

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

Appeal No. 45 of 2016 & IA No. 117 of 2016

Dated: 1st August, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I. J. Kapoor, Technical Member

In the matter of :-

GRIDCO Limited
Janpath, Bhubaneswar – 751 022
Orissa

... Appellant

Versus

1. GMR-Kamalanga Energy Limited
Skip House
25/1 Museum Road
Bangalore – 560 025

...Respondent No. 1

2. Western Electricity Supply Company
of Orissa Limited
Burla – Distt – Sambalpur – 768 017
Orissa

...Respondent No. 2

3. Southern Electricity Supply Company
of Orissa Limited
Courtpeta, Berhampur
Ganjam – 760 004
Orissa

...Respondent No. 3

4. North Eastern Electricity Supply Company
of Orissa Limited
Januganj, Balasore – 756 019
Orissa

...Respondent No. 4

5. **Central Electricity Supply Utility of Orissa**
2nd Floor, Idco Tower
Janpath, Bhubaneswar – 751 022
Orissa ...Respondent No. 5

6. **Central Electricity Regulatory Commission**
4th Floor, Chanderlok Bulding, 36 Janpath
New Delhi 110 001 ...Respondent No. 6

7. **Odisha Power Transmission Corporation Limited (OPTCL),**
Janpath,
Bhubaneswar- 751 022
Odisha ...Respondent No. 7

8. **State Load Despatch Centre (SLDC),**
Office of Senior General Manager (Power System),
Orissa Power Transmission Corporation Limited,
SLDC Building, Gridco Colony,
P.O. Mancheswar Rly. Colony,
Bhubaneswar- 751 017
Odisha ...Respondent No. 8

Counsel for the Appellant(s): Mr. Raj Kumar Mehta
Mr. Elangbam P. Singh
Mr. Abhishek Upadhyay
Ms. Himanshi Andley

Counsel for the Respondent(s): Mr. Amit Kapur
Mr. Vishrov Mukherjee
Mr. Rohit Venkat for R-1

Mr. K.S. Dhingra for R-6

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by GRIDCO (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 12.11.2015 (“**Impugned Order**”) passed by the Central Electricity Regulatory Commission (hereinafter referred to as the “**Central Commission**”), in Petition No.77/GT/2013 determining the Tariff of the Kamalanga Power Plant of GMR – Kamalanga Energy Ltd. (3 x 350 MW) (hereinafter referred to as the “**Station**”) for the period 01.04.2013 to 31.03.2014. The present Appeal is concerning about the jurisdiction of the Central Commission, high project capital cost, allowance of time overrun, prudence check not carried out as per MOU, high Energy Charge Rate (ECR) and other issues.
2. The Appellant i.e. GRIDCO Ltd. is a wholly owned Company of Govt. of Odisha (GoO) and is carrying on the functions of bulk supply of electricity to four Distribution Companies in the State of Odisha w.e.f. 01.04.2005 after the transfer of transmission business to Odisha Power Transmission Corporation Ltd. (OPTCL) vide Notification dated 10.06.2005 of GoO.
3. The Respondent No. 1 i.e. GMR- Kamalanga Energy Limited (“**GKEL**”) is a public limited company incorporated under the provisions of the Companies Act, 1956 on 28.12.2007. The Appellant is a project company which was set up by GMR Energy

Limited (“**GEL**”) to undertake the construction and operation of the Station.

4. The Respondent Nos. 2 to 5, namely Western Electricity Supply Company of Orissa Limited (“WESCO”), Southern Electricity Supply Company of Orissa Limited (“SOUTHCO”), North Eastern Electricity Supply Company of Orissa Limited (“NESCO”) and Central Electricity Supply Utility of Orissa (“CESU”) are the Distribution Licensees (hereinafter collectively referred to as the “**Discoms**”) in the State of Odisha being the beneficiaries of the power procurement by GRIDCO (the Appellant).
5. The Respondent No. 6 is Central Electricity Regulatory Commission (CERC) exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.
6. The Respondent No. 7 is Odisha Power Transmission Corporation Limited is a Transmission Licensee in the State of Odisha and also discharging functions of State Transmission Utility (STU) in terms of the Electricity Act, 2003.
7. The Respondent No. 8 is State Load Despatch Centre in the State of Odisha discharging its functions in terms of the Electricity Act, 2003.
8. **Facts of the present Appeal:**
 - a) Govt. of Odisha (GoO) and GEL entered into Memorandum of Understanding (MOU) dated 9.6.2006 with validity for 3 years for setting up of 1000 MW thermal power plant at Kamlanga,

Dhenkanal, Odisha. In terms of the MOU, the nominated agency by GoO shall have the right to purchase 25% of the power from the power plant in accordance with Power Purchase Agreement (PPA) to be executed.

- b) The Appellant i.e. GRIDCO (the nominated agency of GoO) entered into the PPA dated 28.09.2006 with GEL (the parent company of the Respondent No. 1) in terms of the MOU dated 09.06.2006 for purchase of 25% power from the Station at a tariff determined by the Appropriate Commission, purchase of entire quantum of power produced in excess of 80% PLF at variable cost and incentive (incentive to be determined by the Appropriate Commission) and purchase of entire quantum of infirm power at variable cost. The power is being procured by GRIDCO on behalf of and for supply to Odisha Discoms.
- c) On 17.01.2008 the Respondent No. 1 was allocated Rampia and Dip side Rampia Coal Blocks in Odisha jointly with five other allottees to meet the coal requirement of the Station.
- d) On 28.09.2006, GRIDCO filed a petition before the State Commission of Odisha for approval of the PPA entered into between GRIDCO and GEL. This PPA was approved by the State Commission on 20.08.2009 along with other IPPs. While approving the PPA, the State Commission of Odisha directed GRICDO and the Respondent No. 1 to file petition for approval of tariff under Section 62 read with Section 79 (1) (b) of the Electricity Act, 2003, before the Central Commission.

- e) On 29.01.2009, a Supplementary MOU was executed between GEL and GoO making changes and amendments pursuant to the Rehabilitation and Resettlement Policy of GoO regarding employment of oustees of the project and local people of State of Odisha. On 20.08.2009, another Supplementary MOU was executed between GEL and GoO for substitution of GEL with the Respondent No. 1.

- f) The Respondent No. 1 signed long term PPAs under competitive bidding route with Haryana on 12.03.2009 for supply of 300 MW through Power Trading Corporation (PTC) and with Bihar on 9.11.2011 for supply of 260 MW from the Station.

- g) The Respondent No. 1 awarded Engineering, Procurement and Construction (EPC) Contract to SEPCO (Chinese Company) on 28.8.2008. Notice to Proceed (NTP) was issued to SEPCO by the Respondent No. 1 on 27.5.2009. Financial closure of the project of the Respondent No. 1 was also achieved on 27.05.2009. The schedule of the Station was reckoned from the date of issue of NTP/Financial Closure.

- h) On 28.10.2010, a supplementary MOU was executed between GoO and the Respondent No. 1 for extension of the original MOU dated 09.06.2006 for a further period of two years and increase in project size from 1000 MW to 1400 MW. Further, on 04.01.2011, a revised PPA was executed between the Respondent No. 1 and GRIDCO, revising the installed capacity of the Project to 1400 MW and replacing the counterparty to the PPA from GEL to the Respondent No. 1.

- i) The Respondent No.1 filed Petition No. 77/GT/2013 on 23.03.2013 before the Central Commission for approval of tariff for supply of electricity to the Appellant. Commercial Operation Date (COD) of Unit-I of the Station was 30.04.2013. COD of Unit-II & III was 12.11.2013 & 25.3.2014 respectively.

- j) The Appellant filed reply in Petition No. 77/GT/2013 on 14.8.2013 and 17.2.2014. The Central Commission vide its order dated 3.1.2014 held that Petition No. 77/GT/2013 is maintainable. The Appellant on 28.2.2014 filed Appeal (No. 74 of 2014) before this Tribunal challenging this order of the Central Commission on maintainability. This Tribunal on 30.5.2014 tagged Appeal No. 44 of 2014 (filed by Haryana) and Appeal No. 74 of 2014 filed by the Appellant. These Appeals were disposed of by this Tribunal vide judgement dated 7.4.2016 upholding the jurisdiction of the Central Commission to determine the tariff of the Station of the Respondent No. 1.

- k) On 31.07.2014, in compliance with the Record of Proceedings (ROP) dated 03.06.2014, issued by the Central Commission, the Respondent No.1 filed an Affidavit placing on record the information as sought by the Central Commission. Further, on 23.01.2015, the Respondent No.1 filed an additional Affidavit, placing on record additional information/submissions.

- l) On 12.11.2015, the Central Commission passed the Impugned Order wherein the Central Commission has allowed certain claims of the Respondent No. 1 and determined the tariff of the Station.

- m) Aggrieved by the Impugned Order the Appellant has preferred the present Appeal before this Tribunal on the following issues:
- A. Jurisdiction of the Central Commission to determine the Tariff;
 - B. Prudence Check not carried out as per the provisions in the MOU and PPA;
 - C. Very high Project Cost due to delay in completion of the project has been allowed by the Central Commission;
 - D. Very High Capital Cost/MW (i.e. Hard Cost);
 - E. High Project Cost due to consideration of EPC completion Time Line as Schedule of Completion Date;
 - F. High Project Cost due to time over-run allowed by the Central Commission;
 - G. Loading of entire Capital Cost of Dedicated Transmission Line i.e. 400 kV Single Circuit GMR-Meramundali Line;
 - H. Higher rate of Interest on Loan and thus higher IDC;
 - I. Cost incurred on account of Non-EPC Cost and Pre-Operative Expenses;
 - J. Adjustment of Cost of Infirm Power from Capital Cost;
 - K. Important items not covered in the Impugned Orders;
 - L. Rate of Infirm Power supplied to GRIDCO prior to April-2013;
 - M. Supply of all power beyond 80% PLF at Variable Cost plus incentive as per PPA;
 - N. Very High Energy Charge Rate (ECR).

9. **Questions of Law:**

The Appellant has raised the following questions of law in the present Appeal:

- a) Whether the Central Commission had the jurisdiction to entertain a petition for determination of Tariff under Section 79(1) (b) of the Electricity Act in the present case?
 - b) Whether the determination of tariff in present case is contrary to the principles of Tariff Determination as laid down by this Tribunal in the various judgments?
 - c) Whether the determination of Tariff in present case is contrary to provisions of the Electricity Act, 2003?
 - d) Whether the determination of tariff in present case is contrary to the CERC Tariff Regulations, 2009?
 - e) Whether the determination of Tariff in present case is contrary to the provisions of the MOU dated 09.06.2006, supplementary MOU dated 28.10.2010, PPA dated 28.09.2006 and revised PPA dated 04.01.2011?
10. We have heard at length the learned counsel for the parties and considered carefully their written submissions, arguments put forth during the hearings etc. Gist of the same is discussed hereunder.
11. The learned counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:

- a) The Central Commission has not carried out the prudence check with respect to the provisions in the MOU signed with GoO and PPA signed by the Appellant with the Respondent No. 1. The provisions of MOU and PPA are with respect to time line, entitlement of Infirm Power and entitlement of energy beyond 80% PLF at variable cost. The same has not been considered by the Central Commission in the Impugned Order in proper perspective. MOU is the base document on which PPA is based.
- b) The Central Commission has erred in allowing very high project cost mainly due to delay in completion of the project which has been allowed by the Central Commission.

All Figures in Crs.			
Sl. No.	Description	Claimed by IPP as per Audited Figures	Allowed by CERC
1	Land	101.36	101.36
2	EPC Cost	4129.66	4129.66
3	Non-EPC Cost	360.93	260.12
4.	Pre-Operative Expenses	517.17	394.59
5.	Initial Spares	0	0
6.	Total Hard Cost	5109.12	4885.73
7.	IDC and Financing	827.32	827.32
8.	Taxes and Duties	0	0
9.	Total Cost incl. IDC & Financing charges	5936.44	5713.05

As per Central Commission's Benchmark Capital Cost ("Hard Cost") order for thermal power stations with coal as fuel, the total Hard Cost for a Green Field Project having Unit size of 500 MW has been derived as Rs. 4.48 Cr/MW (3 No. of Units). In the present case, the Hard Cost has been worked out to be

Rs. 5.56 Cr/MW, which is too high for a Green Field project having three units of 350 MW size. As per the MOU with GoO the project cost was envisaged as Rs. 4.2 Cr. per MW.

- c) The time schedule for the commissioning of the project was 60 months from the date of signing of MOU, i.e. upto 08.06.2011. There was excessive delay in completion of power plant which is well beyond the time line stipulated in MOU. Determination of Schedule Completion Date of the Project in line with the EPC Contract is not prudent on the ground that the Time Lines of the EPC Contract are beyond the Time Line agreed in the MOU. The Central Commission erred in not considering the Time Line as prescribed by GoO in MOU on the ground that no Time Line is mentioned in the PPA. The submission of the Central Commission that Regulations override the contractual provisions is misconceived as there is no Regulation in the Tariff Regulation, 2009 of the Central Commission which is contrary to the provisions in the MOU providing timeline for completion of the project.
- d) The contracts related to 400 kV line/sub- station awarded to M/s. Alstom T&D India Limited and purchase order for supply of towers and stubs were done without following Competitive bidding route. This could have resulted in excess expenditure.
- e) The Central Commission was not justified in accepting 3 months time delay on the basis of judgment of this Tribunal in Udupi Case. The time overrun of 3.5 months and 4 months respectively for COD of Unit II and Unit III are not attributable to OPTCL/SLDC. This was due to delay in completion of the Dedicated Transmission Line and shift in planning in respect of Pooling Station where the power was to be delivered. An interim short term LILO arrangement at Kaniha/Meramundali line was allowed with due permission from OPTCL, to avoid further delay

in commissioning of the Units. The Respondent No. 1 agreed to pay the ISTS charges since the delay for completion of Dedicated Transmission Line was on their part. Thus inspite of non-availability of any Transmission Line to CTU pooling station, the Respondent No. 1 was allowed by OPTCL to complete COD of all the three units by evacuating power through STU connected interim arrangement. Although, the Respondent No. 1 was fully aware of the fact that the interim arrangement will only be able to transmit maximum up to 350 MW, but, it wanted all power to be evacuated through this interim arrangement, which is absurd. Had, the Respondent No. 1 planned properly for COD during Low Hydro Power Conditions and had they adhered to the time line as per MOU, they could have achieved the COD without any difficulty. Therefore the delay due to grid restrictions/evacuation constraints was well within the control of the Respondent No. 1 and there cannot be any justification to compensate, the Respondent No. 1 for their improper planning.

- f) The Central Commission has directly loaded an amount of Rs. 140 Crores towards the cost of Dedicated 400 kV Single Circuit Transmission Line to Meramundali and other Non-EPC work without asking the Respondent No.1 to submit the break-up each of its components. The State entitlement of power becomes 350 MW only when the Respondent No. 1 has total installed capacity of 1400 MW which is 1050 MW currently. Presently the State share is 243 MW (ex-bus) and line is capable of transferring upto 320 MW and balance power is sold through open access through IEX. Therefore the differential

revenue earned from such sale after adjustment of fuel cost must be considered for adjustment from the Capital Cost. Extra-cost incurred due to construction of the line and associated bays shall have to be borne by the Respondent No. 1 from the differential revenue it has been earning by availing Open Access through that line and thus the Appellant should not be burdened with such cost.

- g) The Rate of Interest on Loan allowed i.e. 12.989% by the Central Commission is also on higher side. This is much higher than the SBI Base Rate.

- h) The increase in project cost on account of increase in Pre-Operating Cost i.e. reduced Infirm Power Generation due to coal shortage is not justified. The Respondent No. 1 never intimated regarding any constraints in supply of linkage coal prior to synchronization or COD of its units. As the Respondent No. 1 is having long term PPAs for about 800 MW (300 MW : Haryana, 263 MW : Odisha & 260 MW : Bihar), it is having Fuel Supply Agreement wherein it has been strictly mentioned that power so generated from linkage coal shall have to be supplied to Discoms. Since the delay in project work is due to inefficient project management by the Respondent No.1, the subsequent cost incurred towards high Start-Up fuel cost due to reduced availability of linkage coal along with other establishment expenses like salaries, professionals, and consultancy charges are to be borne by the Respondent No. 1.

- i) The infirm power had not been injected as UI rather it was supplied to GRIDCO at variable cost. The revenue earned from such sale shall have to be revised as per revised infirm power rate based on price and GCV of linkage coal and net adjustment shall be zero. The differential amount in respect of total infirm power supplied from all the 3 units at the rate of difference between Rs. 1.75/kWh and the rate arrived based on linkage coal, should be refunded to the Appellant. The Respondent No. 1 should refund an amount of Rs. 11.90 Crores to GRIDCO since the entire infirm power belongs to the State of Odisha and thus had not been injected under UI. The Appellant had paid the Respondent No. 1 at the provisional variable cost of Rs. 1.75/kWh. GRIDCO is entitled on behalf of GoO to get entire infirm power sent out from the Station at variable rate. The Impugned Order is silent in this regard.
- j) As per the PPA supply of all power beyond 80% PLF to the Appellant is at variable cost plus incentive. In the Impugned Order, this issue has been totally ignored. In the Tariff Regulations, 2009, incentive was inbuilt in the fixed charges and not separately levied at any particular rate. As such, power generated beyond 85% PLF may be considered to be paid only at Energy Charge Rate for that particular month based on price and GCV of linkage coal.
- k) As per the PPAs with Haryana and Bihar, the Energy Charge Rate varies between 94 paisa/kWh to 204 paisa/kWh. The ECR of 266.802 paisa/kWh to 297.619 paisa/kWh as per the Impugned Order in respect of GRIDCO, based on the weighted

average rate of imported, e-auction and open market coal is extremely high and wholly unjustified. It would have been more prudent for the Central Commission to consider the actual cost of coal, oil etc. as utilized in the thermal plant instead of taking the open market data as the period in question was already over. The data taken as reference has led to an exaggerated ECR which would have been much less, if price of linkage coal would have been considered. If the weighted average price of linkage coal for previous three months prior to COD of each unit is considered, ECR will come to around 112.64 paisa/kWh, 122.58 paisa/kWh and 102.59 paisa/kWh respectively.

12. The learned counsel for the Central Commission and Respondent No. 1 has made following arguments/submissions for our consideration on the issues raised by the Appellant:

- a) As a result of the prudence check by the Central Commission the capital cost of the power project of Rs. 5936.44 Crore claimed by the Respondent No. 1 was initially pruned down to Rs. 5713.05 Crore which was subsequently pruned down to Rs. 5217.13 Crore. The principles laid down by this Tribunal in MSPGCL Judgement has been applied in allowing the capital cost after prudence check. The Appellant's allegation that the Hard Cost of the power project has been worked out at Rs. 5.56 Crore/MW is on the higher side is false and misleading. The Central Commission has considered the Hard Cost of Rs. 4768.82 Crore of the Station. Hard Cost considered by the Central Commission works out to Rs. 4.54 Crore/MW. The benchmark cost (Hard Cost) specified by the Central

Commission in its order is used for purposes of 'reference' or 'comparison' of the capital cost of power projects while exercising prudence check. The increase in cost of the power project over that provided in the MOU has been on account of increase in Foreign Exchange Rate Variation (FERV) because of depreciation of Rupee in comparison to US Dollar and other international currencies. The impact has been worked out to Rs. 0.426 Crore/MW (Rs. 448.66 Crore/1050 MW). After adjusting the FERV impact the resultant cost of Rs. 4.114 Crore/MW is lower than the capital cost of Rs. 4.20 Cr./MW envisaged under MOU dated 9.6.2006. Some other factors responsible for increase in cost of the power project found by the Central Commission to be in order are increase in cost of land, increase in Interest During Construction (IDC) on account of delay (3 months) for reason of changes in Visa Policy and increase in IDC on account of delay in commercial operation (3½ months in case of Unit II and 4 months in case of Unit III) because of non-availability of the OPTCL transmission system. The Capital Cost of Rs. 4.54 Crore/MW considered by the Central Commission is congruent to Benchmark Capital Cost of Rs. 4.48 Cr./MW (three units) specified by the Central Commission in order dated 4.6.2012 for projects with unit size of 500 MW capacity. The estimated capital cost in MOU was based on capacity of 1000 MW whereas the revised configuration for phase I of the project is 3x350 MW which does not include Unit IV (350 MW) capacity or associated costs.

- b) There was no stipulation under the MOU to apply for extension of time for commissioning of the project. The Central

Commission in the Tariff Order has observed that though the timeline of 60 months is specified in the MOU, the PPA entered into between Respondent No.1 and the Appellant does not prescribe any timeline for COD of units/generating station. Hence it was observed by the Central Commission that it would not be prudent to consider the schedule timeline as per MOU. Accordingly, the Central Commission has rightly considered the schedule COD of units/generating station as computed by Respondent No. 1 based on the timeline from the NTP date specified in the EPC Contract.

- c) All the contracts for construction and laying of transmission lines were placed following a competitive bidding process. The Respondent No. 1 has awarded the contract to Alstom after following the due process. In this regard, it is submitted that the lowest bid received was from Alstom (Rs. 13.75 Crores), whereas OPTCL had levied supervision charges @ 6% of Technical Sanction value (Rs. 23.27 Crores).

- d) On 20.08.2009, the Ministry of Commerce and Industry issued a circular clarifying that all foreign nationals who wanted to come to India for execution of projects had to obtain an employment visa. It was also clarified that such foreign nationals who have come to India under a business visa for execution of projects should leave the country by 30.09.2009. Subsequently, the Ministry of Home Affairs introduced a new visa category "Project Visa" for foreign nationals coming to India for execution of projects in the power and steel sector. As per the new visa regime, the maximum number of foreign nationals who could be

granted a visa for coming to India for execution of a Project has been capped. The change in visa policy is not only a force majeure event but is also in the nature of a change in law which has had an adverse impact on the financial health of the project.

- e) The permission for synchronization of Unit-II was accorded by OPTCL on 04.07.2013 and accordingly Unit-II was synchronized on 09.07.2013. In terms of the Bulk Power Transmission Agreement (BPTA) between Respondent No.1 and PGCIL, the pooling station and transmission lines were required to evacuate 800 MW capacity as per the commissioning schedule of the power plant of the Respondent No.1. However, due to construction related issues, there was delay expected in the completion of the transmission line. PGCIL provided Respondent No.1 with an interim arrangement of LILO of one circuit of Talcher – Meramundali 400 kV D/C line. In terms of the said interim arrangement, Respondent No.1 could not inject more than 350 MW due to capacity constraints in the OPTCL transmission system and this fact was communicated by M/s. OPTCL on 04.07.2013. The permission from OPTCL/SLDC for COD was received on 07.11.2013 and COD of Unit-II was achieved only on 12.11.2013.
- f) Unit-III, which was ready for synchronization in November, 2013 with a proposed COD of January, 2014, received grid clearance only during March, 2014. Respondent No.1 applied for grid connection on 11.11.2013 (November'2013 was not peak hydro season) and permission was only granted on 07.03.2014. Hence, Respondent No.1 could declare the COD of Unit III only

on 24.03.2014. Thus, there was delay of 4 months (from 11.11.2013 to 07.03.2014) in getting the grid clearance for Unit III which were for reasons beyond the control of Respondent No.1. The Central Commission was justified in observing that the delay of 3.5 and 4 months respectively in the COD of Unit – II and Unit – III was on account of grid restrictions imposed by OPTCL.

- g) The weighted average rate of interest for the FY 2013-14 period for some of the private projects was in the range of 12.75% to 14.02%. It is evident that Respondent No. 1's rate of interest for the normative debt is lower than that of other contemporary projects. For calculating interest on loan capital, the Central Commission has considered the weighted average rate of interest based on actual interest on loans contracted by Respondent No. 1, in accordance with clause (5) of Regulation 16 of the 2009 Tariff Regulations. Though the details of loans and interest rates were given by the Respondent No. 1 in the petition before the Central Commission, the Appellant did not raise any objection to the claim.
- h) Linkage coal is to be utilized for generation of firm power as per the definition of Annual Contracted Quantity (ACQ) provided in FSA with MCL. The ACQ shall be in proportion of the percentage generation covered under long term PPAs executed by Purchaser (Generator) with Discoms (viz. Gridco, Bihar, PTC/Haryana). The actual incurred cost of linkage coal would only be to the benefit of GRIDCO by way of lower Energy Charge for the supply of power post COD. The Respondent

No.1 informed the Appellant of the shortage of linkage coal vide its letter dated 06.06.2015 and requested that the Appellant should take up the issue with the Ministry of Coal. Pursuant to the letter dated 06.06.2015, Department of Energy, Government of Odisha wrote to Ministry of Coal, Government of India on 09.11.2015 requesting for supply of full quota of linkage coal.

- i) The Central Commission has already accounted for the revenue earned from infirm power as per Regulation 11 of the Tariff Regulations, 2009. In terms of the Tariff Regulations, 2009 the normative PLF is 85%. The incentive is not separately determined for power supplied at PLF > 85%.
- j) The quoted rates for Case-1 bids for PTC/HPPC PPA and Bihar PPA cannot be relied upon in tariff determination under Section 62 of the Act. In this regard this Tribunal in the Full Bench judgment has observed that there is no connection between Sections 62 and 63 of the Electricity Act, 2003.
- k) After COD of the respective units, Energy Charges are being determined on the basis of linkage coal received. Likewise shortfall in linkage coal is being met through procurement from alternate sources such as open market, imported or e-auction coal. The Respondent No. 1 issued bills to the Appellant in which ECR was determined based on actual supply and consumption of coal. Regarding payment of penalty by fuel supplier, in FY 2013-14, the level of delivery was not below 65%. Therefore, no penalty can be claimed under the FSA. The Respondent No.1 has billed the Appellant ECR which is derived

based on the actual quantity, quality and landed cost of coal received as also admitted by Appellant.

- l) The Central Commission in the Impugned Order has given detailed reasons in support of its findings. The Appellant had filed its reply dated 17.02.2014 in the tariff petition filed by the Respondent No. 1.
- m) In the present Appeal, the Appellant has raised a number of issues that were not raised in the reply filed by it before the Central Commission.

The fresh issues raised are:

- i. Non-impleadment of GoO.
- ii. Excess cost incurred by GKEL on 400 kV S/C GMR – Meramundali dedicated transmission line based on single quotation from L&T and Alstom.
- iii. Loading of cost of 400 kV S/C GMR-Meramundali dedicated transmission line in the capital cost of the power project.
- iv. Sharing of cost of GKEL-Meramundali 400 kV S/C dedicated transmission line by GKEL on the ground that the same is used for evacuation of power outside the State of Odisha.
- v. High rate of interest on loans contracted by GKEL and consequential increase in Interest During Construction (IDC).
- vi. Increase in capital cost on account of non-EPC items such as transmission line, Railway Feeder line, etc.
- vii. Increase in pre-operating expenses because of time overrun.
- viii. Reduction in infirm power generation due to coal shortage.

- ix. Sharing by GKEL of cost incurred towards high start-up fuel cost due to reduced availability of Linkage Coal, along with other establishment expenses.
- x. Refund of excess amount earned through sale of infirm power not supplied to the appellant.
- xi. Non-consideration of sale of infirm power prior to April' 2013.

The Appellant has not indicated any reasons for which these issues could not be raised before the Central Commission in the first instance. It is trite law that fresh issues cannot be raised at the appeal stage.

- n) The issue of jurisdiction of the Central Commission to regulate the tariff of the power project has been settled by the Full Bench of this Tribunal in its judgment dated 07.04.2016 in Appeal No. 100/2013 (Uttar Haryana Bijli Vitran Nigam Ltd. and another Vs. CERC and others).
- o) The Appellant has repeatedly referred to the provisions of the MOU and the PPA executed between the Appellant and Respondent No. 1. The tariff of the power project for supply of electricity to the Appellant has been determined under the Tariff Regulations, 2009. It is settled principle of law that regulations framed by the Central Commission override the contractual obligations of the parties. In the context the following observations of the Constitution Bench of the Hon'ble Supreme Court in PTC India Ltd. Vs. CERC (AIR 2010 SC 1388) are relevant

“(ii) A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.”

Accordingly, the Appellant’s reliance on the MOU and the PPA is without merit.

- p) The MOU provided that the power project for two units of 500 MW each, total capacity 1000 MW, would be completed by 8.6.2011. Subsequently, capacity of the power project was increased to 1400 MW, with four units of 350 MW each by signing supplementary MOU. The validity of MOU was also extended further for a period of 2 years by signing supplementary MOU dated 28.10.2010. Accordingly, the time line of achieving financial closure on 8.12.2007 as per original MOU was tentative and not binding, otherwise GoO would not have executed supplementary MOUs after expiry of timeline for achieving financial closure. Therefore it follows that the GoO by signing supplementary MOU accepted financial closure date of 27.5.2009. In first instance Respondent No. 1 was handed over possession of 308 acres of land by the agency of Government of Odisha on 24.09.2009. Less than two years time was available from 24.9.2009 with reference to commissioning schedule provided under MOU. It would be unreasonable to expect commissioning of the power project of capacity 1050 MW within a short period of less than 2 years. Further, the timelines specified in EPC Contract (30/32/34 months for Unit

I/II/III) are stringent as compared to MOU timelines (42 months) and timelines (33/37/41 for Unit I/II/III) months as specified in Tariff Regulations, 2009. The Appellant in its affidavit dated 17.02.2014 accepted the time lines for commissioning of the power project as agreed under the EPC contract. It is now futile on the part of the Appellant to urge that the Central Commission ought to have given effect to the timelines for commissioning of the power project provided under MOU.

- q) The Appellant and the Respondent No. 1 has admitted that the 400 kV S/C GKEL – Meramundali dedicated transmission line was commissioned in the year 2014-15 and whereas the Impugned Order is for the year 2013-14. Therefore the question of loading the cost of 400 kV S/C GKEL – Meramundali dedicated transmission line did not arise. The Appellant's grievance on this issue is imaginary. The Appellant has not furnished any details in support of its plea of sharing of the cost of 400 kV S/C GKEL – Meramundali dedicated transmission line by the Respondent No. 1 for evacuation of power to other entities. It has made just a bald statement in the present appeal, though no such plea was even raised before the Central Commission.
- r) The Central Commission after prudence check allowed a total non-EPC cost of Rs. 260.12 Crore, thereby disallowing the expenditure of Rs. 100.81 Crore. The Central Commission allowed pre-operative expenses of Rs. 277.68 Crore against the Respondent No. 1's claim of Rs. 517.17 Crore. The pre-operative expenses amounting to Rs. 239.49 Crore were

reduced for the delay not condoned by the Central Commission and allied reasons.

- s) The Respondent No. 1 had furnished the following details of the revenue earned from sale of infirm power and the total fuel cost incurred.

Particulars	Unit-I	Unit-II	Unit-III
Revenue from sale of infirm power	1237.49	1956.43	644.19
Total Fuel Cost	4079.46	4497.97	1249.64

From the above details it is noted that the fuel cost exceeded the revenue earned from sale of infirm power. Accordingly, the question of refund of any amount to the Appellant should not arise.

- t) The ECR has been fixed by the Central Commission by considering the weighted average price and GCV of fuels for three months prior to the COD of the respective Unit. The ECR is subject to adjustment every month based on weighted average price and GCV of fuels burnt during the month, in accordance with clause (5) of Regulation 21 of the 2009 Tariff Regulations. The Energy Charge Rates quoted by the Respondent No. 1 in response to the bids invited by Haryana Discoms or Bihar is not relevant since the ECR has been fixed in accordance with the Tariff Regulations, 2009 in the instant case.

13. After having a careful examination of all the arguments and submissions of the rival parties on various issues raised in the present Appeal, our observations are as follows:-

- a) The main issues raised by the Appellant in the present Appeal are related to jurisdiction of the Central Commission for determination of the tariff of the Respondent No.1's Station, non consideration of provisions of the MOU & the PPA, high project cost, time overrun allowed by the Central Commission on account of change in visa policy & grid restrictions, higher rate of interest on loan, pre-operative expenses, adjustment of cost of infirm power from capital cost and energy charge rate.

- b) On Question No. 6 a) i.e. Whether the Central Commission had the jurisdiction to entertain a petition for determination of Tariff under Section 79(1) (b) of the Electricity Act in the present case?, we observe that the Appellant has submitted that on this issue the Appellant had filed Appeal No. 74 of 2014 before this Tribunal. This Tribunal has upheld the jurisdiction of the Central Commission under Section 79 (1) (b) of the Electricity Act, 2003 for determination of tariff of the Station of Respondent No. 1. Further, the Appellant filed Appeal No. 5415 of 2016 before the Hon'ble Supreme Court against the judgement of this Tribunal. The Hon'ble Supreme Court vide judgment dated 11.4.2017 in the said Appeal also upheld the jurisdiction of the Central Commission for determination of tariff of the Station of Respondent No. 1.

Accordingly, this issue is decided against the Appellant.

c) Now we take Question No. 6 e) i.e. Whether the determination of Tariff in present case is contrary to the provisions of the MOU dated 09.06.2006, supplementary MOU dated 28.10.2010, PPA dated 28.09.2006 and revised PPA dated 04.01.2011?, we observe as below:

i. The main issue of the Appellant is that the provisions of MOU and PPA have not been considered by the Central Commission while determining the tariff of the Station. These issues are related to non-consideration of project execution time line as per the MOU, sale of infirm power and excess energy beyond 80% PLF to the Appellant at variable charge as per the provisions of the PPA.

ii. The Central Commission has submitted that in view of changes in MOU from time to time, change in capacity and configuration of the project, and handover of possession of 308 acres of land by IDCO on 24.09.2009 and acceptance of time lines for commissioning of the power project as agreed under the EPC Contract, by the Appellant vide its affidavit dated 17.02.2014, before the Central Commission, it is futile on the part of the Appellant to urge now that the Central Commission should have considered the timelines for commissioning of the power project provided under MOU.

It is observed that the Appellant had not contested the time lines specified in the EPC Contract up to issuance of the Impugned Order by the Central Commission. Subsequent to issue of NTP on 27.05.2009 the capacity of the project was enhanced from 1000 MW to 1400 MW vide supplementary MOU dated 28.10.2010 between GoO and the Appellant. This has also necessitated the change in unit configurations affecting thereby the timeline for the project completion. The timelines for the project could not be fixed unless unit configuration finalized. Accordingly, the timelines for the

project can be considered from the date of issue of NTP. Further, it is also observed that the timelines under the EPC contract were stringent vis a vis timelines agreed in MOU. The Central Commission after applying prudence check based on material on record reckoned project timelines from NTP/Financial Closure date. Accordingly, the contention of the Appellant that the timelines as per MOU ought to have been considered by the Central Commission is misplaced.

- iii. The tariff of the Appellant is determined by the Central Commission under Section 62 of the Electricity Act, 2003 as per the Tariff Regulations, 2009. The provisions of MOU/PPA do not override the provisions of the Tariff Regulations, 2009. The same has also been held by Hon'ble Supreme Court in PTC India Ltd. Vs. CERC (AIR 2010 SC 1388) case. We are in agreement with these views expressed by the Central Commission. The provisions of the MOU/PPA become redundant to the extent which are not in line with the Tariff Regulations, 2009. We are of the opinion that even on the other issues i.e. sale of infirm power and energy beyond 80% PLF to the Appellant at variable charges, these are to be dealt according to the prevailing regulations of the Central Commission as decided above.

The Tariff Regulations, 2009 provide following provisions regarding infirm power:

“3 (20) ‘infirm power’ means electricity injected into the grid prior to the commercial operation of a unit or block of the generating station;

.....
.....

11. Sale of Infirm Power. Supply of infirm power shall be accounted as Unscheduled Interchange (UI) and paid for from the regional or State UI pool account at the applicable frequency-linked UI rate:

Provided that any revenue earned by the generating company from sale of infirm power after accounting for the fuel expenses shall be applied for reduction in capital cost”

From the above it is clear that sale of infirm power is to be accounted as UI and any revenue earned by sale of infirm power after accounting for fuel expenses shall be applied for reduction in capital cost.

- iv. Now let us examine the impugned findings of the Central Commission. The relevant portion is reproduced below:

“Sale of infirm power

59. The petitioner vide affidavit dated 31.7.2014 has furnished the details of the revenue earned from the sale on infirm power from the three units along with the cost of fuel incurred for generation of infirm power as under:

(Rs. in lakh)

	<i>Unit I</i>	<i>Unit II</i>	<i>Unit III</i>
<i>Revenue from sale of Infirm Power</i>	<i>1237.49</i>	<i>1956.43</i>	<i>644.19</i>
<i>Total Fuel Cost</i>	<i>4079.46</i>	<i>4497.97</i>	<i>1249.64</i>

60. The submissions of the petitioner have been examined and the differential amounts in positive have been adjusted in the capital cost.”

The Central Commission has adjusted the positive differential amounts of fuel cost and revenue earned from sale of infirm power in the capital cost.

- v. The Central Commission while dealing with infirm power issue has acted in accordance with the provisions of the Tariff Regulations, 2009. In our opinion there is no infirmity in the decision of the Central Commission on this issue.

- vi. On the issue of sale of excess energy beyond 80% PLF to the Appellant at variable charge as per the provisions of the PPA we observe that there is no such provision in the Tariff Regulations, 2009. The Appellant has contended that in the Tariff Regulations, 2009, incentive was inbuilt in the fixed charges and not separately levied at any particular rate. As such, power generated beyond 85% PLF may be considered to be paid only at Energy Charge Rate for that particular month based on price and GCV of linkage coal. We observe that as per Regulation 26 (i) the Normative Annual Plant Availability Factor (NAPAF) for thermal generating stations is 85%. The stations achieving availability factor of more than 85% are incentivised in the form of capacity charges based on the age of the Station. Any scheduled energy beyond 85% PLF is billed at ECR based on the weighted average landed price of primary fuel and GCV of the coal which may include linkage/ e-auction/ imported coal. Accordingly, the contention of the Appellant on this issue is misplaced and this issue has been taken care by the Central Commission based on Tariff Regulations, 2009.

Accordingly the issue has been decided against the Appellant.

d) On Question No. 6 d) i.e Whether the determination of tariff in present case is contrary to the CERC Tariff Regulations, 2009?, we observe as below:

i. From the perusal of the issues raised by the Appellant we find that the following issues can be related to Tariff Regulations, 2009 which are not dealt above:

A. Very high Project Cost due to delay in completion of the project; High Project Cost due to consideration of EPC completion Time Line as Schedule of Completion Date; High Project Cost due to time over-run allowed by the Central Commission;

B. Very High Capital Cost/MW (i.e. Hard Cost);

C. Loading of entire Capital Cost of Dedicated Transmission Line i.e. 400 kV Single Circuit GMR-Meramundali Line;

D. Higher rate of Interest on Loan and thus IDC allowed is on higher side;

E. Cost incurred on account of Non-EPC Cost and Pre-Operative Expenses;

F. Very High Energy Charge Rate (ECR).

ii. The Central Commission has submitted that the Appellant has raised many fresh issues which were not raised before the Central Commission during the pleadings before it. These issues include non-impleadment of GoO, loading of entire

Capital Cost of Dedicated Transmission Line i.e. 400 kV Single Circuit GMR-Meramundali Line based on single quotation from L&T and Alstom, Higher rate of Interest on Loan, Cost incurred on account of Non-EPC Cost and Pre-Operative Expenses, high start up fuel cost and related establishment expenses, refund of excess amount earned through sale of infirm power not supplied to the Appellant and non-consideration of sale of infirm power prior to April, 2013.

The Central Commission also submitted that the Appellant has not indicated reasons why these issues cannot be raised before the Central Commission. It is settled in law that fresh issues cannot be raised in an appeal. We agree with the contention of the Central Commission that fresh issues cannot be taken at the appeal stage. Hence, we are not inclined to deal with these issues in the present Appeal.

- iii. The issues which remains to be addressed are higher capital cost due to time overrun on account of change in visa policy by Gol & grid restrictions, high capital cost (hard cost) and high ECR.
- iv. The issues regarding time overrun on account of change in visa policy by Gol and capital cost (hard cost) have already been dealt with and the decision of the Central Commission has been upheld vide this Tribunal's judgement dated 1st August in Appeal No. 35 of 2016.

Accordingly these issues are decided against the Appellant.

- v. Now let us examine the issue of time overrun granted by the Central Commission to the Respondent No. 1 due to grid restrictions. On this count the Central Commission has granted time overrun of 3.5 months for COD of Unit II and 4 months for COD of Unit III. The Appellant has contended that the Respondent No. 1 is only responsible for the delays in construction of the dedicated transmission line. OPTCL has helped it to commission all the three units by way of providing LILO for evacuation of power with limitation of 350 MW and the Respondent was well aware of it.
- vi. Let us analyse the impugned findings of the Central Commission in this regard. The relevant extracts are reproduced below:

“Analysis and Decision

38. We have examined the matter. From the documents furnished by the petitioner, it is noticed that the permission for synchronization of Unit-II was accorded by OPTCL on 4.7.2013 and accordingly Unit-II was synchronized on 9.7.2013. As per terms of the Bulk Power Transmission Agreement (BPTA) entered between the petitioner and PGCIL, the pooling station and transmission lines were required to evacuate 800 MW capacity as per the commissioning schedule of the power plant of the petitioner. However, due to construction related issues, there was delay expected in the completion of the transmission line. Hence, PGCIL provided the petitioner an interim arrangement of LILO of one circuit of Talcher-Meramundali 400kV D/C line. Under this interim arrangement, the petitioner

could not inject more than 350 MW and this fact was communicated by M/s. OPTCL vide on 4.7.2013. Unit-II was first synchronized with the grid on 9.7.2013 and applied to OPTCL /SLDC on 27.7.2013 for permission for COD. The permission of OPTCL/SLDC for COD was received on 7.11.2013 and COD of Unit-II was achieved only on 12.11.2013. PGCIL has also considered its inability to provide the power evacuation facility of the petitioner as a Force Majeure constraint as per the Minutes of Meeting. In the background of the events and discussions, it is evident that the delay of 3.5 months (from 27.7.2013 to 7.11.2013) in the COD of Unit-II is on account of grid constraints and the petitioner cannot be held responsible for the same.

39. It is further noticed that due to capacity constraints in the OPTCL transmission system, the petitioner was not provided access for connecting the generation units to the grid. Unit-III, which was otherwise ready for synchronization in November, 2013 with the grid to achieve COD in the month of January, 2014, had received grid clearance only during March, 2014. The petitioner applied for grid connection on 11.11.2013 and the permission was obtained on 7.3.2014. Accordingly, the petitioner could declare the COD of Unit-III under commercial operation only on 24.3.2014. Thus, there was delay of 4 months (11.11.2013 to 7.3.2014) in getting the grid clearance for Unit-III. Moreover, as PGCIL pooling station including 765 kV Jharsuguda - Dharamjaygadh D/C line were still not available, the operation of the plant was restricted to 350 MW only. In the background of the events and discussions, it is evident that the delay of 4 months in the COD of Unit-III is on account of grid restrictions by OPTCL for which the petitioner cannot be held responsible. In view of the above, we conclude that the delay due to grid restrictions/evacuation constraints

were beyond the control of the petitioner and the petitioner cannot be made attributable for the same. Accordingly, in terms of the principles laid down by the Tribunal in the judgment dated 27.4.2011 [(situation (ii)], the total delay of 7.5 months (3.5 months for COD of Unit-II and 4 months for COD of Unit-III) is condoned and the generating company is given the benefit of the additional cost incurred due to time overrun. However, the LD recovered from the contractor and the insurance proceeds, if any, would be considered for reduction of capital cost.”

The Central Commission has granted time overrun of 3.5 months and 4 months for Unit II & Unit III of the Station on account of grid restrictions based on the submissions of the Respondent No.1.

- vii. It is noticed that the Appellant vide its affidavit dated 17.2.2014 before the Central Commission has not objected to the claim of the Respondent No. 1 for time overrun due to grid restrictions. The Central Commission based on the submissions of the Respondent No. 1 and material on record and by applying prudence check has held that the permission to withhold the trial run operation of Unit II & Unit III by OPTCL is beyond the control of the Respondent No. 1 and is eligible for time overrun on this count and has decided to grant time overrun of 3.5 months and 4 months for Unit II & Unit III of the Station. We have observed that the Appellant has not made any submissions before the Central Commission objecting to the claim of the Respondent No.1 seeking time overrun for Unit II & Unit III due to grid restrictions imposed by OPTCL. The Appellant has also utilised the LILO arrangement for

drawl of its share of power from the Station during the said period. In view of our discussions as above, we are of the considered opinion that there is no infirmity in the decision of the Central Commission and the findings of the Central Commission on these issues are upheld.

- viii. On the issue of high ECR the Appellant has contested that the Central Commission should have considered the price of linkage coal instead of open market coal prices etc. as that would have resulted in lower ECR for the Appellant. The ECR of the power supplied through competitive bidding route to Bihar and Haryana is much lower than that of the Appellant as determined by the Central Commission. The Appellant has also submitted that while fixing the Energy Charge Rate the Central Commission ought to have considered the actual price and GCV of fuel procured and burnt for each month since the Energy Charge Rate was fixed post facto and the information relating to price and GCV of each month was available with Respondent No. 1.
- ix. The Central Commission submitted that it has fixed ECR by considering the weighted average price and GCV of fuels for three months prior to the COD of the respective Unit. The ECR is subject to adjustment every month based on weighted average price and GCV of fuels burnt during the month, in accordance with clause (5) of Regulation 21 of the Tariff Regulations, 2009. The Energy Charge Rates quoted by Respondent No. 1 in response to the bids invited by Haryana Discoms or Bihar is not relevant since the ECR has been fixed

in accordance with the Tariff Regulations, 2009 in the instant case.

- x. Let us examine the relevant provisions of the Tariff Regulations, 2009 regarding ECR are reproduced below:

“ 21 (5) The energy charge shall cover the primary fuel cost and limestone consumption cost (where applicable), and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the energy charge rate of the month (with fuel and limestone price adjustment). Total Energy charge payable to the generating company for a month shall be:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh.}

(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

(a) For coal based and lignite fired stations

$$\text{ECR} = \{ (GHR - SFC \times CVSF) \times LPPF / CVPF + LC \times LPL \} \times 100 / (100 - AUX)$$

Where, AUX = Normative auxiliary energy consumption in percentage.

CVPF = Gross calorific value of primary fuel as fired, in kCal per kg, per litre or per standard cubic metre, as applicable.

CVSF= calorific value of secondary fuel, in kCal per ml.

ECR=Energy charge rate, in Rupees per kWh sent out.

GHR = Gross station heat rate, in kCal per kWh.

LC = Normative limestone consumption in kg per kWh.

LP = Weighted average landed price of limestone in Rupees per kg.

LPPF = Weighted average landed price of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month.

SFC = Specific fuel oil consumption, in ml per kWh.

(7) The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below :

Pithead generating stations: 0.2%

Non-pithead generating stations: 0.8%”

As can be seen from above ECR for the month is to be calculated based on weighted average landed price of primary fuel and GCV during the month.

- xi. Now let us analyse the impugned findings of the Central Commission. The relevant extracts are reproduced below:

“120. The petitioner has claimed an Energy Charge Rate (ECR) of 271.04 paisa/kWh based on the weighted average price and GCV of Coal procured and burnt for the period December, 2011, January, 2012 and February, 2012 and not on based on the price and GCV of coal for the preceding three months from the COD of Unit-I, II and III. Since the same was not in conformity with the regulations, the petitioner was directed to submit the price and GCV of Fuels for preceding 3 months from the COD of Unit-I, II and III. The respondent, GRIDCO has submitted that the ECR as computed by the petitioner is based on large number of variable parameters works out to 204.19 paisa/kWh. It has also pointed out that the energy charge rate quoted by the petitioner in the competitive bidding for tariff under Section 63 of the Electricity Act, 2003 in respect of the State of Haryana State is 90.4 paisa/kWh. Accordingly, the respondent has submitted that there is wide gap in the ECR under the cost plus mechanism and the competitive bidding mechanism which can be attributed to the manipulation of large number of variable parameters in the calculation of ECR.

121. We have examined the matter. In compliance with the directions of the Commission, the petitioner has filed the details of price and GCV of coal for the preceding three months from the COD of Unit-I, II and III. Based on the weighted average price and GCV of

coal procured and burnt for the preceding three months from the COD of Unit-I, II and III the ECR is worked out and allowed as under:

Description	Unit	30.4.2013 to 11.11.2013	12.11.2013 to 24.3.2014	25.3.2014 to 31.3.2014
Capacity	MW	350	700	1050
Gross Station Heat Rate	kCal/kWh	2424	2424	2424
Specific Fuel Oil Consumption	ml/kWh	1.0	1.0	1.0
Aux. Energy Consumption	%	6.50	6.50	6.50
Weighted Average GCV of Oil	kCal/l	10750	10706	10600
Weighted Average GCV of Coal	kCal/Kg	3099.00	3025.00	3350.00
Weighted Average Price of Oil	₹/KL	55870.65	60909.31	65848.54
Weighted Average Price of Coal	₹/MT	3203.46	3209.19	3862.66
Rate of Energy Charge ex-bus	Paisa/kWh	266.802	273.822	297.618

122. The Energy charge on month to month basis shall be billed by the petitioner as per Regulation 21 (6) (a) of the 2009 Tariff Regulations.”

From the above findings of the Central Commission two things can be concluded. First the Central Commission has worked out ECR based on the weighted average price and GCV of coal procured and burnt for the preceding three months from the COD of Unit-I, II and III. Second ECR on month on month basis to be billed is to be calculated as per Regulation 21 (6) (a) of the Tariff Regulations, 2009 as reproduced above.

- xii. In our opinion the Appellant has mixed two issues i.e. ECR for the purpose of working out Interest on Working Capital (IWC) and monthly ECR to be billed for scheduled energy. The Central Commission has calculated ECR for the purpose of working out IWC and for calculation of monthly ECR it has referred to Regulation 21 (6) (a) of the Tariff Regulations,

2009. The requirement of IWC is as per the following regulation

“18 Interest on Working Capital.

(1) The working capital shall cover:

*(a) Coal-based/lignite-fired thermal generating stations
(iv) Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor,*

(2) The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.”

In view of our discussions as above and the relevant regulations of the Central Commission, it is clear that the contentions of the Appellant are misplaced and the Central Commission has acted according to the Tariff Regulations, 2009.

- e) Now we take Question Nos. 6 b) and 6 c) together. On Question No. 6 b) i.e. Whether the determination of tariff in present case is contrary to the principles of Tariff Determination as laid down by this Tribunal in the various judgments? and on Question No. 6 c) i.e. Whether the determination of Tariff in present case is contrary to provisions of the Electricity Act, 2003?, we observe that the Appellant has not pointed out any specific provision of the Electricity Act, 2003 and the principles laid down by this Tribunal to substantiate the alleged violations as claimed by the Appellant. However we find that the Central Commission has followed its

Tariff Regulations, 2009 for determination of tariff of the Station except on one issue related to time overrun due to initial delay in handing over possession of land to the Appellant by GoO/IDCO which needs fresh consideration by the Central Commission in line with our decision vide judgement dated 1st August, 2017 in Appeal No. 35 of 2016 where the Impugned Order dated 12.11.2015 has been remanded to the Central Commission for allowing initial delay in handing over possession of land and grant consequential reliefs to the Respondent No. 1. Hence, the issues raised in Question Nos. 6 b) and 6 c) are also decided against the Appellant.

ORDER

We are of the considered opinion that the issues raised in the present appeal have no merit as discussed above. The Appeal and IA are hereby dismissed.

The Impugned Order dated 12.11.2015 passed by the Central Commission is confirmed. However, as stated above, Appeal No.35 of 2016 has been remanded to the Central Commission only to the extent of grant of consequential reliefs to the Respondent No. 1 on account of our decision of allowing initial delay in handing over possession of land as decided by this Tribunal in that appeal vide judgement dated 1st August, 2017.

No order as to costs.

Pronounced in the Open Court on this **1st day of August, 2017.**

(I.J. Kapoor)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Mrs. Justice Ranjana P. Desai)
Chairperson