allowing the expenditure on this issue. Accordingly, we decide this issue against the Appellant.

18. **Issue No. III: Whether the Central Commission erred in disallowing the capital expenditure of Rs. 1.77 crores towards non R&M capital addition scheme/other capital works which includes installation of Cenpeep instruments, township metering, instruments for energy audit, solar water heater, solar PV lights, online energy meters and replacement of ABT meters? (Appeal No. 134 of 2013).**

Issue No. X: Whether the Central Commission erred in disallowance of capital expenditure on Township Metering Package and SAP license capitalization amount to Rs. 10.19 lakhs and Rs. 6.11 lakhs, respectively during 2009-10? (Appeal No. 193 of 2013)

These two issues are similar in nature and hence will be dealt together.

The following are the submissions of the Counsel of the Appellant:

18.1 that the Central Commission has erred in not allowing the expenditure amounting to Rs. 1.77 Crores towards non R &

M scheme / other capital works which includes installation of Cenpeep instruments, township metering, instruments for energy audit, solar water heater, solar PV lights, online energy meters and replacement of ABT meters. The Central Commission has disallowed such expenditure on the ground that there is no provision under Regulation 9(2) of Tariff Regulations, 2009 to consider the capitalization of these assets and these assets do not provide any direct benefit to the beneficiaries of the generating station.

18.2 that the Central Commission erred in not allowing the capital expenditure incurred towards Township Metering Package amounting to Rs. 10.19 lakh and Rs. 6.11 lakh for SAP license during 2009-10 on the ground that these are in the nature of minor assets and NTPC is entitled to meet such expenditures from the compensation allowance under Regulation 19(e) of 2009 Tariff Regulation.

18.3 that the Central Commission failed to consider that these capital works are required for monitoring energy efficiency, metering energy consumption, energy conservation and better station operation and management and capital

expenditure on such assets are admissible under last proviso of Regulation 7 of Tariff Regulations, 2009.

19. **Per Contra, the following are the submissions made by the Counsel of the Respondent No. 4,5 and 18.**

19.1 that the Counsel stated that the Appellant can meet these expenditures under compensation allowance specified in the Tariff Regulation 19(e) and special allowance under Regulation 10(4) of Tariff Regulations 2009. Therefore, the Commission has rejected the claim of the Appellant on this issue.

19.2 that the similar type of issue was covered in the Judgment dated 27.01.2014 in Appeal No. 44 of 2013 of this Hon'ble Tribunal, wherein it is decided that the additional capitalization is allowed according to Regulation 9 of 2009 Tariff Regulations of the Central Commission. Thus the alleged claim of the Appellant should not be allowed.

20. **Per Contra,** the following are the submissions made by the Counsel of the Respondent No. 10.

20.1 that the Petitioner has submitted that these assets are required for monitoring energy efficiency, metering energy consumption and for better station operation and

management. There is no provision under Regulation 9(2) of the 2009 Tariff Regulations to consider the capitalization of these assets. Moreover, these assets do not provide any direct benefit to the beneficiaries of the generating station. In view of this, the capitalization of expenditure is not allowed by the Central Commission in the Impugned Order.

20.2 that the Petitioner's claim for capitalization of 10.19 lakhs towards township metering package and Rs. 6.11 lakhs for SAP license during 2009-10 is in the nature of minor assets and the said expenditure has not been allowed in terms of the last proviso to Regulation 9(2) of the 2009 Tariff Regulations. The Petitioner is however entitled to meet such expenditures from the Compensation allowance admissible to the generating station under Regulation 19(e) of the 2009 Tariff Regulations.

21 **Our considerations and conclusion on these issues**

21.1 The contention of the Appellant is that the Central Commission disallowed the expenditure of Rs. 27.94 lakh during 2009-10 for Cenpeep Instruments, Rs. 5.60 lakh

during 2010-11 for Township Metering, Rs. 7.00 lakh during 2011-12 for Instruments for Energy audit, Rs. 17.00 lakh each during 2010-11 and 2011-12 for Solar water heater, Rs. 34.00 lakh (Rs. 19.00 lakh during 2010-11 and Rs. 15.00 lakh during 2011-12) for Solar PV Lights, Rs. 15.00 lakh during 2010-11 for Online Energy meter and Rs. 53.00 lakh during 2010-11 for replacement of ABT meter. Further, the Petitioner/Appellant has submitted that these assets are required for monitoring energy efficiency, metering energy consumption, energy conservation and for better station operation and management.

Further, the Central Commission disallowed the expenditure towards township metering package and SAP license during 2009-10 as they are in the nature of minor assets.

21.2 The relevant part of the Central Commission's decision pertains to township metering and SAP license is as under:

“The Petitioner's claim for capitalization of Rs. 10.19 lakhs towards Township Metering package and Rs. 6.11 lakhs for SAP license during 2009-10 is in the nature of minor assets and the said expenditure has not been allowed in terms of

the last proviso to Regulation 9(2) of the 2009 Tariff Regulations. The Petitioner is, however, entitled to meet such expenditures from the compensation allowance admissible to the generating station under Regulation 19(e) of the 2009 Tariff Regulations”.

21.3 This Tribunal in various Judgments specified that the Appellant can meet the expenditure incurred on the minor assets under Regulation 19(e) of the 2009 Tariff Regulations and disallowed the arguments of the Appellant in those Judgments to consider under Regulation 9(2) of 2009 Tariff Regulations.

21.4 We feel that the Central commission has not committed any illegality or perversity in disallowing the additional capital expenditure on energy monitoring system, metering energy consumption and other minor assets on the ground that this is not covered under the purview of Regulation 9(2) of Tariff Regulations, 2009.

Further, the Appellant can meet these expenditures under Regulation 19(e) of the Tariff Regulations.

21.5 In our opinion that the expenditure on these items does not provide any direct benefit to the beneficiaries of the

generating station and the Central Commission rightly disallowed the expenditure on these assets.

21.6 Accordingly, we conclude that these issues are decided against the Appellant and the order of the Central Commission in the Impugned Order affirmed.

22. **Issue No. IV: Whether the Central Commission erred in disallowance for calculation of maintenance of spare requirement and calculation on interest on working capital? (Appeal No. 134 of 2013).**

Issue No. VIII: Whether the Central Commission erred in disallowance of compensation allowance for calculation of maintenance of spares? (Appeal No. 141 of 2013).

Issue No. XIII: Whether the Central Commission erred in disallowance of compensation allowance for calculation of maintenance spares? (Appeal No. 193 of 2013).

Since above three issues are similar in nature and hence these three issues will be taken up together.

The following are the submissions of the Counsel of the Appellant:

22.1 that the Central Commission failed to consider that the Regulation 18 dealing with the Interest on Working Capital inter-alia provides that “Maintenance spares @ 20% of Operation and Maintenance Expenses specified in Regulation 19” and Operation and Maintenance Expenses

for one month shall be considered as part of Working Capital. Regulation 18 reads as under:

“18. Interest on Working Capital. (1) *The working capital shall cover :*

(a) *Coal-based/lignite-fired thermal generating stations*

.....

(v) *Operation and maintenance expenses for one month.*

(b) *Open-cycle Gas Turbine/Combined Cycle thermal generating stations*

.....

(v) *Operation and maintenance expenses for one month.*

22.2 Because Regulation 19 has sub-parts (a) to g). Regulation 19, inter alia, provides in Clause (e) for Compensation Allowance as under:

“19 Operation and Maintenance Expenses. *-(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)

<i>0-10</i>	<i>Nil</i>
<i>11-15</i>	<i>0.15</i>

16-20	0.35
21-25	0.65”

The Central Commission has not followed the Regulation 18 while working out the interest on Working Capital particularly in reference to the elements of Maintenance Spares and O&M expenses.

22.3 that while calculating interest on working capital, one month O&M expenses and maintenance spares @ 20% of O&M cost inclusive of the compensation allowance for the period 2009-14 as per the Tariff Regulations, 2009 were claimed by the NTPC. The Central Commission has not considered the claim of NTPC and excluded the amount pertaining to the compensation allowance for calculation of one month O&M expense and maintenance spares (as 20% of O&M expenses) corresponding to the O&M expense for the above period.

22.4 that the compensatory allowance as a part of O&M expenses in working capital and 20% maintenance spares as a part of the working capital requirement ought to be considered for

allowing interest under Regulation 18, of the Tariff Regulations, 2009.

22.5 that the NTPC craves leave to add to the grounds mentioned above and states that the above grounds are in the alternative and have been raised without prejudice to one another.

23 **Per Contra**, the following are the submissions of the Counsel of the Respondent 4,5,7, Mr. R.B. Sharma.

23.1 **Non consideration of compensation allowance for calculation of maintenance spare:**

the Appellant has alleged that the Central Commission has not allowed the inclusion of the compensation allowance allowed under Regulation 19(e) of the Tariff Regulations, 2009 for the purpose of determining the working capital requirements which finally leads to computing the interest on working capital. This issue is covered by the Judgment dated 27th January, 2014 of this Hon'ble Tribunal in Appeal No. 44 of 2012 and decided against the Appellant.

In the circumstances aforesaid, it is respectfully submitted that the Appeal as filed is absolutely devoid of merits and liable to be dismissed with costs.

24 Submissions made by the Counsel of the Respondent No. 10

24.1 The Counsel has admitted that this issue has been covered by the decision of the Hon'ble Tribunal dated 27.01.2014 in Appeal No. 129 of 2012. Thus, the claim of the Appellant has to be dismissed.

25 Our Consideration and Submission on this Issue

25.1 Let us examine the capitalization of spares as per Tariff Regulations, 2009.

25.2 According to the Tariff Regulation 7, which deals with determination of capital cost of a generating station shall include-

- a) The capital expenditure incurred or projected to be incurred including IDC etc, and
- b) Capitalized initial spares subject to ceiling rates specified in the Regulation 8.

Further, the proviso to the Regulation says that the assets forming part of project but not in use shall be taken out of the capital cost.

Thus, the Regulation 7(1) (b) specifies that the capitalized initial spares subject to ceiling rates specified in Regulation 8 will be the basis for arriving capital cost pertains to spares.

Hence, after COD of the generating station, the expenditure incurred on spares cannot be taken into consideration under additional capitalization for fixing of capital cost towards determination of Tariff.

25.3 Further, Regulation 9(1) & (2) deals with additional capitalization, none of the clauses under 9(1) and (2) deal with additional capitalization of thermal generating station except under clause 9(2) (vii) stipulates that the expenditure necessitated on account of modification required or done in fuel receipt system arising due to non-materialization of full coal linkage in respect of generating station as result of

circumstances not within the control of the generating station.

25.4 Thus, expenditure on procurement of spares cannot be considered under additional capitalization.

Further, in case of coal-based thermal generating station to meet the expenditure towards procuring new assets and assets in minor nature a compensation allowance clause is provided for the generating station which completes 10 years of useful service from the date of commercial operation.

Thus, the procurement of spares is minor in nature and hence has to be met from compensation allowance specified in Regulation 19(e) only.

25.5 Hence, we finally conclude that the capitalization of spares cannot be met under Regulation 9(2) or Regulation 7(i) (b). The compensation allowance provided in Regulation 19(e) is to meet the expenses on new assets of capital in nature.

25.6 Let us consider the issue regarding inclusion of compensation allowance in O&M expenditure in

determining the working capital. This issue was discussed by this Tribunal in the Judgment dated 44 of 2012 dated 27.01.2014 and the relevant part is quoted below:

“47. According to NTPC, while calculating the interest on working capital, one month O&M expenses and maintenance spares @ 20% of O&M cost inclusive of the compensation allowance for the period 2011-12 to 2013-14 were claimed by them but the Central Commission has wrongly excluded the amount pertaining to the compensation allowance for calculation of one month O&M expenses and maintenance spares.

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”.

25.7 Accordingly, we do not find any infirmity or perversity regarding the decision of the Central Commission in the

Impugned orders. Accordingly, these issues are decided against the Appellant.

26 **Issue No. V: Whether the Central Commission erred in disallowance of capital expenditure towards procurement of 10 Nos. Wagons amounting to Rs. 367 lakhs during 2010-11 on the ground that this expenditure is not covered under the purview of Regulation 9(2) of Tariff Regulations 2009? (Appeal No. 141 of 2013).**

Issue No. IX: Whether the Central Commission erred in disallowance of capital expenditure towards procurement of 35 Nos. Wagons amounting to Rs. 1260 lakhs during 2011-12? (Appeal No. 193 of 2013).

Since above two issues are similar in nature and hence these two issues will be taken up together.

The following are the submissions made by the Appellant:

26.1 that the Central Commission erred in not allowing the capital expenditure incurred on procurement of wagons on the ground that there is no provision under Regulation 9(2) of Tariff Regulations, 2009 to consider the expenditure for procurement of wagons against replacement of old wagons and as compensation allowances is admissible to the generating station of NTPC under Regulation 19(e), NTPC shall be able to meet the expenditure on this assets.

26.2 that the Central Commission has failed to consider that the expenditure on procurement of wagons are substantial in nature and are not covered under compensation allowances as provided under Regulation 19 (e). Regulation 19 (e) under the head O&M Cost dealing with the compensation allowance is in the context of minor assets and the like and it does not deal with the additional capitalization of substantial nature like expenditure on procurement of wagons. Normative compensation allowance has no relevance to the additional capitalization of a substantial nature incurred by the generating company from time to time. The Central Commission should therefore have allowed the additional expenditure incurred by NTPC on wagons under Regulation 7 last proviso.

26.3 that the Central Commission has failed to appreciate that Railway wagons are mechanical drive equipments used for transporting coal and they are required to be replaced from time to time. It cannot possibly that the Railway wagons can be maintained without replacement for long period, namely, during the life space of 25 years of a Thermal Power Station.

27 Following are the submissions made by the Counsel of 4,5,18

27.1 that the Appellant has claimed that the Commission has disallowed the additional capitalization towards procurement of 10 nos. new wagons amounting to Rs. 367 lakh used for transporting the coal from the mine head to the power station. The alleged claim of the Appellant was rejected by the Commission as the same is not covered under Regulation 9(2) of the Tariff Regulations, 2009.

27.2 that there is no provision for additional capital expenditure for procurement of new wagons and the Appellant was expected to meet the expenditure of this nature from the compensation allowance admissible to the generating station under Regulation 19(e) of the Tariff Regulations, 2009.

27.3 that similar claim of this nature was disallowed by the Tribunal in its Judgment dated 27 January 2014 in Appeal No. 44 of 2012. It may, therefore, be noted that the Impugned Order of the Hon'ble Commission is in

accordance with the Tariff Regulations 2009 and in line with the Judgment of this Tribunal.

28. The following are the submissions made by the Counsel of the Respondent No. 7.

28.1 that the Counsel has submitted that this issue is covered by the decision of this Hon'ble Tribunal in Appeal No. 173 of 2013, stated in reply to Appeal No. 120 of 2013.

29 Our consideration and conclusion on these Issues

29.1 The Appellant has submitted that the Railway Wagons are mechanical drive equipments used for transporting coal and they are required to be replaced from time to time and also stated that it cannot be possibly be that the Railways Wagons can be maintained without replacement for long period.

29.2 As seen from Impugned Order, the Central Commission disallowed the additional expenditure towards the procurement of 10 nos. of new wagons against replacement of damaged/condemned wagons for Rs. 367 lakhs during 2011-11 and procurement of 35 new wagons amounting to

Rs. 1260 lakhs during 2011-12 towards replacement of wagons declared unserviceable . The relevant part of the Impugned Order of the Central Commission is as under:

“We notice that the provisions of the Regulation 9(2) under which capitalization is sought for by the petitioner has not been indicated. In our view, the expenditure towards replacement of old wagons by new wagons cannot be considered under the provisions of Regulation 9(2) of the 2009 Tariff Regulations. Keeping in view that the generating station is entitled to meet such expenditure from the Compensation allowance admissible under Regulation 19(e) of the 2009 Tariff Regulations, the claim of the petitioner is not allowed”

29.3 Further, this Hon’ble Tribunal in Appeal No. 173 of 2013 dated 8 May 2014, this Tribunal supported the decision taken by the Central Commission and the relevant part of the Judgment is quoted below:

“The Learned Counsel for the Respondents, having taken us through the Tariff Regulations 2009, have vehemently argued that as per the Appellant, the said claim has been made under Regulation 9(2) (vii) of the Tariff Regulations, 2009 (2nd Amendment) but this Regulation provides for modification required fuel receipt system like wagon tippler at the generating station arising due to non-materialization of full coal linkage in respect of thermal generating station and not the coal transport system containing the rolling stock/wagons.

After giving serious consideration to the rival submissions and having a look at the relevant part of the Impugned Order, we do not find any force in the submissions made by the

Appellant. We agree to all the findings recorded on this issue in the Impugned Order and there is no reason to deviate there-from. This issue is also decided against the Appellant”.

29.4 Thus, after going through the provision of the Tariff Regulations, 2009, these expenditures have to be met from the compensation allowance specified in Regulation 19(e) of Tariff Regulations, 2009.

Thus, as seen from the impugned order of the Central Commission and as per the Judgment of this Tribunal, the expenditure met towards procurement of wagons cannot be taken into consideration under additional capital expenditures to determine the capital expenditure and to determine the tariff.

29.5 Thus, we do not find any infirmity in the findings of the Central Commission in the Impugned Order. Thus, these two issues are decided against the Appellant.

30 Issue No. VI: Whether the Central Commission erred in disallowance of capital expenditure amounting to Rs. 125 lakhs during 2011-12 on the installation of condenser on line tube cleaning system on the ground that there is no provision under Regulation 9(2) for capitalization of this asset after the cut-off date? (Appeal No. 141 of 2013).

The following are the submissions made by the Counsel of the Appellant:

30.1 that the Central Commission erred in disallowing the capital expenditure on installation of Condenser on line tube cleaning system amounting to Rs. 125.00 lakh during 2011-12 on the ground that there is no provision under Regulation 9 (2) for capitalization of this asset after the cut off date. NTPC shall meet the expenses from compensation allowances under Regulation 19 (e). The Central Commission has failed to consider that installation of such asset is necessary to maintain the stringent operating norms of both heat rate and target availability. The original design of turbine and auxiliaries does not provide for Condenser Back Washing Arrangement or Online Condenser Tube Cleaning System to remove debris, sludge and biological fouling from inside the condenser tubes. These deposits on condenser tubes reduce heat transfer. Further during monsoon, the average turbidity of cooling water (clarified water) increases causing settlement of mud inside condenser tubes, further reducing the heat transfer.

These factors lead to poor condenser vacuum resulting in poor unit heat rate at times leading to loading restriction. The cleaning of condenser tubes during over hauls or shut downs were then the only course. In order to overcome these problems, Condenser on load tube cleaning system is being installed which will work on a continuous basis and enable the maintenance of operating norms.

30.2 that because the Central Commission vide order dated 20.01.2011 in Petition No. 182/2009 filed for revision of fixed charges on account of additional capitalization incurred during the period 2006-09 w.r.t. Rihand STPS Stage – I (1000 MW) has allowed capitalization of CEA approved scheme of Online Condenser Tube Cleaning System for efficient and successful operation of the units, the expenditure of which was not included in the original project cost.

30.3 that the Central Commission failed to consider that expenditure on such asset is substantial nature and could not be met from the compensation allowances as provided under Regulation 19 (e). Regulation 19 (e) deals with the

compensation allowance in the context of minor assets and the like and it does not deal with the additional capitalization of substantial nature. Therefore the Central Commission should therefore have allowed the additional expenditure incurred by NTPC on such asset.

31. Following are the submissions made by the Counsel of the Respondent 4,5 and 18

31.1 that the Appellant claimed the alleged additional capitalization amounting to Rs. 125 lakh during 2011-12 without indicating the relevant regulation under which the alleged claim has been preferred.

31.2 that the Central Commission disallowed the alleged claim and the corresponding para of the impugned order is reproduced below:

“Condenser on-line tube cleaning systems

32. The petitioner has claimed expenditure of 125.00 lakh during 2011-12 for installation of condenser on line tube cleaning system which is envisaged for cleaning of condenser tubes even when the units are in operation. The provision of Regulation 9(2) under which capitalization is sought for has not been mentioned. However, there is no provision under Regulation 9(2) of the 2009 Tariff Regulations for capitalization of this asset after the cut-off date. Since, compensation allowance is admissible to the generating station under Regulation 19(e) of the 2009 Tariff Regulations, the petitioner shall be able to meet the expenditure on this

asset. Hence, capitalization of the expenditure claimed by the petitioner is not allowed.”

31.3 that it may, therefore, that the Impugned Order of the Hon'ble Commission is in accordance with the Tariff Regulation 2009 and in line with the Judgment of this Tribunal dated 27.01.2014 in Appeal No. 44 of 2012 and hence the expenditure has to be disallowed.

32. Our consideration and conclusion on these issues

32.1 The Appellant has stated that online Condenser Tube Cleaning System to remove debris, sludge and biological fouling from inside the condenser tubes. These deposits on condenser tubes reduce heat transfer. Further during monsoon, the average turbidity of cooling water increases causing settlement of mud inside condenser tubes, further reducing the heat transfer. These factors lead to poor condenser vacuum resulting in poor unit heat rate at times leading to loading restriction. The cleaning of condenser tubes during over hauls or shut downs were then the only course. In order to overcome these problems, Condenser on load tube cleaning system is being installed which will work

on a continuous basis and enable the maintenance of operating norms.

32.2 Further, the Appellant stated that the capitalization work is approved by the CEA for efficiency and successful operation of the units and hence the Central Commission did not consider under Regulation 9(2) of the Tariff Regulations.

32.3 The units of Kahalgaon Super Thermal Power Station commissioned during 1995-96 and hence the Appellant is eligible to procure new assets of capital in nature, under Regulation 19(e). Thus, the Central Commission has disallowed this expenditure in the Impugned Order is as under:

“Condenser on-line tube cleaning systems

32. The petitioner has claimed expenditure of 125.00 lakh during 2011-12 for installation of condenser on line tube cleaning system which is envisaged for cleaning of condenser tubes even when the units are in operation. The provision of Regulation 9(2) under which capitalization is sought for has not been mentioned. However, there is no provision under Regulation 9(2) of the 2009 Tariff Regulations for capitalization of this asset after the cut-off date. Since, compensation allowance is admissible to the generating station under Regulation 19(e) of the 2009 Tariff Regulations, the petitioner shall be able to meet the expenditure on this

asset. Hence, capitalization of the expenditure claimed by the petitioner is not allowed.”

32.4 The asset in nature is for the improvement of the performance of the generator turbine. Further, the online cleaning system will benefit to the Appellant in improving the performance of the generator turbine and also it improves the generation. Due to this, the Appellant is benefited but at the same time, the benefit is not passed on to the consumers.

Further, for procuring new assets and asset of minor in nature, the Appellant is allowed to meet the expenditure under Regulation 19(e).

32.5 Thus, we find that the decision of the Central Commission with regard to procurement of online cleaning systems in disallowing the expenditure is legally correct and justifiable. Thus, this issue is decided against the Appellant.

33 Issue No. VII: Whether the Central Commission erred in disallowance of exclusion from de-capitalization of 9 Wagons? (Appeal No. 141 of 2013)

The following are the submissions made by the Counsel of the Appellant

33.1 that the Central Commission erred in proceeding to rectify the exclusion of de-capitalization of 9 wagons allowed in the order dated 23.5.2012, when the same was not a subject matter of review petition before the Central Commission.

33.2 that the Central Commission has failed to appreciate that when the capitalization of new wagons in replacement of old wagons were not being allowed, there cannot be any de-capitalization of old wagon. Such a course would amount to penalizing the NTPC, both by disallowing additional capitalization of new wagons and also not allowing exclusion from de-capitalization of old wagons.

34. Our consideration and conclusion on this issue

34.1 The contention of the Appellant is that the Central Commission failed to consider the de-capitalization of 9 wagons allowed on 23.05.2012 and the same was not a subject matter of review petition before the Central Commission.

34.2 The Commission in its order dated 15.6.2010 in Petition No. 126/2009 while disallowing the exclusion of negative entries

with respect to unserviceable assets de-capitalized had observed as under:

“De-capitalization of unserviceable assets

The petitioner has de-capitalized an amount of (-) Rs. 19.18 lakh in books of accounts during 2008-09, in respect of unserviceable assets (10 nos. of wagons). However, the Petitioner has prays that negative entries arising out of de-capitalization of these assets be retained in the capital base for the purpose of tariff. The ground on which the exclusion is sought by the petitioner is as under:-

“Procurement action for capitalization against the same is in progress. De-capitalization of these wagons may be considered at the time of capitalization”.

The petitioner’s prayer for exclusion of negative entries due to de-capitalization of unserviceable assets on the ground that corresponding new assets would be purchased in future, is not allowed as these assets do not provide service to the beneficiaries. The petition is at liberty to approach the Commission after procurement of new assets”.

The Petitioner in its original Petition had not indicated the specific provision of Regulation 9(2) of the 2009 Tariff Regulation under which the expenditure in respect of 10 nos. wagons against replacement of damaged/condemned wagons were claimed. Moreover, no provision existed under Regulation 9(2) of the 2009 Tariff Regulations for capitalization of this asset after the cut-off date. Since the generating station was in operation for more than 10 years and was entitled for compensation allowance to meet the expenditure on this asset in terms of Regulation 19(e) of the 2009 Tariff Regulations, As the additional capital expenditure for procurement of new wagons was not considered, the corresponding de-capitalization was ignored. It has been the consistent stand of the Commission in respect of the tariff orders pertaining to the generating stations of the petitioner

that any assets which form part of the capital base and has outlived its useful life and does not render any service to the generation station shall be taken out from the capital base for the purpose of tariff. As the capitalization of the expenditure in respect of this new asset (wagons) was not allowed on account of compensation allowance allowed to the generating station, we are of the view that the de-capitalized value of Rs. 171.80 lakh for 9 nos. old wagons which formed part of capital base and had become unserviceable and not rendering any useful service to the generating station should have been taken out of the capital cost of the generation station, while determining tariff by order dated 23.05.2012. The non-consideration of the same in order dated 23.05.2012 is an error apparent on the face of the order which is required to be rectified suo motu in review. We order accordingly. In view of this, there is no justification for the exclusion of the negative entry of Rs. 19.18 lakh for the 10th wagon, which was disallowed by the Commission by its order dated 15.6.2010 in Petition No. 126/2009 as prayed for by the petitioner in the review petition.

34.3 We feel the reasoning given by the Central Commission in the Impugned Order is justifiable. The audited capital expenditure incurred by the Appellant towards procurement of new wagons is not considered by the Central Commission in determination of the Tariff Order. Similarly, the Commission has disallowed the de-capitalization of 9 wagons while determining the capital cost for determination of Tariff.

Thus, we do not find any infirmity in the decision of the Central Commission.

34.4 Accordingly this issue is decided against the Appellant.

35 **Issue No. XII: Whether the Central Commission erred in disallowance of capital expenditure towards strengthening of Merry Go Round (MGR) track amounting to Rs. 4556.00 lakhs during the year 2013-14? (Appeal No. 193 of 2013).**

The following are the submissions made by the Counsel of the Appellant

35.1 that the Central Commission erred in not allowing the capital expenditure towards strengthening of MGR track amounting to Rs. 4556.00 lakh during the year 2013-14 on the ground that this expenditure is in the nature of R & M expenses and NTPC should meet such expenditure from the special allowance admissible in terms of the Regulation 10 (4) or the compensation allowances admissible under Regulation 19 (e) of the Tariff Regulations 2009.

35.2 that because the capital expenditure towards strengthening of MGR Track ought not to be disallowed on the ground that they are covered by special allowances under Regulation 10 (4) or compensation allowances under Regulation 19 (e). The special allowances permitted under Regulation 10 (4) of the Tariff Regulations, 2009 cannot be extended to cover

anything above the normal replacement of the Plant and Machinery. Further the expenditure on MGR Tracks is of substantial nature and is not covered under the compensation allowances provided under Regulation 19(e). These expenses are only covered under last proviso of Regulation 7 of the Tariff Regulations, 2009.

35.3 that because the Central Commission has failed to appreciate that last proviso of Regulation 7 permitting the additional capital expenditure on specific aspects are to be considered and allowed irrespective of the Special Allowance given under Regulation 10 (4) and special allowances under Regulation 19 (e).

35.4 that because the Central Commission failed to consider that this expenditure is required for replacement of existing CST 9/ obsolete cast iron sleepers, replacement of timber wood sleepers etc for track stabilization, life extension and safe reliable operation of MGR tracks. Farakka Station has longest MGR track among NTPC stations (84.5 kms) passing through difficult terrain with substantial gradient and consequently higher risk of accidents.

35.5 that because for stable and reliable operation of the railway tracks Ministry of Railways has been insisting to replace the old wooden/cast iron/steel sleepers with concrete sleepers. The Indian Railways are also replacing such obsolete wooden and cast iron sleepers with concrete sleepers for better functioning of its vast railway network. The Standing Committee on Railways, Ministry of Railway in its eight report (August, 2010) on 'Protection and Security of Railway Property and Passengers' states as under;

“ Measures Taken to Reduce Derailments of Trains

- a. Derailment of trains is another concern area for the Indian Railway. As such, the Indian Railways have taken a number of steps to check derailments of trains. They are as follows

- (i).....

-

- (vi) Replacement of majority of wooden/cast iron/steel sleepers with sturdier concrete sleepers. 60 kg rail sections are being progressively used.

-”

Further the General Manager (Engg), Southern Eastern Railway vide CE's Circular No. 148 dated 20.10.98 had

made the proposal for Track Renewal and also specified the criterion for replacement based on life period of the sleepers as i) Sleeper CST/9 – more than 20 Years age ii) Sleepers ST – more than 20 years age iii) Wooden – 8 to 10 years age. Therefore it is essential to replace the sleepers for safe and reliable operation of the MGR tracks.

36. Following are the submissions made by the Counsel of the Respondent No. 5

36.1 that the Counsel of the Respondent opined that the quantum of special allowance allowed under Regulation 10(4) of the Tariff Regulations 2009 is to meet the expenses including R&M beyond the useful life is quite substantial at Rs. 5 lakhs/MW/year which the Appellant has opted for. Having opted for such allowance year after year on completion of useful life, the Appellant cannot be allowed double benefits in the form of additional capitalization. The contention of the Appellant, therefore, is without merit and the Commission has rightly rejected the alleged claim.

37 Following are the submissions made by the Counsel of the Respondent No. 10

37.1 that the Petitioner has claimed 4556.00 lakh during 2013-14 for strengthening of MGR track against the CEA approved cost of Rs. 4548.50 lakh. The Petitioner by its affidavit dated 11.11.2011 has submitted that the strengthening of MGR track including replacement of CST-9/obsolete cast iron sleepers (1,10,000 nos), 950 nos. of existing bridge timbers (wooden sleepers), points and crossings on wooden layout etc., is required for track stabilization, life extension and safe reliable operation. The estimated de-capitalization for the said asset is Rs. 570.00 lakh as submitted by the Petitioner. Since, the expenditure during the year 2013-14 is in the nature of R&M expenses, we are of the view that the petitioner should meet the said expenditure from the Special allowance admissible to Units I&II of the generating station in terms of Regulation 10(4) of the 2009 Tariff Regulations and/or the Compensation allowance admissible under Regulation 19(e) of the 2009 Tariff Regulations in order to meet the expenses on new assets of capital nature including in the nature of minor assets. In view of this, the

expenditure of Rs. 4556.00 lakh during 2013-14 is not allowed and the corresponding estimated de-capitalization of Rs. 570.00 lakh has also been ignored.

37.2 that the above issue is covered by the decision dated 12.05.2015 of this Hon'ble Tribunal in Appeal No. 129 of 2012.

38 Our consideration and conclusion on this issue

38.1 The Appellant has contested that the expenditure on strengthening of Merry Go Round (MGR) track is required for replacement of existing CST-9/obsolete cast iron sleepers, replacement of timber wood sleepers etc. for track stabilization, life extension and safe reliable operation of MGR Track.

38.2 Further, the Appellant submitted that the Farakka has longest MGR track and passing through difficult terrain with substandard gradient and hence is required for replacement of existing CST/Obsolete cast iron sleepers, replacement of timber wood etc. for track stabilization, life extension and safe reliable operation of MGR Track.

38.3 It is a fact that the Railway authorities also replacing such obsolete wooden cast iron sleepers with concrete sleepers for better functioning of its railway network, but the expenditure can be met from the compensation allowance provided to the Appellant from time to time.

38.4 The decision of the Central Commission in the Impugned Order regarding strengthening of MGR track is as under:

“The Petitioner has claimed 4556.00 lakh during 2013-14 for strengthening of MGR track against the CEA approved cost of Rs. 4548.50 lakh. The Petitioner by its affidavit dated 11.11.2011 has submitted that the strengthening of MGR track including replacement of CST-9/obsolete cast iron sleepers (1,10,000 nos), 950 nos. of existing bridge timbers (wooden sleepers), points and crossings on wooden layout etc., is required for track stabilization, life extension and safe reliable operation. The estimated de-capitalization for the said asset is Rs. 570.00 lakh as submitted by the Petitioner. Since, the expenditure during the year 2013-14 is in the nature of R&M expenses, we are of the view that the petitioner should meet the said expenditure from the Special allowance admissible to Units I&II of the generating station in terms of Regulation 10(4) of the 2009 Tariff Regulations and/or the Compensation allowance admissible under Regulation 19(e) of the 2009 Tariff Regulations in order to meet the expenses on new assets of capital nature including in the nature of minor assets. In view of this, the expenditure of Rs. 4556.00 lakh during 2013-14 is not allowed and the corresponding estimated de-capitalization of Rs. 570.00 lakh has also been ignored.34.6 This issue was discussed by this Tribunal in Appeal No. 150 of 2012. In the said Judgment this Tribunal decided that the view taken by the

Learned Central Commission in the Impugned Order that the said expenditure is in the nature of R&M expenditure”.

38.5 Let us examine the relevant Regulation deals with this type of expenditure:

“ (4) A generating company on opting for the alternative in the first proviso to clause (1) of this regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/year in 2009-10 and hereafter escalated @ 5.72% every year during the Tariff period 2009-14, unit-wise from the next financial year from the respective date of completion of useful life with reference to the date of commercial operation of the respective unit of generating station:

Provided that in respect of a unit in commercial operation for more than 25 years as on 01.04.2009, this allowance shall be admissible from the year 2009”.

38.6 We do not find any merit in the contention of the Appellant because the Central Commission has rightly proceeded to classify the said assets as minor assets and has rightly and correctly disallowed the capital expenditure pertaining to said items, to be borne by the Appellant NTPC from the normative expenses allowed to the generating station. Accordingly, the State Commission has rightly disallowed the said expenditure to be capitalized.

38.7 Accordingly, we conclude that there is no infirmity with the decision of the Central Commission on this issue and we decide against the Appellant.

ORDER

All the Appeals being numbered 134 of 2013, 141 of 2013 and 193 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 the open Court on this day of 7th December, 2015.

**(T Munikrishnaiah)
Technical Member**

**(Justice Ranjana P Desai)
Chairperson**

Dated 7th December 2015.

√ REPORTABLE / NON-REPORTABLE