

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 175 of 2014

Dated : 21st December, 2018

**PRESENT:HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF:

NTPC Limited
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110 003

- Appellant

Versus

1. The Central Electricity Regulatory Commission
3rd & 4th Floor, Chandralok Building,
36, Janpath, New Delhi – 110 001

2. GRIDCO Limited
24, Janpath,
Bhubaneswar-751 007

- Respondents

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Anushree Bardhan
Ms. Poorva Saigal
Mr. Shubham Arya

Counsel for the Respondent(s) : Mr. K.S. Dhingra for R-1

Mr. Raj Kumar Mehta
Ms. Himanshi Andely for R-2

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The Appellant, NTPC assailing the correctness of the impugned order dated 15.05.2014 in Petition No. 304 of 2009 on the file of Central Electricity Regulatory Commission (hereinafter called the 'Central Commission') for determination of tariff for Talcher Thermal Power Station (460 MW) for the period from 1.4.2009 to 31.3.2014, as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2009 (herein after referred to as "**the Tariff Regulations 2009**").
2. **Brief Facts of the case:-**
 - 2.1 The Appellant, NTPC Limited ('**NTPC**') is a Government of India Undertaking and a Company incorporated under the provisions of the Companies Act, 1956 with registered office at NTPC Bhawan, SCOPE Complex, 7, Institutional Area, Lodhi Road, New Delhi – 110003.
 - 2.2 The Appellant/NTPC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. The NTPC being a generating company owned and controlled by the

Central Government is covered by clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The generation and sale of power by the Appellant/NTPC is regulated under the provisions of the Electricity Act, 2003 by the Central Commission.

2.3 One of the generating stations of the Appellant/NTPC is the Talcher Thermal Power Station (460 MW) (hereinafter called the “**Talcher Station**”). The electricity generated from the Talcher Station is supplied to Respondents 2, GRIDCO (erstwhile Orissa State Electricity Board) in terms of the Power Purchase Agreement dated 08.03.1995.

2.4 The Talcher Station has a total capacity of 460 MW comprising of four units of 60 MW each and two units of 110 MW each. The dates of commercial operation (COD) of the units of the Talcher Station are as under:

Unit	COD
Unit – I	17.12.1967
Unit – II	28.03.1968
Unit – III	11.07.1968
Unit-IV	11.04.1969
Unit – V	24.03.1982
Unit-VI/Station	24.03.1983

2.5 The Central Commission notified the Tariff Regulations, 2009 specifying the norms and parameters for determination of tariff for the period of 01.04.2009 to 31.3.2014.

- 2.6** On 27.11.2009, the Appellant/NTPC filed a petition being Petition No. 304/2009 for approval of tariff for Talcher Station (460 MW) for the period from 01.04.2009 to 31.03.2014 as per the Tariff Regulations, 2009. Thereafter, on 25.6.2013 the Appellant, NTPC filed an amended petition incorporating the updated financials.
- 2.7** The Central Commission by its order dated 07.06.2013 in Petition No. 212/2010 (filed by NTPC for approval of R&M Phase IV schemes) had directed that R&M schemes which have already been initiated and planned to be capitalised by the Appellant/NTPC during the period 2009-2014, in respect of the Talcher Station, would be considered for recovery in tariff in Petition No. 304 of 2009.
- 2.8** The Central Commission after hearing the parties on 24.10.2013 also directed the Appellant/NTPC to submit the audited statement of accounts for the period 2009-13 and actual expenditure for the period from 01.04.2013 to 30.09.2013 along with the reconciliation of statement of accounts of the additional capital expenditure with respect to the books of accounts.
- 2.9** The Appellant/NTPC vide its affidavit on 04.11.2013 furnished the above documents and details. The Appellant/NTPC also furnished

the details of the capitalisation on actual basis for 2009-13 and revised projected additional capital expenditure for 2013-14 for R&M Phase – IV schemes for determination of tariff for the period of 2009 – 14.

2.10 The Respondent No. 2 filed its reply on 22.10.2012 & 18.11.2013 for which NTPC filed its rejoinder on 20.11.2013 & 22.11.2013. The Central Commission after hearing has passed the order dated 15.05.2014 deciding the petition No. 304 of 2009. Aggrieved by the order, NTPC filed a Review Petition on 03.07.2014 before the Central Commission which has been adjudicated vide order of the Commission dated 24.09.2014 and excepting two, all the claims of the Appellant stand settled.

2.11 The present Appeal has been preferred by the Appellant / NTPC against disallowance of its certain claims by the Central Commission.

3. Facts in Issue :

The following two issues remained for consideration in this Appeal:-

(i) The additional capitalisation of Stage I of the station under Renovation and Modernisation has not been fully and properly allowed;

- (ii) Payment of up-front fees for loans and consequential interest on the same has not been considered.

4. Questions of Law:-

4.1 Whether the Central Commission is right in disallowing the additional capitalisation for R & M Phase IV Stage I of the station by selectively referring to the earlier orders passed by the Central Commission when referred selected portion of the said orders have no application to the claim ?

4.2 Whether the Central Commission has rightly applied the rate of interest on the loans from the Life Insurance Corporation of India at the rate of 7.25%, 8.7281% and 8.5230 % for the financial years 2009-10, 2010-11 and 2011-12 instead of the applicable rate of 7.3%, 8.7481% and 8.5430%?

5. Mr. M.G. Ramachandran, learned counsel for the Appellant has filed his written submission as follows:-

The additional capitalisation of stage I of the station under renovation and modernisation has not been fully allowed;

5.1 NTPC had claimed Rs. 32.11 Cr for the FY 2009-14 as capitalization of Renovation & Modernization Phase IV schemes including Stage I and II of the Talcher Station. However, the Central Commission has only allowed the claim specific to Stage II amounting to Rs. 13 Cr.

- 5.2** The Central Commission disallowed an amount of Rs. 19.10 Cr for Stage I by placing reliance on the Order dated 07.06.2013 passed in Petition No. 212 of 2010 relating to the approval of Renovation & Modernization Phase IV. NTPC had in fact only claimed Rs. 9.44 Cr for Stage I and not Rs. 19.10 Cr. The reliance placed is selective and the Central Commission has not considered the said order fully.
- 5.3** In the order dated 07.06.2013, the Central Commission had clearly directed that it shall consider the additional capitalization for Renovation & Modernization Phase IV schemes already planned and undertaken during 2009-14, for both Stage-I & Stage-II, in the tariff petition for 2009-14 in Petition No 304/2009.
- 5.4** In the circumstances, the selective reliance placed on the certain aspects of order dated 07.06.2013 passed by the Central Commission while ignoring the relevant aspect of the same order setting out that the schemes already planned and initiated to be capitalized shall be considered for recovery in tariff in Petition No 304/2009, is erroneous.
- 5.5** The Central Commission has not considered the fact that there is significant additional capitalisation for Stage-I in Renovation & Modernization Phase-IV that has already been undertaken by NTPC during 2009-14 and the same will remain un-serviced, as

the above claim stood disallowed. These pertain to the phase-IV Renovation & Modernization works in respect of Stage-I which were of essential nature and which could not be delayed pending decision in Pet No. 212/2010 and were therefore, booked under the O & M expenses.

5.6 In the proceedings of Petition No 212/2010 vide affidavit dated 20.11.2012, NTPC had placed on record that certain works of Phase-IV are of urgent nature which had already been planned and initiated during 2009-14 and it was prayed that the same be allowed.

5.7 NTPC had filed a review being No. 17/RP/2014 before the Central Commission on the said issue of disallowance in respect of R & M, Phase IV works. By its Order dated 24.09.2014, the Central Commission held as under:

“Allowance of disallowed Stage-I items of R&M Phase-IV
8. The petitioner has submitted that Commission in its order dated 15.5.2014 has wrongly disallowed additional capitalization expenditure for R&M Phase-IV, Stage-I. The petitioner has submitted that it had claimed Rs32.11 crore in 2009-14 towards capitalization of R&M Phase-IV schemes including Stage I & II and other T&P and the Commission in its order dated 15.5.2014 has allowed Rs 13.00 crore for Stage-II and disallowed Rs 19.10 crore for Stage-I, by placing wrong reliance on the order dated 7.6.2013 passed in Petition No.212 of 2010. The petitioner has pointed out that the claim for Stage-I of the generating station was only Rs 9.44 crore and there has been no explanation or

justification for how the figure of Rs 19.10 crore for Stage-I was arrived at by the Commission.

*9. We have examined the matter. Against the expenditure for Rs 32.11 crore claimed by the petitioner in respect of R&M Phase-IV, the Commission in its order dated 15.5.2014 had allowed expenditure for Rs 13.00 crore on Stage-II items only. **However, after prudence check, an expenditure of Rs 19.10 crore was disallowed which comprised exclusively of Stage-I items of Rs7.79 crore, Stage-I & II combined items of Rs1.65 crore, expenditure of Rs6.81 crore from O & M budget, Expenditure of Rs 0.006 crore towards Tools & Tackles, Minor Assets of Rs 1.26 crore and general items of Rs 1.56 crore.**In view of this, the contention of the petitioner is not acceptable and the prayer of the petitioner for review of the order dated 15.5.2014 on this ground is rejected”.*

5.8 Thus, even in the review Order, the Central Commission did not allow the capitalization, as sought for by NTPC. The Central Commission did not consider that (a) in terms of the in-principle order dated 7.06.2013, all the schemes that had been initiated and planned to be capitalized during the period 2009-14 were required to be considered, irrespective of whether it pertains to Stage I or Stage II; and (b) The Central Commission itself had prescribed in its Order dated 7.06.2013 that

“Any requirement for replacement of any components/system on need basis during the normal operation during the remaining life of these units could be booked under O&M expenses rather than capitalization of the expenditure considering the fact that increase in tariff particularly when the units are to be phased out in next 6-7 years period, would not be desirable”.

Accordingly, NTPC had booked certain expenses relating to Stage I and II, under O & M expense. The aforementioned expenses ought to have been considered by the Central Commission in terms of the methodology prescribed under the Order dated 7.06.2013.

Non consideration of the payment of up-front fees for loans and consequential interest

5.9 The Central Commission has not considered the specific information and details provided by NTPC including the rate of interest for Punjab National Bank, LIC-III D4 & LIC-III D1; and that it is distinct and different from the interest rate considered by the Central Commission in Form 13. The interest rate for Punjab National Bank, LIC-III D4 & LIC-III D1 ought to have been 7.3%, 8.7481% & 8.5430% instead of the 7.25%, 8.7281%, & 8.5230% considered by the Central Commission.

5.10 The interest rate considered in the impugned Order dated 15.05.2014, does not factor the adjustment in interest rate on account of upfront fees paid by NTPC at the time of drawl of these loans. NTPC had duly provided these details in Form-8 filed in its Petition being Petition No. 304 of 2009 especially vide affidavit dated 27.11.2009.

5.11 NTPC also submits that in respect of another generating Station, namely, Ramagundam Super Thermal Power Station, Stage I and II, the Central Commission had allowed for the payment of Upfront fees in its Order dated 31.08.2012 in Petition No. 278 of 2009.

6. **Mr. K.S. Dhingra, learned counsel for the Respondent No.1 has filed his written submission as follows:-**

Non-capitalization of Stage-I assets executed under R&M Phase-IV

6.1 In the impugned order, the Central Commission did not allow capitalization of expenditure relating to Stage I of the generating station executed under Phase IV of R&M and restricted capitalization of expenditure pertaining to Stage II only.

“27. In line with the above decision of the Commission, the R&M expenditure under Phase-IV schemes actually incurred and projected to be incurred by the petitioner during 2009-14 for Stage-II units only have been allowed, after prudence check with corresponding de-capitalization @ 13% of the value of real assets allowed. The expenditure pertaining to Stage-I units has been disallowed. Accordingly, the expenditure allowed under R&M Phase-IV scheme is summarized as under:.....

6.2 The above decision of the Central Commission is based on its earlier order dated 7.6.2013 in Petition No 212/2010, under which R & M for Phase IV was approved by the Central Commission, wherein the Central Commission directed that –

“23.The Stage-I units of the generating are very old and are in operation for more than 41 to 42 years. Accordingly, there is no justification for the petitioner to take up further R&M in Stage-I units. Instead, the petitioner is well advised to file a phasing out scheme for Stage-I units in line with policy decision of the CEA with regard to old units

sizes of 110 MW and below. Any requirement for replacement of any components /system on need basis during the normal operation during the remaining life of these units could be booked under O&M expenses rather than capitalization of the expenditure considering the fact that increase in tariff particularly when the units are to be phased out in next 6-7 years, would not be desirable.”

6.3 The above direction of the Central Commission in the said order dated 7.6.2013 has become final and binding on the appellant since no further proceedings were taken to question the wisdom on which the direction was based.

6.4 Accordingly, the said order dated 7.6.2013 and consequently the directions in the impugned order based on the said order dated 7.6.2013 are binding on the appellant.

6.5 Relying on the following observation in the said order dated 7.6.2013 in Petition No 212/2010, the appellant has presently contended that the Central Commission in the impugned order has wrongly disallowed additional capital expenditure for R&M Phase-IV, Stage-I:

“26. As regards the schemes which have already been initiated and planned to be capitalized by the petitioner during the period 2009-14, in respect of this generating station, the same would be considered for recovery in tariff in Petition No. 304/2009 which is pending before the Commission.

- 6.6** On the basis of the above observations of the appellant has contended that the Central Commission had decided to allow capitalization of expenditure on the schemes already initiated and planned for capitalization during the tariff period 2009-14, and that the schemes for R&M of Stage I units of the generating station were already initiated and planned for execution during 2009-14.
- 6.7** The appellant's plea lacks merit for the reason that R&M of Phase IV was approved by the Central Commission in the said order dated 7.6.2013 in Petition No 212/2010. At that juncture itself, the Central Commission directed to not allow capitalization of expenditure incurred under R&M Phase IV for Stage I units. The expenditure incurred on Stage I units under R&M Phase IV prior to approval of Phase IV of R&M was not authorized. The appellant cannot be permitted to raise claim for capitalization of the expenditure incurred prior to the Central Commission's approval of Phase IV of R&M.
- 6.8** The observations of the Central Commission in paras 23 and 26 of the order dated 7.6.2013 extracted above are to be construed harmoniously. When so construed, it would imply that capitalization of expenditure incurred on R&M schemes approved

under Phase IV, excluding the schemes for Stage I units, was to be considered for capitalization.

6.9 In view of the specific direction in para 23 of the said order dated 7.6.2013 in Petition No 212/2010, capitalization of expenditure on Stage I under R&M Phase IV could not be allowed to be capitalized.

6.10 Any other interpretation would negate the Central Commission's specific direction in para 23 of the said order dated 7.6.2013. In the tariff petition the appellant had claimed capitalization of expenditure of Rs. 32.11 crore towards R&M Phase-IV schemes for Stage I as well as Stage II and other T&P.

6.11 The Central Commission in the impugned order allowed capitalization of expenditure of Rs. 13.00 crore for Stage-II and disallowed the balance expenditure of Rs. 19.10 crore. The appellant has pointed out that its claim for Stage-I of the generating station was `9.44 crore and accordingly there has been no justification for arriving at the disallowed amount of Rs. 19.10 crore.

6.12 The position in regard to above has been clarified in para 9 of the Review Order as under:

“9. We have examined the matter. Against the expenditure for `32.11 crore claimed by the petitioner in respect of R&M Phase-IV, the Commission in its order dated 15.5.2014 had allowed expenditure for `13.00 crore on Stage-II items only. However, after prudence check, an expenditure of Rs. 19.10 crore was disallowed which comprised exclusively of Stage-I items of Rs.7.79 crore, Stage-I & II combined items of Rs.1.65 crore, expenditure of Rs. 6.81 crore from O & M budget, Expenditure of Rs.0.006 crore towards Tools & Tackles, Minor Assets of Rs.1.26 crore and general items of Rs.1.56 crore. In view of this, the contention of the petitioner is not acceptable and the prayer of the petitioner for review of the order dated 15.5.2014 on this ground is rejected.”

Non-consideration of Upfront Fees Paid In Weighted Average Rate of Interest for PNB, LIC-III D4 and LIC-III D1 Loans

6.13 The Central Commission while working out the weighted average rate of interest for loans did not consider additional interest rate of 0.05% against PNB loan and 0.02% against LIC-III D4 and LIC-III D1 loans claimed by the appellant as the upfront fees.

6.14 The reasons for non-consideration of additional interest rates are clarified in the Review Order as under:

“15. The matter has been examined. The petitioner has claimed additional interest rate @ 0.05% & 0.02% in lieu of upfront fees

corresponding to PNB and LIC-III loans. On scrutiny of Form-8 in respect of the above said loans, it was observed that the same loans have also been allocated to various other generating stations such as Vindhyachal STPS, Stage-III, where no additional interest of 0.20% had been claimed by the petitioner. Moreover, in the absence of documentary evidence, the claim of upfront fees in respect of other generating stations of the petitioner had been disallowed by the Commission in its various orders, which had not been challenged by the petitioner. Accordingly, the Commission, following the consistent methodology of not allowing upfront fees to the generating stations of the petitioner, had disallowed the same in order dated 15.5.2014, while working out the weighted average rate of interest on loan. It is also observed that the rate of interest corresponding to above loans as considered in order dated 15.5.2014 are same as those claimed and considered in the earlier orders of Commission for the instant generating station. Accordingly, these rates had only been considered in order dated 15.5.2014. On scrutiny of the corresponding loan agreement, it is further observed that the upfront fee was to be paid by 31.3.2007. In this backdrop, it is not clear as to why the petitioner has claimed the same as additional interest during this tariff period. In our view, there is no error apparent on the face of the order and review on this count is not maintainable.

6.15 A perusal of above reveals that

- (a) The rates of interest considered in the impugned order were same as claimed by the appellant and considered in the earlier orders pertaining to the generating station.
- (b) On scrutiny of Form-8 annexed to the tariff petition, it was noticed that the loans in question had also been allocated to Vindhyachal STPS, Stage-III, where too, additional interest rate of 0.02% was not claimed by the appellant.

(c) In the absence of any documentary evidence in support of payment of upfront fees, similar claim in respect of other generating stations of the appellant had also been rejected and the appellant did not take any further proceedings against such rejections in case of other generating stations.

(d) The scrutiny of the loan agreements pertaining to the loans in question revealed that the upfront fee was to be paid by 31.3.2007 and not during 2009-14 to which period the tariff petition pertained.

6.16 In the light of above, the appellant's claim for consideration of upfront fees for PNB and LIC-III loans is not maintainable.

7. Mr. R.K. Mehta, learned counsel for the Respondent No.2 has filed his written submissions as follows:-

7.1 In the memo dated 14.08.2018 it has been stated on behalf of NTPC that out of the six issues raised in the Appeal, only the following two issues namely, Issue C & F survive for consideration of the Hon'ble Tribunal:-

C. The Additional Capitalization of Stage-1 of the Station under Renovation and Modernization has not been fully and properly allowed;

- F. Payment of Up-front Fees for Loans and consequential Interest on the same has not been considered.

Issue C – Additional Capitalization

- 7.2 In Para 23 of its Order dated 07.06.2013 in Petition No.212 of 2010 pertaining to Phase IV R&M works for TTPS, the Commission has held as follows:

*“23. The commission in its order dated 19.06.2002 in Petition No.62/2000 had extended the life of the generating station by 20 years with effect from 1.4.2001 i.e. upto 31.3.20121 based on the agreed expenditure of Mr. Ramji Srinivasan, Sr. Adv.436.5 crores under R&M Phase-I & Phase-II. NTPC had formulated R&M Phase-I, Phase-II and Phase-III and Switchyard scheme in consultation with the respondent, the expenditure of which was allowed by the Commission during 2001-04 and 2004-09 tariff periods. The benefit of life extension and improved operational performance has been passed on to the respondent in the form of sustained generation and improved operational norms, in consideration of which, the operational norms had been revised twice by the Commission based on actual performance during the implementation of R&M. As stated, some of the works under Phase-III are still under implementation. While considering the extension of life of the generation station earlier, NTPC has also not indicated that without the implementation of the works under Phase-IV, it would not be possible to extend the life of the units by 20 years or to sustain generation with improved performance. **The Stage-I units of the generating are very old and are in operation for more than 41 to 42 years. Accordingly, there is no justification for NTPC to take up further R&M in Stage-I units. Instead, NTPC is well advised to file a phasing out scheme for Stage-I units. Instead, NTPC is well advised to file a phasing out scheme for Stage-I units in line with policy decision of the CEA with regard to old units sizes of 110 MW and below. Any requirement for replacement of any***

components/system on need basis during the normal operation during the remaining life of these units could be booked under O&M expenses rather than capitalization of the expenditure considering the fact that increase in tariff particularly when the units are to be phased out in next 6-7 years period, would not be desirable.

7.3 In view of the above findings of the Commission, the Commission did not allow the expenditure towards Phase IV R&M for Stage-I Units of TTPS as the said expenditure was to be met from the O&M expenses as decided by the Commission in the Order since the Units are to be phased out very soon. The Commission also rightly declined the said claim of NTPC in its order dated 24.09.2014 in Review Petition No.17/RP/2014.

Issue F – Interest on Loan

7.4 NTPC claimed additional interest rate @ 0.05% & 0.02% in lieu of Up-front Fees corresponding to Punjab National Bank (PNB) and LIC-III Loans. On scrutiny of Form-8 in respect of the above said Loans, it was observed that the same Loans have also been allocated to various other Generating Stations such as Vindhyachal STPS, Stage-III, where no additional interest of 0.02% had been claimed by NTPC. Moreover, in the absence of documentary evidence, the claim of Upfront Fees in respect of other Generating Stations of NTPC had been disallowed by the Commission in its various orders, which had not been challenged

by NTPC. Accordingly, the Commission following the consistent methodology of not allowing Upfront Fees to the Generating Stations of NTPC had disallowed the same in order dated 15.5.2014, while working out the weighted average rate of Interest on Loan. It is also observed that the rate of interest corresponding to above Loans as considered in order dated 15.5.2014 are same as those claimed and considered in the earlier orders of Commission for the instant Generating Station. Accordingly, these rates only have been considered in order dated 15.5.2014. On scrutiny of the corresponding Loan Agreement, it is further observed that the Up-front Fee was to be paid by 31.3.2007. In this backdrop there is no justification for NTPC claiming the same as Additional Interest during this Tariff period. This position has been clarified in the Order dated 24.09.2014 in Review Petition No.17/RP/2014 filed by NTPC.

- 8. We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondents at consideration length of time and considered the written submissions carefully and evaluated the entire relevant material available on record. The following main two issues emerge out of Appeal for our consideration:**

Issue No.1: Whether the Central Commission is right in disallowing the additional capitalisation for Stage-I

of the Station under renovation and modernisation Phase-IV?

Issue No2: Whether the Central Commission has rightly disallowed the payment of upfront fees paid for loans and consequential interest thereon?

9. Our Findings & Analysis:-

Issue No.1:-The learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant submitted that against the claim of Rs. 32.11 Crores for the FY 2009-14 for capitalization of Renovation & Modernization Phase IV schemes including Stage I and II of the Talcher Station, the Central Commission has only allowed Rs. 13 Crore, specific to Stage II only. He further submitted that the Central Commission disallowed an amount of Rs. 19.10 Crores for Stage I by placing reliance on the Order dated 07.06.2013 passed in Petition No. 212 of 2010 relating to the approval of Renovation & Modernization Phase IV. The learned counsel was quick to point out that NTPC had in fact claimed only Rs. 9.44 Crores for Stage I and not Rs. 19.10 Crores, as mentioned by the Commission in its order. He contended that the Central Commission had clearly directed in its order dated 07.06.2013 that it shall consider the additional capitalization for Renovation & Modernization Phase IV

schemes which have already been planned and undertaken during 2009-14, for both Stage-I & Stage-II. The learned counsel further contended that despite submission of requisite details relating to R&M works in respect of Stage-I, the Central Commission has not considered the essentiality & genuineness of the said claim and disallowed the same and even the Review Petition being No. 17/RP/2014 before the Central Commission was rejected vide order dated 24.09.2014.

9.1 *Per contra*, the learned counsel, Mr. K.S. Dhingra, appearing for the Respondent Commission submitted that the decision of the Commission is based on its earlier order dated 7.6.2013 in Petition No 212/2010, under which R & M for Phase IV was approved. The relevant extract is reproduced below:-

*“23.The Stage-I units of the generating are very old and are in operation for more than 41 to 42 years. Accordingly, there is no justification for the petitioner to take up further R&M in Stage-I units. Instead, the petitioner is well advised to file a phasing out scheme for Stage-I units in line with policy decision of the CEA with regard to old units sizes of 110 MW and below. **Any requirement for replacement of any components /system on need basis during the normal operation during the remaining life of these units could be booked under O&M expenses rather than capitalization of the expenditure considering the fact that increase in tariff particularly when the units are to be phased out in next 6-7 years, would not be desirable.**”*

9.2 He further submitted that the above direction of the Central Commission in the said order dated 7.6.2013 has become final

and binding on the appellant since no further proceedings were taken to question the wisdom on which the direction was based. Regarding contentions of the Appellant that its claim for Stage I was only Rs.9.44 Crores and not Rs.19.10 Crores, the Learned counsel submitted that the Central Commission has duly clarified the position in this regard in Para 9 of the Review order and nothing is left to be interpreted further in this regard.

9.3 The learned counsel, Mr. R.K. Mehta, appearing for the second Respondent (GRIDCO) contended that the issue relating to the additional capitalization for R&M under Phase IV for Stage I has been elucidated in Para 23 of the Order dated 07.06.2013 in Petition No.212 of 2010 which specifically emphasizes that Stage I units of the generating station are very old and are in operation for more than 41 to 42 years. Accordingly, there is no justification for NTPC to take up further R&M in Stage I units. The relevant portion of the sub-para reads as:-

“23. The Stage-I units of the generating are very old and are in operation for more than 41 to 42 years. Accordingly, there is no justification for NTPC to take up further R&M in Stage-I units. Instead, NTPC is well advised to file a phasing out scheme for Stage-I units. Instead, NTPC is well advised to file a phasing out scheme for Stage-I units in line with policy decision of the CEA with regard to old units sizes of 110 MW and below. Any requirement for replacement of any components/system on need basis during the normal operation during the remaining life of these units could be booked under O&M expenses rather than

capitalization of the expenditure considering the fact that increase in tariff particularly when the units are to be phased out in next 6-7 years period, would not be desirable”.

9.5 The learned counsel accordingly submitted that in view of the above findings of the Central Commission, there does not appear any rationale in the claim of NTPC for additional capitalization in lieu of R&M works of Stage I. The Central Commission, accordingly, also declined the said claim in its review order dated 24.09.2014.

Our Findings:-

9.6 We have gone through the submissions of the learned counsel for the Appellant and the learned counsel for the Respondents and also perused the relevant findings of the Central Commission in its order dated 07.06.2013 as well as in the review order dated 24.09.2014. It is not in dispute that the R&M works for Stage I being essential were to be undertaken on an urgent basis for restoration of the generating units. However, how these expenditures are to be booked is the only question on which there are divergent views of the Appellant and the Respondents. While the Appellant (NTPC) intends to get the expenditures allowed under additional capitalization under R&M for Stage I, the Respondents including the Central Commission contend that the

said expenditures are required to be met from the O&M expenses. We have carefully analysed the issue and found that the Central Commission after considering all the pros and cons has rightly arrived at its conclusion and disallowed the claim of the Appellant for additional capitalization of R&M expenditures for Stage I. We, accordingly hold that there is no infirmity or perversity in the impugned order relating to this issue and thus, does not necessitate any interference of this Tribunal.

- 10. Issue No.2**:- The learned counsel for the Appellant submitted that the Central Commission has not considered the specific information and details provided by NTPC including the rate of interest for loans from Punjab National Bank and LIC III. He further submitted that the rate of interest considered in the impugned Order dated 15.05.2014, does not factor the adjustment in interest rate on account of upfront fees paid by NTPC at the time of drawl of these loans. The learned counsel contended that the Central Commission had allowed for the payment of upfront fees for another generating Station, namely, Ramagundam Super Thermal Power Station, Stage I and II, in its Order dated 31.08.2012 in Petition No. 278 of 2009. He, accordingly reiterated that the Central Commission ought to have allowed the payment of

upfront fees in the Talcher Thermal Power Station also. Therefore, learned counsel for the Appellant at the outset submitted that the order impugned passed by the first Respondent / CERC may be set aside.

10.1 *Per contra*, learned counsel for the Respondent Commission submitted that rates of interest considered in the impugned order were same as claimed by the Appellant and also considered in the earlier order pertaining to the generating stations of the Appellant. He further submitted that on scrutiny of Form 8 annexed to the tariff petition, it was noticed that the loans in question had also been allocated to Vindhyachal STPS, Stage-III, where too, additional interest rate of 0.02% was not claimed by the Appellant. The learned counsel contended that in the absence of any documentary evidence in support of payment of upfront fees, similar claim in respect of other generating stations of the Appellant had also been rejected. Besides, the scrutiny of the loan agreements in question revealed that the upfront fee was to be paid by 31.3.2007 and not during 2009-14 to which period the tariff petition pertained. He submitted that thus, the claim of the Appellant for consideration of upfront fees for PNB & LIC-III loans is not maintainable.

Further, learned counsel for the first Respondent submitted that the Appeal filed by the Appellant is liable to be dismissed as devoid of merits.

10.2 The learned counsel for the second Respondent submitted that the Appellant has claimed additional interest rate @ 0.05% & 0.02% in lieu of Up-front Fees corresponding to Punjab National Bank (PNB) and LIC-III loans which, based on the earlier practices, the Central Commission has not allowed. The learned counsel further submitted that the Appellant has not been able to submit documentary evidence in support of its claim for upfront fees and the Central Commission has followed the consistent methodology of not allowing Upfront Fees to the Generating Stations of the Appellant. He further contended that the Up-front Fee was payable by 31.3.2007 which is not in the period of tariff determination and the Commission has rightly disallowed the claim of the Appellant in this regard.

Learned counsel for the second Respondent, therefore, submitted that the Appeal filed by the Appellant is liable to be dismissed.

Our Findings:-

10.3 Having regard to the submissions made by the learned counsel for the Appellant and learned counsel for the Respondents, we note

that the Appellant has claimed an additional interest @ 0.05% and 0.02% in lieu of the Up-front Fees corresponding to loans drawn from PNB & LIC III. The Central Commission in line with its earlier decisions on similar claims, has disallowed the said claim of the Appellant. In some cases, even the Appellant has not claimed for the same. It is relevant to note that the Central Commission has followed the consistent methodology of not allowing Up-front Fees for the generating stations of the Appellant and has accordingly disallowed the same in its order dated 15.05.2014. In its findings, the Central Commission has also noticed that the reference Up-front Fees were to be paid by 31.03.2007 which does not correspond to the tariff period of 2009-14. The same stand was taken by the Central Commission in the adjudication of the Review Petition of the Appellant. In view of these facts, we are of the considered opinion that the Central Commission has taken the decision for disallowing the additional interest rate in lieu of the Up-front fees corresponding to various loans in accordance with its earlier orders and consistent methodology of not allowing Up-front Fees to the generating stations of the Appellant. Accordingly, we do not find any error or legal infirmity in the impugned order passed by the Central Commission.

ORDER

For the forgoing reasons, as stated supra, we are of the considered view that the issues raised in the present appeal being Appeal No. 175 of 2014 are devoid of merits.

Hence the Appeal filed by the Appellant is dismissed.

The impugned order passed by Central Electricity Regulatory Commission dated 15.05.2014 in Petition No. 304 of 2009 is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this 21st day of December, 2018.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / NON-REPORTABLE

Pr