

**Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal nos. 70 of 2012 & 71 of 2012

Dated: 25th October, 2013

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of:

NTPC Limited,

NTPC Bhavan, Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi-110 003

... **Appellant**

Versus

1. **Central Electricity Regulatory Commission,**
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.
2. **Madhya Pradesh Power Trading Co. Ltd.,**
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482008.
3. **Maharashtra State Electricity Distribution Company Ltd.,**
Pradashgad, Bandra (East),
Mumbai-400 051
4. **Gujarat Urja Vikas Nigam Limited,**
Sardar Patel Vidyut Bhawan,
Race Course Road,
Vadodra-390 007.
5. **Chattisgarh State Electricity Board,**
P.O. Sunder Nagar, Danganiya,
Raipur-492913
6. **Electricity Department,**
Government of Goa,
Vidyut Bhawan, Panaji, Goa-403001

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

8. **Electricity Department,**
Administration of Dadra and Nagar Haveli,
Silvassa-396230

...Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan,
Ms. Swapna Seshdri &
Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. Manu Seshadri for R-1
Mr. Pradeep Misra,
Mr. Manoj Kr. Sharma,
Mr. Suraj Singh,
Mr. Shashank Pandit for R-2

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

Appeal nos. 70 & 71 of 2012 have been filed by NTPC Ltd. against two separate impugned orders dated 30.12.2011 passed by the Central Electricity Regulatory Commission (“Central Commission”) regarding approval of tariff in respect of Kawas Gas Power Station and Jhanor Gandhar Gas Power Station

respectively for the period between 1.4.2009 and 31.3.2014.

2. The Appellant is a generating company. The Central Commission is the Respondent no. 1. The beneficiaries of power from the above Gas Power Stations are the Respondent nos. 2 to 8.

3. The brief facts of the case are as under:

3.1 Tariff Regulations, 2009 were notified by the Central Commission on 19.1.2009 for the period 2004-09. One of the modifications made in the 2009 Regulations over the earlier Regulations of 2004 was that the useful life of gas power stations was extended from 15 years to 25 years.

3.2 Subsequent to notification of the 2009 Tariff Regulations, NTPC filed petitions for determination of

tariff for Kawas and Gandhar Gas Stations for the period 2009-14.

3.3 On 21.6.2011, the Central Commission issued the first amendment to the 2009 Tariff Regulations allowing the Gas Power Stations to carry on the Renovation and Modernization programme and claim expenditure for extending the useful life of the gas turbine.

3.4 Thereafter, on 30.12.2011 the impugned orders were passed by the Central Commission. Aggrieved by the above orders, NTPC has filed these Appeals.

4. In Appeal no. 70 of 2012 relating to Kawas Power Station, NTPC has raised the following issues:

- (a) The Central Commission has taken into account 15 years of life extension of the gas turbines after Renovation & Modernization

instead of 10 years provided in the Tariff Regulations, 2009.

- (b) Un-recovered depreciation after useful life has neither been allowed prior to Renovation and Modernization ('R&M') nor mentioned to be allowed after the extended useful life after Renovation and Modernization.

5. In Appeal no. 71 of 2012 relating to Jhanor Gandhar Power Station, besides the above two issues raised in Appeal no. 70 of 2012, the following two issues have also been raised.

- (a) The Central Commission has not allowed the capital expenditure on replacement of Air Inlet Cooling System on the ground that there is no commitment from NTPC to pass the benefit arising therefrom to the beneficiaries.

(b) The Central Commission has considered the de-capitalization amount as Rs. 25029 lakhs instead of Rs. 19278 lakhs relying on the field survey conducted in the year 2001, ignoring the specific affidavit filed by NTPC on de-capitalization.

6. As some of issues raised in the Appeals are similar, a common judgment is being rendered.

7. NTPC has made the following submissions in Appeal on 70 of 2012 in respect of Kawas Gas Power Station.

(A) Life Extension considered for 15 years instead of 10 years:

(i) The Central Commission has not specifically dealt with the extension of the life of gas power station by 15 years, namely from 15

years to 30 years but the reading of the order particularly dealing with the depreciation clearly shows that the Central Commission has proceeded on the basis that the useful life extension is 15 years instead of 10 years as specified in the 2009 Tariff Regulations.

- (ii) In the 2009 Tariff Regulations, the life of the gas based stations was extended by 10 years and expenditure on R&M of gas turbine was specifically allowed to extend the life of gas turbine upto the extended life of gas station of 25 years. Thus, the Central Commission ought not to have decided to extend the useful life of the Gas Turbine after R&M by 15 years.

(B) Adjustment of un-recovered depreciation:

There was un-recovered depreciation of

Rs. 6.68 crores in relation to the assets commissioned prior to the life extension as on 31.3.2009. This was to be recovered after balance useful life of 15 years as originally envisaged in the 2004 Tariff Regulations. The Central Commission has not allowed the unrecovered depreciation after balance useful life of 15 years in contravention of the directions of this Tribunal in its judgment dated 13.6.2007 in Appeal nos. 139, 140, etc. of 2006.

8. In Appeal no. 71 of 2012 relating to Jhanor Gandhar Gas Power Station, NTPC has submitted as under:

(A) Life Extension considered for 15 years instead of 10 years.

(B) Adjustment of un-recovered depreciation.

On the above two issues, NTPC has made similar submissions as made in Appeal no. 70 of 2012, except that in Appeal no. 71 of 2012, the un-recovered depreciation of Rs. 69.42 crores has been claimed in respect of the assets commissioned prior to life extension as on 31.3.2009.

(C) Disallowance of expenditure on installation of Air Intel Cooling System:

- (i) Air Intel Cooling System is necessary for sustained and efficient operation at the normative level. The expenditure on Air Intel Cooling System cannot be disallowed on the basis that NTPC is securing some additional benefit and the

same is not being shared with or passed on to the beneficiaries.

- (ii) The improvement of operational parameters due to Renovation & Modernization including the expenditure on Air Intel Cooling System is taken into account while determining the norms for the various tariff periods following the Renovation & Modernization Programme. The Central Commission ought not to have rejected a substantial amount of Rs. 795 lakhs which is identified as a part of Renovation & Modernization System particularly when the same was duly considered by the Central Electricity Authority and approved.

(iii) The finding of the Central Commission is also contrary to the amendment to the Tariff Regulations, 2009 notified on 21.6.2011.

(D) **Amount of de-capitalization:**

(i) The Central Commission has considered the total de-capitalization amount as Rs. 25029 lakhs. This is wrong particularly in the context of the affidavit filed before the Central Commission by NTPC with documentary proof showing that the de-capitalization amount should be Rs. 19278 lakhs only.

(ii) The Central Commission has proceeded on the basis of the field survey conducted in the year 2001 instead of

sworn affidavit filed by the NTPC and has unilaterally decided to adopt the study report without seeking comments from NTPC.

(iii) There is inconsistency in the approach of the Central Commission in the case of Gandhar Gas Power Station as compared to other gas stations. In case of Kawas and Anta Gas Stations, the Central Commission has duly considered the de-capitalization amount as per the affidavit filed by NTPC.

(iv) No valid reason has been given in the impugned order for not adopting the value as per the affidavit filed by NTPC.

9. The Respondent no. 2 has made submissions supporting the impugned order which we shall be dealing with at the appropriate place in the following paragraphs.

10. On the above issues, we have heard Shri M.G. Ramachandran, learned counsel for NTPC and Shri Pradeep Misra, learned counsel for the Respondent no. 2. In view of the rival contentions of the parties, the following questions would arise for our consideration:

(i) Whether the Central Commission has erred in considering the life extension of gas based power station after Renovation & Modernization by 15 years instead of 10 years in contravention to the Tariff Regulations?

(ii) Whether the Central Commission should have allowed the adjustment of un-recovered

depreciation in relation to the assets commissioned prior to life extension as on 31.3.2009 in the Tariff for the period 2009-14 after balance useful life of 15 years?

(iii) Whether the Central Commission has erred in not allowing the expenditure on installation of Air Inlet Cooling System at Gandhar Gas Power Station when the same was included in the Renovation & Modernization Scheme of NTPC?

(iv) Whether the Central Commission has wrongly determined the de-capitalization amount without considering the affidavit filed by NTPC for lower amount in respect of Gandhar Gas Station?

11. Let us take up the first issue regarding life extension of gas station after Renovation & Modernization.

12. According to NTPC, the Central Commission has wrongly considered life extension of 15 years after Renovation & Modernization in contravention to the Tariff Regulations which provided for life extension of only 10 years.

13. According to Shri Pradeep Misra, learned counsel for the Respondent no. 2, the Statement of Object of framing the Regulations specifically mentioned that the Gas Turbines installed in India have already completed 20 years of operation and continued to work after major overhaul at regular intervals. Thus, the State Commission has correctly fixed the useful age of gas turbine after complete renovation of hot gas path as per the Regulations. In the petition, the Appellant had clearly mentioned that after R&M activities the life of gas turbine will be another 1,00,000 EOH

(equivalent to 15 years). Thus, there is no mistake in order in extending the life of the gas based power station after Renovation.

14. Let us examine the Tariff Regulations, 2009.

15. We find that the useful life specified in the Regulations for a gas based thermal generating station is 25 years from the Commercial Operation Date (COD). In the 2004 Tariff Regulations the life of gas based station was specified as 15 years, but the same was enhanced to 25 years in the 2009 Tariff Regulations.

16. The Statement of Object and Reasons of the Tariff Regulations, 2009 gives the following reasons for extending the useful life of gas based station from 15

years to 25 years:

- (i) The gas/liquid based stations comprise of two main components. One set of components is the gas turbine and its auxiliaries which are subjected to high temperatures; and the other set of components namely waste heat recovery boiler, steam turbine, generators and their auxiliaries are not subjected to very high temperatures.
- (ii) The useful life for gas turbine is being considered as 15 years and that of waste heat recovery boilers, steam turbine, etc., as 25 years. Considering the reliability of gas

turbine, life of gas turbine was considered as 15 years.

- (iii) However, experience has shown that many of the first gas turbines installed in India have already completed 20 years of operation and continue to operate with major overhauls at regular intervals of 50000 Equivalent Operating Hours (“EOH”). The major overhaul of gas turbine involves complete renovation of hot gas path which is subjected to very high temperatures.
- (iv) Considering the performances of gas turbines, the useful life of gas turbine stations has been fixed as 25 years. Accordingly, for the purpose of R&M useful

life of gas turbine as 25 years has been specified in the Tariff Regulations, 2009.

17. We find that subsequently the Central Commission proposed amendment in the 2009 Regulations in the section dealing with Additional Capitalization to provide for expenditure incurred on renovation of Gas Turbines and issued an Explanatory Memorandum to the Draft Amendments on 3.9.2010 for inviting objections and suggestions. The proposal briefly contained the following:

- (i) The life of gas turbine referred to as 25 years in the Statement of Reasons on Tariff Regulations, 2009 was to mean the life of gas based generating station and not the gas turbine as such.

- (ii) In the absence of R&M data in respect of gas stations and that there was no additional capitalization witnessed in gas stations till 2007-08, neither the option of special allowance was provided nor any compensation allowance was provided for gas based stations. Despite this, no provision is made in the Regulations for additional capitalization on account of Renovation & Modernization of gas turbines after 15 years but during the useful life of gas based generating station as provided for hydro stations and transmission system.
- (iii) In the light of above, there is need to provide for similar dispensation for gas based stations for allowing for R&M after 15 years and for obsolescence of technology.

18. On the basis of above, the amendment to the Tariff Regulations, 2009 was notified on 21.6.2011.

The amendment provides as under:

“5. Amendment of Regulation 9 of the Principal Regulations- Three sub-clauses namely, (vi), (vii) and (viii) shall be added after sub-clause (v) of clause (2) of Regulation 9 of the Principal Regulations as under:

“(vi) In case of gas/liquid fuel based open/combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 year of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine

shall be suitably deducted after due prudence from the R&M expenditure to be allowed”.

19. Regulation 9 provides for additional capitalization from Date of Commercial Operation upto the Cut-Off date and after the Cut-Off date. The sub-section (2) of Section 9 specify the counts on which the additional capitalization could be allowed after the cut-off date. Prior to the amendment dated 21.6.2011, the sub-section (2) of Section 9 did not provide for additional capitalization of the expenditure on renovation & modernization of the gas based power station. With the amendment date 21.6.2011, the gas based generating station could claim expenditure on renovation of gas turbine after 15 years of operation from COD and expenditure necessary due to obsolescence or non-availability of spares for

successful and efficient operation of the station as additional capitalization after the cut-off date.

20. The intent of the Regulation is that the life of gas turbine and its auxiliaries which are subjected to very high temperatures can be extended from 15 years to 25 years only after renovation of gas turbine which may become necessary after 15 years of operation from its COD. While the Central Commission in its 2009 Tariff Regulations enhanced the life of the gas based power stations from 15 years to 25 years it did not provide for compensating the gas power station for expenditure which may be required for renovation of gas turbine after 15 years of operation of the plant from its COD during the useful life of the gas station of 25 years. Therefore, the Central Commission amended its 2009 Tariff Regulations to provide for additional capitalization for renovation of gas turbine after 15

years of operation and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station.

21. In the above background let us now consider the petition filed by the Appellant before the Central Commission. The salient points of the Petition are as under:

- (i) The life of most of the major equipments in a gas station such as Waste Heat Recovery Boiler, transformers, switchyard, water and auxiliary systems, etc. have an estimated life of 25 years or so, the gas turbine has the fair life of 15 years in view of shorter life of gas turbine components. It is possible to extend the life of gas stations to 25 years as considered in the Regulations only by extending the life of gas turbine.

- (ii) NTPC claimed additional capital expenditure on account of Renovation & Modernization of gas turbines, rotor refurbishment, etc., during the period 2009-14.

22. Let us now examine the findings of the Central Commission regarding balance useful life of the generating units as given in the order for Gandhar Gas Power Station. The relevant findings are as under:

“61. The details of the date of commercial operation of the different units of the generating station, the period of operation up to 1.4.2009 and 1.4.2012 (completion of major R&M works) and the extended life after R&M of Gas Turbine and their weighted average period of operation on above dates and weighted average life are as under:

<i>Description</i>	<i>Capacity MW</i>	<i>COD</i>	<i>Elapsed life up to 1.4.2009</i>	<i>Elapsed life as on 1.4.2012</i>	<i>Useful life after extension of life by 15 years for GTs</i>
<i>GT-I</i>	<i>144.30</i>	<i>1.3.1995</i>	<i>14.08</i>	<i>17.08</i>	<i>32.08</i>
<i>GT-II</i>	<i>144.30</i>	<i>1.7.1995</i>	<i>13.75</i>	<i>16.75</i>	<i>31.75</i>
<i>GT-III</i>	<i>144.30</i>	<i>1.3.1995</i>	<i>14.08</i>	<i>17.08</i>	<i>32.08</i>
<i>ST-I</i>	<i>224.49</i>	<i>1.11.1995</i>	<i>13.42</i>	<i>16.42</i>	<i>25.00</i>
<i>Total</i>	<i>657.39</i>		<i>13.78</i>	<i>16.78</i>	<i>29.59</i>

62. *The weighted average of the elapsed life (period of operation) of the generating station, as on 1.4.2009 works out to 13.78 years. The major part of R&M works would be completed by 31.3.2012. The weighted average of the period of operation of the generating station as on 1.4.2012 works out to 16.78 years. After the completion of R&M, the life of the Gas Turbine shall be extended by 15 years (approx) from the date of completion of major R&M i.e from 1.4.2012. However, the useful life of the Steam Turbine shall remain as 25 years from the date of commercial operation of the Steam Turbine unit”.*

64. *As stated above, the elapsed life of the generating station as on 1.4.2009 is 13.78 years and the balance useful life of generating station as on 1.4.2009 is 15.81 years (29.59-13.78), after taking into account the major R&M expenditure incurred by the petitioner. Since, the elapsed life of the generating station of 13.78 years is more than the ceiling limit of 12 years (for normal depreciation) as on 1.4.2009, the balance depreciable value for each year has been spread over the remaining useful life for the purpose of calculating depreciation for the respective years. Further, proportionate adjustment has been made to the cumulative depreciation on account of de-capitalization of assets considered for the purpose of tariff as well as discharges/reversal of liabilities out of un-discharged liabilities deducted from capital cost as on 1.4.2009. The necessary calculations in support of depreciation are as stated overleaf:”*

23. Thus, the Central Commission has considered that after the completion of R&M, the life of the Gas

Turbines shall be extended by 15 years (approximately) from the date of completion of major R&M i.e. from 1.4.2012. However, the useful life of the steam turbine was considered as 25 years from its COD.

24. It is clear from the table given in the impugned order in paragraph 61 that, the useful life of Gas Turbine I, II & III at Gandhar after extension of life by 15 years has been considered as 32.08, 31.75 and 32.08 years respectively while the life of steam turbine has been taken as 25 years. Accordingly, the weighted average useful life of the gas based power station after extension of useful life of Gas Turbine has been computed as 29.59 years in the impugned order. Similarly in case of Kawas the useful life of the gas turbines IA, IB, 2A and 2B on life extension after R&M has been considered as 35.83, 35.67, 35.58 and 35.42 year respectively and for steam turbine as 25 years.

Accordingly, for Kawas the weighted average life of the gas station has been computed as 29.59 years in the impugned order. This is against the intent of the Regulations for enhancing the useful life of the gas turbine to 25 years on Renovation after completing 15 years of useful life. No reason has been given by the Central Commission for enhancing the useful life of the gas turbines by 15 years after R&M over the elapsed life as on 1.4.2012 instead of 10 years as intended in its Tariff Regulations, 2009. We feel that the useful life of the Gas Turbines should have been extended by 10 years after completion of the Renovation of the Gas Turbines as per the Regulations. Accordingly, decided.

25. Therefore, we decide to remand this matter back to the Central Commission with direction to re-

determine the useful life of the plants after extension of life by 10 years for GTs after completion of Renovation and Modernization, instead of 15 years.

26. The second issue is regarding adjustment of un-recovered depreciation in respect of the assets commissioned prior to life extension as on 31.3.2009 in the Tariff after balance useful life of 15 years.

27. According to Shri M.G. Ramachandran, learned counsel for NTPC, un-recovered depreciation in respect to assets commissioned prior to life extension as on 31.3.2009 should have been allowed to be recovered in view of the directions of the Tribunal in judgment dated 13.6.2007 in Appeal nos. 139, 140 etc. of 2006.

28. According to Shri Pradeep Misra, learned counsel for the Respondent no. 2, as per 2009 Regulations, after allowing R&M of the gas turbines, the useful life

of the gas station has been extended and therefore, the un-recovered depreciation is also required to be recovered during the extended life of the plant and therefore, there is no error in the findings of the Central Commission.

29. The issue of un-recovered depreciation was considered by this Tribunal in Appeal no. 139 of 2006 & batch in the matter of NTPC vs. CERC & Ors. The contention of the Appellant in that case was that the fixed cost to be recovered by NTPC includes depreciation and in case a particular station fails to achieve the target availability the fixed charges are proportionally reduced as per the Regulations. Even if NTPC over performs in a subsequent year, it is not able to recover the fixed charges allowed earlier as the incentive for generation over and above the specified Plant Load Factor is not sufficient to cover up the fixed cost

disallowed in the years where the target availability was not achieved. The Tribunal in its Judgment dated 13.06.2007 in Appeal no. 139 of 2006 & batch decided as under:

“We note that as per the CERC Regulations appellant can recover, in full, capacity (fixed) charges on reaching the target availability. If the appellant exceeds the targeted Plant Load Factor for incentives he is entitled to an incentive at flat rate of 25 paise per kWh for ex-bus schedule energy corresponding to schedule generation in excess of ex-bus energy corresponding to target Plant Load Factor. Capacity (fixed) charges inter-alia include depreciation. Therefore, the appellant is able to recover the annual depreciation amount only if it achieves the target availability. In case of shortfall fixed charges and thereby the depreciation amount is pro-rata reduced according to the shortfall in achieving the target availability. However, if the appellant exceeds the Plant Load Factor beyond a certain value he is entitled to only a flat rate incentive of 25 paise. Whereas the depreciation amount is reduced due to

underperformance, the same does not increase due to over performance.

In a regulatory cost plus regime all costs have to be reimbursed. Depreciation amount up to 90% being a cost has to be allowed over the life of the plant. If due to underperformance in a particular year the appellant is not able to recover full depreciation allowed in that year and if this denial is forever, it will tantamount to a penalty. In a contract between the appellant and the beneficiaries, only levy of liquidated damages can be permitted. It will, therefore, be enough deterrent for the appellant if the depreciation is not allowed during the year of underperformance. However, the same cannot be denied forever and, therefore, it will be only fair to allow the unpaid portion of the depreciation after the plant has lived its designated useful life. In this view of the matter the CERC needs to examine this aspect as per the aforesaid observations”.

Thus, the Tribunal decided that the unpaid portion of the depreciation which could not be

recovered by NTPC due to under performance in some particular years could be allowed after the plant has lived its designated useful life.

30. Let us examine the findings of the Central Commission in its order regarding Gandhar Power Station where the State Commission has dealt with this issue. The Central Commission after recording the findings of the Tribunal in its Judgment dated 13.06.2007 stated that in terms of 2009 Regulations, the designated useful life of the gas based power station is 25 years and as the elapsed life of the generating station is 16.32 years as on 1.4.2009, the balanced useful life of the generating station got extended to 8.77 years as per the 2009 Regulations, prior to the extension of the useful life of the generating station due to R&M expenditure. Accordingly, the Central Commission has not allowed

the un-recovered depreciation claimed by NTPC during 2012-13 but stated that the same would be considered during the next tariff period after expiry of 8.77 years from 1.4.2009.

31. Accordingly, the Central Commission has decided to consider the un-recovered depreciation as per the directions of the Tribunal in its Judgment dated 13.6.2007 after the completion of the designated useful life of the generating station which is 25 years as per 2009 Regulations. We do not find any infirmity in the findings of the Central Commission in view of the fact that the designated useful life has been enhanced to 25 years by 2009 Regulations which are applicable for the period in question. As per the Tribunal's judgment in Appeal No. 139 of 2006 & batch, the un-recovered depreciation in respect of the assets commissioned prior to life extension have to be

allowed after the power plant has lived its designated useful life. The designated useful life of gas based power station is 25 years as per the 2009 Tariff Regulations which is relevant to the period in question i.e. 2009-14. Therefore, the un-recovered depreciation could be allowed after the gas power station has completed 25 years of operation. As Kawas and Gandhar gas power stations are not completing 25 years of operation during the period 2009-14 for which tariff has been determined in the impugned order, the Central Commission has rightly decided to consider the un-recovered depreciation in the tariff period subsequent to the current tariff period of 2009-14.

32. The third question is regarding capitalization of the expenditure on installation of Air Inlet Cooling System which has been raised in Appeal No. 71 of 2012.

33. According to Shri M.G. Ramachandran, the Central Commission ought not to have rejected the capitalization of expenditure on installation of Air Inlet Cooling System which is identified as a part of the Renovation & Modernization System and the findings of the Central Commission are contrary to the amendment to the Tariff Regulations, 2009, notified on 21.6.2011.

34. According to the to Shri Pradeep Misra, the expenditure claimed by the Appellant on account of Air Inlet Cooling System is not covered under Regulation 9(2)(vi) of Regulations, 2009 and hence, the same was rightly disallowed by the Central Commission. The amendment to the 2009 Tariff Regulations dated 21.6.2011 stipulates that only expenditure which has become necessary on renovation of gas turbine after

15 years of the operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station has to be allowed for additional capitalization after the cut-off date.

35. The findings of the Central Commission with regard to expenditure on installation of Air Inlet Cooling System in the impugned order in respect of Gandhar Gas Based station are as under:

“38. Expenditure for Rs. 795.00 lakh during 2010-11 towards Air Inlet cooling system for Gas Turbines has been claimed by the petitioner. Apart from increase in output, inlet air cooling would also improve the Station Heat Rate (SHR). However, the benefit of improvement of SHR would be retained by the generator. Hence, there is no reason to allow such expenditure in the absence of any commitment on the part of the petitioner to pass on

the benefit of improvement in efficiency to the respondent/beneficiaries”.

Thus, the Central Commission has disallowed the expenditure on account of installation of Air Inlet Cooling System as there is no commitment on part of the Appellant to pass on the benefit of improvement in efficiency to the beneficiaries.

36. We find that the Central Commission has not dealt with this issue according to its Regulations. The Tariff Regulations provide that additional capitalization in case of gas based stations has to be allowed under the following conditions:

- (i) any expenditure which has become necessary on renovation of gas turbine after 15 years of the operation from its COD; and (ii) the expenditure necessary due to obsolescence or

non-availability of spares for successful and efficient operation of the gas station.

37. The Central Commission should have decided this issue strictly on the basis of its Regulations. The norms for heat rate are decided by the Central Commission in its Regulations and the same could not be decided by NTPC. Therefore, we direct the Central Commission to decide the issue according to its Regulations after considering whether the expenditure on Air Inlet Cooling System is required for renovation of gas turbine or necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station, after hearing the concerned parties.

38. The fourth issue is regarding amount of de-capitalization in case of Gandhar Gas based power Station.

39. According to NTPC, the Central Commission has considered the total de-capitalization amount as Rs. 250.29 crores which is wrong in the context of an affidavit filed before the Central Commission with documentary proof showing that de-capitalization amount should be Rs. 192.78 crores only.

40. According to Shri Pradeep Misra, the learned counsel for Respondent no. 2, the Central Commission has rightly considered the de-capitalization amount as the Appellant had failed to provide the gross value of the GT's, as on the date of CoD to the Central Commission and, therefore, in the absence of the requisite information, the Central Commission has

rightly determined the de-capitalization value of the assets.

41. We find that the Central Commission in the impugned order in case of Gandhar Gas Station observed that the NTPC was directed to submit the gross value of the GTs as on the date of commercial operation. However, they could not furnish the same. The learned counsel for the NTPC argued that it had to rely on the value of billing break-up provided in the main plant contract. The Central Commission observed that the billing rates based on the Letter of Award value do not include escalation during the construction period, taxes & duties, transportation cost, IDC & FC, IEDC, etc. Subsequently, NTPC furnished an affidavit dated 12.1.2011 giving the C&F value ex-Works Supply and Erection cost of the main plant package along with custom duty at the rate of

20% and Finance & Insurance charges on the date of Letter of Award. The Central Commission examined the data furnished by the NTPC in its affidavit dated 12.1.2011 and observed that the cost of the remaining works such as all civil works, switchyard, cooling water system, etc. appeared to be on higher side and the value of the main plant package was lower. Accordingly, the Central Commission computed the de-capitalization by giving detailed reasoning in the impugned order. The contention of NTPC is that the Central Commission should have accepted the affidavit dated 12.1.2011 filed by them.

42. We do not agree with the contention of the Appellant. The Central Commission has given a detailed reasonings for not accepting the figures given in the affidavit dated 12.1.2011 of NTPC. The Appellant has not been able to point out how the

computation of Central Commission for de-capitalization is incorrect. Accordingly, this issue is decided against the Appellant.

43. Summary of findings:

- i) Life extension of Gas Turbine: The useful life of Gas Turbine should be extended by 10 years after completion of the Renovation of the Gas Turbines as per the Regulations. Accordingly, the matter is remanded back to the Central Commission with direction to re-determine the useful life of the plants after extension of life by 10 years for GTs after renovation instead of 15 years.**
- ii) Adjustment of un-recovered depreciation: We do not find any infirmity in the order of the Central Commission.**

- iii) Capitalization of the expenditure on installation of Air Inlet Cooling System:**
We direct the Central Commission to decide the issue according to its Regulations after considering whether the expenditure on Air Inlet Cooling System is required for renovation of gas turbine or necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station, after hearing the concerned parties.
- iv) Amount of de-capitalization for Gandhar:**
We do not find any infirmity in findings on this issue given in the order of the Central Commission.

44. Accordingly, the Appeal is allowed in part as indicated above. The Central Commission is directed

to pass consequential orders in terms of findings given by this Tribunal in this Judgment. No order as to costs.

45. Pronounced in the open court on this **25th day of October, 2013.**

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

REPORTABLE/~~NON-REPORTABLE~~

vs