Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal Nos. 160 of 2012, 211 of 2013, 215 of 2013, 3 of 2013, 4 of 2013, 57 of 2013, 274 of 2013, 164 of 2013, 166 of 2013 and 121 of 2013

Dated: 8th April, 2015

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

In the matter of:

Appeal No. 160 of 2012

Reliance Infrastructure Limited **....Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. **The Maharashtra Electricity Regulatory Commission** **...Respondent(s)**
   World Trade Centre No.1
   13th Floor, Cuffee Parade, Colaba
   Mumbai – 400 001

2. **The Maharashtra State Electricity Distribution Company Limited**
   Prakashgad, Bandra (East)
   Mumbai – 400 051

3. **Tata Power Company Limited**
   Bombay House, Fort
   Mumbai – 400 001

4. **Bombay Electric Supply & Transport Undertaking**
   BEST House, BEST Marg
   Mumbai – 400 005
5. **Mumbai Grahak Panchayat**
   Grahak Bhavan, Sant Dyaneshwar Marg
   Vile Parle (W), Mumbai – 400 056

6. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

7. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

8. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

9. Shri N. Ponrathnam
25, Majithia Industrial Estate
Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

10. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

11. Shri Rakshpal Abrol
Bhartiya Udhami Avam Upbhokta Sangh
Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

Counsel for the Appellant (s) :	**Mr. J.J. Bhatt, Sr. Adv.** **Ms Anjali Chandurkar,** **Mr. Hasan Murtaza** **Mr. Aditya Panda**
Counsel for the Respondent(s):	**Mr. Buddy A. Ranganadhan and** **Mr. Raunak Jain for R-1.**
	Mr. Ramji Srinivasan, Sr. Adv., **Ms. Prerna Priyadarshni ,** **Mr. Udit Seth,** **Ms. Kanika Chugh and** **Mr. Jafar Alam for Tata Power (R-3)**

Appeal Nos. 211 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. **The Maharashtra Electricity Regulatory Commission** **...Respondent(s)**
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. **Mumbai Grahak Panchayat**
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. **Prayas (Energy Group)**
Amrita Clinic, Athawale Corner
Lakdipool-Karve Road Junction
Deccan Gymkhana, Karve Road
Pune – 411 004

4. **Thane Belapur Industries Association**
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli, Navi Mumbai – 400 071

5. **Vidarbha Industries Association**
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

6. **Shri N. Ponrathnam**
25, Majithia Industrial Estate
Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

7. **Shri Sandeep N. Ohri**
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

8. **Shri Rakshpal Abrol**
Bhartiya Udhami Avam Upbhokta Sangh

Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 215 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. **The Maharashtra Electricity Regulatory Commission** **...Respondent(s)**
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. **Mumbai Grahak Panchayat**
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. **Prayas**
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

4. **Thane Belapur Industries Association**
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. **Vidarbha Industries Association**
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

6. **The Chief Engineer**
State Load Dispatch Centre
Thane-Belapur Road

Post Aairoli
Navi Mumbai 400 708

7. The Chief Engineer,
State Transmission Utility
Maharashtra State Transmission Co. Ltd.
Prakashganaga, Bandra (East)
Mumbai 400 051

8. Shri N. Ponrathnam
25, Majithia Industrial Estate
Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

9. Shri Rakshpal Abrol
Bhartiya Udhami Avam Upbhokta Sangh
Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

10. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 3 of 2013

Reliance Infrastructure Ltd. **... Appellant(s)**

Versus

Maharashtra Electricity Regulatory Commission & Ors. **... Respondent(s)**

Reliance Infrastructure Limited **... Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. The Maharashtra Electricity Regulatory Commission ...Respondent(s)
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 4 of 2013

Reliance Infrastructure Limited ….Appellant(s)
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. The Maharashtra Electricity Regulatory Commission ...Respondent(s)
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No.57 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. The Maharashtra Electricity Regulatory Commission **...Respondent(s)**
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

6. Shri N. Ponrathnam
25, Majithia Industrial Estate
Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

7. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

8. Shri Rakshpal Abrol
Bhartiya Udhami Avam Upbhokta Sangh
Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 274 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. **The Maharashtra Electricity Regulatory Commission** **...Respondent(s)**
   World Trade Centre No.1
   13th Floor, Cuffee Parade, Colaba
   Mumbai – 400 001

2. **Mumbai Grahak Panchayat**
   Grahak Bhavan, Sant Dyaneshwar Marg
   Vile Parle (W), Mumbai – 400 056

3. **Prayas**
   C/o. Amrita Clinic, Athawale Corner
   Deccan Gymkhana, Karve Road
   Pune – 411 004

4. **Thane Belapur Industries Association**
   Plot No. P-14, MIDC, Rabale Village
   Post: Ghansoli,
   Navi Mumbai – 400 071

5. **Vidarbha Industries Association**
   1st Floor, Udyog Bhavan
   Civil Lines, Nagpur – 400 041

6. **Shri N. Ponrathnam**
   25, Majithia Industrial Estate
   Waman Tukaram Patil Marg
   Deonar, Mumbai – 400 088

7. **Shri Rakshpal Abrol**
   Bhartiya Udhami Avam Upbhokta Sangh
   Madhu Compund, 2nd Floor
   2nd Sonawala Cross Road
   Goregaon (East), Mumbai – 400 063

8. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 164 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. The Maharashtra Electricity Regulatory Commission **...Respondent(s)**
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road
Pune – 411 004

4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

6. Shri N. Ponrathnam
25, Majithia Industrial Estate

Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

7. Shri Rakshpal Abrol
Bhartiya Udhami Avam Upbhokta Sangh
Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

8. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): **Mr. Buddy A. Ranganadhan**

Appeal No. 166 of 2013

Reliance Infrastructure Limited **….Appellant(s)**
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. The Maharashtra Electricity Regulatory Commission **...Respondent(s)**
World Trade Centre No.1
13th Floor, Cuffee Parade, Colaba
Mumbai – 400 001

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyaneshwar Marg
Vile Parle (W), Mumbai – 400 056

3. Prayas
C/o. Amrita Clinic, Athawale Corner
Deccan Gymkhana, Karve Road

Pune – 411 004

4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
Post: Ghansoli,
Navi Mumbai – 400 071

5. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 400 041

6. The Chief Engineer
State Load Dispatch Centre
Thane-Belapur Road
Post Aairoli
Navi Mumbai 400 708

7. The Chief Engineer,
State Transmission Utility
Maharashtra State Transmission Co. Ltd.
Prakashganaga, Bandra (East)
Mumbai 400 051

8. Shri N. Ponrathnam
25, Majithia Industrial Estate
Waman Tukaram Patil Marg
Deonar, Mumbai – 400 088

9. Shri Rakshpal Abrol
Bhartiya Udhami Avam Upbhokta Sangh
Madhu Compund, 2nd Floor
2nd Sonawala Cross Road
Goregaon (East), Mumbai – 400 063

10. Shri Sandeep N. Ohri
A-74, Tirupati Tower
Thakur Complex, Kandivali (East)
Mumbai – 400 101

Counsel for the Appellant (s) : **Ms Anjali Chandurkar,**
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan

Appeal No. 121 of 2013

Reliance Infrastructure Limited ….Appellant(s)
H-Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Vs

1. **The Maharashtra Electricity Regulatory Commission ...Respondent(s)**
   World Trade Centre No.1
   13th Floor, Cuffee Parade, Colaba
   Mumbai – 400 001

2. **Mumbai Grahak Panchayat**
   Grahak Bhavan, Sant Dyaneshwar Marg
   Vile Parle (W), Mumbai – 400 056

3. **Prayas**
   C/o. Amrita Clinic, Athawale Corner
   Deccan Gymkhana, Karve Road
   Pune – 411 004

4. **Thane Belapur Industries Association**
   Plot No. P-14, MIDC, Rabale Village
   Post: Ghansoli,
   Navi Mumbai – 400 071

5. **Vidarbha Industries Association**
   1st Floor, Udyog Bhavan
   Civil Lines, Nagpur – 400 041

Counsel for the Appellant (s) : Ms Anjali Chandurkar,
Mr. Hasan Murtaza
Mr. Aditya Panda

Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The above Appeals have been filed by Reliance Infrastructure Ltd. ("RInfra") against the various orders of Maharashtra Electricity Regulatory Commission ("State Commission"). Appeal no. 160 of 2012 is against the order in case no. 180 of 2011 regarding ARR for FY 2011-12 for the distribution business of the Appellant (RInfra-D). Appeal nos. 4, 3, 57 of 2013 have been filed challenging the orders in case nos. 156, 159 and 158 of 2012 respectively for Business Plan in respect of generation, transmission and distribution businesses of the Appellant (RInfra-G/T/D). Appeal nos. 121, 166 and 164 of 2013 have been filed against the orders in case nos. 122, 123 and 124 of 2012 for truing up of FY 2011 and FY 2012 in respect of generation, transmission and distribution businesses of Appellant (RInfra-G/T/D). Appeal nos. 211, 215 and 274 of 2013 have been filed in case no. 1 of 2013, 141 of 2012 and 9 of 2013 for MYT order in respect of generation, transmission and distribution businesses of the Appellant (RInfra-G/T/D).

2. A total of 51 issues have been raised in these Appeals out of which a number of issues are covered in the various judgments of this Tribunal and some issues do not survive as a result of a subsequent orders of the State Commission. The details of the issues as submitted by the Appellant are as under:

Tariff Appeals – Issues

Sr. No.	Issue	Appeal No.
Appeal No 3 of 2013 - Transmission		
1	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
2	Actual I-Tax at time of Truing up	
3	Non-consideration of actual loans and interest thereon	
Appeal No. 4 of 2013 – Generation		
4	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
5	Actual I-Tax at time of Truing up	
6	Station Heat Rate	Writ filed in High Court challenging the Regulations – Issue no longer survives
Appeal No 57 of 2013 – Distribution		
7	Actual I-Tax at time of Truing up	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
8	O&M Expenses based on norms not sufficient to meet actual Expenditure	Already addressed by MERC in MYT order. Issue no longer survives.
9	Non-consideration of actual loans and interest thereon	
Appeal No 121 of 2013 – Generation		
10	Actual I-Tax at time of Truing up	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
11	Disallowance of efficiency gains in Fuel Cost with regard to Secondary Oil Consumption	

12	Wrongful denial towards Capitalization of Non-DPR Schemes	
Appeal No 166 of 2013 – Transmission		
13	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
14	Actual I-Tax at time of Truing up	
15	Non-consideration of restoration of Efficiency gains on Interest on Working Capital	Already addressed by MERC in MYT order. Issue no longer survives.
16	Non-consideration of actual loans and interest thereon	
Appeal No 164 of 2013 – Distribution		
17	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
18	Actual I-Tax at time of Truing up	
19	Disallowance of GEPL-JPL contract of 300 MW	
20	Disallowance of Power Purchase Cost when banking was active	
21	Disallowance of Carrying Cost on banking	
22	Rent income from Santacruz Asset	
23	Non-consideration of actual loans and interest thereon	
Appeal No 211 of 2013 – Generation		
24	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
25	Zero Income Tax Approval	
26	Carrying Cost on past recovery and Revenue Gap	
27	Weighted Average Interest rate on loans	
Appeal No 215 of 2013 – Transmission		
28	Zero Income Tax Approval	Issue covered as per

		Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
29	Rental Income from land usage as "Non-tariff income"	Issue not pressed in the Present Appeal
30	Carrying cost on past recovery and Revenue Gap	
31	Weighted Average Interest rate on loans	
32	Non-consideration of actual loans and interest thereon	
Appeal No 274 of 2013 - Distribution		
33	Zero Income Tax Approval	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
34	Rental Income from land usage as "Non-tariff income" – Partly pressed	
35	Weighted Average Interest rate on loans	
36	Non-consideration of actual loans and interest thereon	
37	Disallowance of Solar Power Purchase Cost	
Appeal No 160 of 2012 – Distribution		
38	Interest rate on Normative outstanding loans	Issue covered as per Judgment dated 2.12.2013 in Appeal No. 138-139 of 2012
39	Actual I-Tax at time of Truing up	
40	Disallowed Efficiency Gain by non-consideration of Assessed Sales for FY 10 and FY 11 in sales	Issues covered as per Judgment dated 20.5.2013 in Appeal No 85 of 2012
41	ECS and Internet Discount for FY 10 and FY 11 disallowed	
42	Non-consideration of expenditure incurred in respect of Non-DPR Schemes	Already addressed by MERC in MYT order. Issue no longer survives
43	Delay in approval of Detailed Project Report (DPR) Schemes by	

	Respondent No. 3 and denial of capitalization in the Order	
44	Disallowance of GEPL-JPL contract of 300 MW	
45	Disallowance of Day Ahead Power Purchase Cost	
46	Disallowance of Power Purchase Cost when banking was active	
47	Disallowance of Carrying Cost on banking	
48	Rent income from Santacruz Asset	
49	Principle of sharing standby charges payable to MSEDCL	
50	CSS determination in the impugned order	
51	Commercial Loss not considered as part of wheeling loss as per ATE's order in Appeal No 150 of 2010	

3. The following remaining issues argued by the Learned Counsel for the Appellant before us are as under:-

Tariff Appeals and Issues argued

Sr. No.	**Issue**	**Appeal No.**
1.	Non-consideration of actual loans and interest thereon	3, 166, 215, (T), 57, 164, 274 (D)
2.	Weighted Average Interest rate on loans	211(G) 215(T) 274(D)
3.	Disallowance of efficiency gains in Fuel Cost with regard to Secondary Oil Consumption	121(G)
4.	Carrying Cost on past recovery and Revenue Gap	211(G) 215(T)
5.	Rental Income from building as "Non-tariff income"	274(D)

6.	Disallowance of Day Ahead Power Purchase Cost	160(D)
7.	Disallowance of Power Purchase Cost when banking was active	164, 160 (D)
8.	Disallowance of Carrying Cost on banking	164, 160 (D)
9.	Rent income from Santacruz Asset	164, 160 (D)
10.	Disallowance of GEPL-JPL contract of 300 MW	164, 160(D)
11.	Disallowance of Solar Power Purchase Cost	274(D)
12.	Wrongful denial towards Capitalization of Non-DPR Schemes	121(G)
13.	Principle of sharing standby charges payable to MSEDCL	160(D)
14.	CSS determination in the impugned order	160(D)
15.	Commercial Loss not considered as part of wheeling loss as per ATE's order in Appeal No 150 of 2010	160(D)

4. On the above 15 issues we have heard Mr. J.J. Bhatt, Learned Sr. Advocate and Ms. Anjali Chandurkar, Learned Counsel for the Appellant, Mr. Buddy A. Ranganadhan, Learned Counsel for the State Commission and Mr. Ramji Srinivasan, Learned Sr. Counsel for Tata Power.

5. We shall now be taking up the above issues one by one.

6. The first issue is regarding non-consideration of actual loans and interest thereon raised in Appeal nos. 3, 166, 215, 57, 164 and 274 of 2013.

7. RInfra had proposed in its petitions that it had replaced the admitted outstanding normative loans for the relevant periods in question with actual loans from banks as per the term sheets in respect thereof.

RInfra also proposed that it had taken loans for meeting its capital expenditure for the current years during the relevant period in question from various banks as per the term sheets in respect thereof.

8. The State Commission was considering interest on normative loans as per its earlier order which in the submissions of RInfra was much lower than what it was entitled to under the relevant Regulations and was the subject matter of challenge in Appeal nos. 138 and 139 of 2012. The said Appeals have since been disposed of by the judgment of this Tribunal dated 02.12.2013 wherein it has been held that notional loans ought to be allowed interest rates in line with the actual cost of loans available in the market. In the impugned orders the State Commission has disallowed interest on loans which replace the outstanding normative loans and on new loans for the current period due to the following reasons:

a) The State Commission has considered the swapping of amounts which were initially brought in by RInfra as part of equity above 30% and treated as normative loan as “refinancing”. The Commission has held that such refinancing would be logical when the term of new loan is better than the old loan including the interest rates availed.
b) RInfra has sought for interest on actual loan which was higher than the current applicable rates and would amount to increase in interest expenses.
c) There is no provision in the Regulations for “refinancing” of normative loans.

d) The new loans taken by RInfra are not "long term loans". Accordingly, the State Commission disallowed the interest rates on actual basis as per the respective term sheet.

9. According to the Appellant, the Regulations do not make a distinction between short term, medium term and long term loans. Thus, the Appellant could avail of a loan for any tenure. RInfra is entitled to rates of interest as provided for in Regulation 33.5 on actual basis. There is no refinancing of loan in the present cases. There is no bar on swapping of normative notional loans with actual loans. There is no reasoning in the impugned orders that the rate of interest as per the term sheet being purportedly unreasonable and, therefore, the disallowance of the same are contrary to the Regulations and arbitrary.

10. The Appellant submitted that the denial on the basis that a comparison of past interest rate with the interest rate claimed now is totally unjustified. The State Commission had in the past allowed interest on notional basis at fixed rates which has been expressly set aside by the Tribunal by its judgment dated 02.12.2013 in Appeal nos. 138 and 139 of 2012.

11. The Appellant had proposed in its petition that it had replaced the admitted outstanding normative loans for the relevant periods in question with actual loans taken from the banks as per the term sheets in respect thereof. The Appellant also proposed that it had taken loans for meeting its capital expenditure for the current years during the relevant periods in question from various banks as per the term sheets in respect thereof. The State Commission was considering interest on normative loans as per its earlier orders which as per the Appellant was much lower than what it was entitled to under the relevant

Regulations and was subject matter of challenge in Appeal nos. 138 of 139 of 2012. The said Appeals have since been disposed of by the judgment dated 02.12.2013 wherein it has been held that notional loans ought to be allowed interest rates based on the market related interest rates prevailing in that year.

12. The impugned orders disallow interest on loans which replace the outstanding normative loans and on new loans for the current period on the following grounds.

(a) The State Commission has stated that replacement of normative loans by actual loan amounts to refinancing and the interest on new loan should be better than the old loan. The interest rate of new loan being claimed by the Appellant is higher and would result in increase in interest expenses, ARR and tariff.

(b) The loans taken by the Appellant are on short term basis and ought to be on long term basis.

13. In Appeal No. 138 and 139 of 2012 Reliance Infrastructure Ltd. had raised the issue on interest on normative debts outstanding as on 01.04.2011. The State Commission had allowed rate of 11.5% for new normative loans approved during FY 2011-12. However, the State Commission did not agree to reset the interest rate on outstanding normative loans as on 01.04.2011 at the same rate i.e. 11.5%. This Tribunal on the basis of its findings in Appeal no. 52 of 2008 decided the issue in favour of the Appellant. The ratio in the judgment was that the interest rate on notional loan is to be allowed based on prevailing market rate.

14. We feel that in view of decision of this Tribunal in Appeal no. 138 and 139 of 2012, the Appellant is now entitled to interest rate on the

outstanding normative loans based on the market related interest rate prevailing in that year as per the said decision. The State Commission has, therefore, to revise the interest rate on the normative loans as on 01.04.2011 in light of the Tribunal's judgment and the interests on new loans taken by RInfra have to be compared with the revised interest rate on normative loans to be allowed by the State Commission in compliance of the judgment of this Tribunal in Appeal nos. 138 and 139 of 2012.

15. Learned Counsel for the State Commission has argued that replacing of normative loans by actual loans amounts to refinancing and such refinancing is logical only when the terms of the new loan are better than older loan. Generally the long term loans are spread over 10 to 15 years whereas in RInfra-T's case it will be repaid in 5 years.

16. The Appellant in the written submission has given details of market interest rate on different dates to justify that the interest rate on the outstanding debt as on 01.04.2011 should be 11.5%. The Appellant has also compared the interest rates of the loans drawn by them in FY 2011-12 from State Indian Bank and in FY 2012-13 from Bank of Maharashtra, Corporation Bank and Bank of Hyderabad to show that they had obtained actual loans at lower than the prevailing market rates. The Appellant has also submitted that Axis Bank in May 2011 had offered loan for 15.5 years and the interest rate provided was base rate of 9.0% plus spread of 2.75% to 3.25%. As the loan was of larger duration, Axis Bank perceived the risk to be higher and thus the spread was in the range of 2.75% to 3.25%. However, the spread provided by SIB was 2.25% which was subsequently further reduced to 1.5% and by BOM was 1.5%. Thus, the Appellant had to opt for loans from SIB

and BOM since the spread rate was lower. The Appellant has argued that the contention of the State Commission that higher tenure loans will have lower interest rate vis-a-vis lower tenure loans is not correct.

17. As far as outstanding normative loan as on 01.04.2011 is concerned, we have already held that it has to be based on the prevailing market related interest of rate. For interest rate on loans taken for new assets in the FY 2011-12 and the second control period we shall have to examine the Regulations.

18. Let us examine the MYT Regulations, 2011.

"30. Debt-equity ratio

30.1 For a project declared under commercial operation on or after April 1, 2011, if the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan for the Generating Company, Transmission Licensee and Distribution Licensee.

……

30.2 In case of the Generating Company, Transmission licensee and Distribution Licensee, if any fixed asset is capitalized on account of capital expenditure project prior to April 1, 2011, debt-equity ratio allowed by the Commission for determination of tariff for the period ending March 31, 2011 shall be considered."

……..

30.3 Any expenditure incurred or projected to be incurred on or after April 1, 2011, as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernization expenditure for life extension, shall be serviced in the manner specified in this Regulation".

……..

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"33. Interest on loan capital

33.1 The loans arrived at in the manner indicated in Regulation 30 shall be considered as gross normative loan for calculation of interest on loan.

……..

"33.3 The repayment for the year of the tariff period FY 2011-12 to FY 2015-16 shall be deemed to be equal to the depreciation allowed for that year:

33.4 Notwithstanding any moratorium period availed by the Generating Company or the Transmission Licensee or the Distribution Licensee, as the case may be, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the annual depreciation allowed,

33.5 The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year applicable to the Generating Company or the Transmission Licensee or the Distribution Licensee:

Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered.

Provided further that if the Generating Company or the Transmission Licensee or the Distribution Licensee, as the case may be does not have actual loan, then the weighted average rate of interest of the Generating Company or the Transmission Licensee or the Distribution Licensee as a whole shall be considered.

"33.6 The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest."

19. According to above Regulations, the equity deployed in excess of the 30% has to be treated as normative loan. The interest on loan has to be taken as per the weighted average rate of interest on the basis of actual loan portfolios at the beginning of each year applicable to the generating company or the Transmission Licensee or the Distribution

Licensee as the case may be. However, if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered. If the Generating Company or the Transmission Company or the Distribution Company as the case may be, does not have actual loan, then the weighted average rate of interest of the Generating Company or the Transmission Licensee or the Distribution Licensee as a whole shall be considered. There is no provision for replacement of outstanding normative loan by actual loan. However, there is no bar in replacing the outstanding normative loan as on 01.04.2011 by actual loan provided the actual loan has been taken for the assets which have been taken into service prior to 01.04.2011 and the Appellant is able to establish that no prejudice has been caused to the consumers by arranging loans at better terms then the prevailing market rates.

20. The Appellant has taken actual loans during 2011-12 however, the Commission has not considered the same as according to the State Commission these are not long term loans and loans taken for 6-7 years will require refinancing, exposing the consumers to refinancing risk. This perception in our view is not correct. The interest rate of long term corporate loans offered by the Banks consists of base rate plus spread. The base rate varies from Bank to Bank and depends on cost of funds of the bank, return on equity, market conditions and RBI policy. Spread is a function of credit worthiness and rating of borrower, risk perception of the business of the borrower, funds use, terms of loan and other factors like collateral, guarantees, phase or status of the project, etc. The long term loans may normally have maturity of 3 to 10 years.

21. The perception that the State Commission is having that the loan of tenure of 5 to 6 years is short term loan and the interest on a loan for tenure of 10 years or more than 10 years will be lower than the interest rate for 5-7 years tenure is not correct as the Bank may charge higher spread on longer term loans. The Bank would perceive a loan of 10 or more than 10 years as having higher risk than loan of 5 to 6 years. Sometimes when the interest rates are showing declining trend it may be advisable to take shorter term loan. It is also wrong to assume that loans if actually taken from FY 2004-05 to 2010-11 would be having fixed interest rate (as assumed in the respective years for normative loan) even in FY 2011-12 and beyond.

22. We feel that the interest rate for the actual loans taken by the Appellant to replace the normative loans and loans taken for new capital works should be reconsidered and redetermined by the State Commission taking into account the following:

    i) The interest rate on the normative loan as on 01.04.2011 has to be reconsidered in view of the judgment of this Tribunal in Appeal nos. 138 and 139 of 2012 at the prevailing market rate.

    ii) Actual loans taken to replace the outstanding normative loans keeping in view of our finding in paragraph 19 above be considered.

    iii) The interest rate on the actual loans taken by the Appellant for the new capital works should be decided taking in account the data on market rates of loan and actual loans availed as furnished by the Appellant after analysis and after considering our findings in paragraphs 20 and 22 above.

23. The second issue is regarding disallowing of interest rate on normative debt by considering actual loan and interest rate of unregulated business while approving the weighted average interest rate on loans raised in Appeals 211, 215 and 274 of 2013 in cases relating to MYT order in respect of Generation, Transmission and Distribution business.

24. The issue essentially relates to interpretation of Regulation 33.5 of the MYT Regulations 2011. For the sake of brevity the facts in Appeal no. 211 of 2013 are being considered.

25. The Appellant in its petition claimed interest rate on all new normative debts corresponding to 70% of capitalization of each year at 11.5%. However, the State Commission allowed weighted average interest rate for RInfra as a whole at 8.78% as the generation company did not have any actual borrowings, applying second proviso to Regulation 33.5 of the MYT Regulations, 2011.

26. According to the Appellant, the State Commission instead of taking the normative loan which is outstanding for the purpose of determining the last available weighted average rate of interest since there was no actual loan has computed the weighted average rate of interest of RInfra as a whole. The State Commission has considered interest rate so computed for calculating interest expense of RInfra-G, thereby considering the loans taken by the unregulated and the unlicensed businesses of Reliance Infrastructure Ltd. as a whole. It has done so on the basis of the annual accounts. In view of the fact that the State Commission had not approved actual loans for RInfra-T and RInfra-D and there were no loans taken by RInfra-G, the State Commission ought to have followed the first proviso to Regulation 33.5 which stated

that if there is no actual loan for a particular year but normative load was outstanding which was so in the present case, the last available weighted average rate of interest ought to have been allowed.

27. According to Learned Counsel for the State Commission the first proviso to Regulation 33.5 is not applicable since RInfra-G did not have an actual loan and the second proviso is applicable which specifies that the rate has to be calculated for the company as a whole.

28. Regulation 33.5 (reproduced under paragraph 18) provides as under:

The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio at the beginning of each year. However as per first proviso, if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered. As per the second proviso, if the generating company or the transmission licensee or the distribution licensee as the case may be, does not have actual loan, then the weighted average rate of interest of generating company, or the transmission licensee or the distribution licensee as a whole shall be considered.

29. The first proviso will be applicable if there is no actual loan for a particular year but normative loan is still outstanding. In that case the last available weighted average rate of interest shall be considered. If the generation company or the transmission licensee or the distribution licensee, as the case may be, does not have actual loan, only then weighted average rate of interest of the generating company or the transmission licensee or the distribution licensee as a whole shall be considered.

30. In the present case there is no actual loan by generating company or the transmission licensee or the distribution company of the Appellant company but there is outstanding normative loan. Therefore, under the first proviso the last available rate of interest for the concerned company should have been considered.

31. The second proviso does not allow considering the loans taken for unregulated business of RInfra. The second proviso only allows rate of interest of the generating company or the transmission licensee or the distribution licensee as a whole. Thus, the loans taken for business of generation, transmission and distribution of RInfra have only to be considered even if the second proviso is made applicable. In the present case the second proviso will not be applicable as there are no actual loans of the regulated business of the generating company, transmission licensee or the distribution licensee of the Appellant.

32. Accordingly, the second issue is decided in favour of the Appellant.

33. The third issue is regarding efficiency gains in fuel cost with regard to secondary oil consumption raised in Appeal no. 121 of 2013.

34. In Form no. 21 of the petition before the State Commission, the Appellant had shown HFO consumption of 254 KL whereas the heat contribution was shown as zero for FY 2010-11. The State Commission sought explanation for the same. The Appellant gave the following response:

i) RInfra-G submits that DTPS had entered into a contract with M/s IOCL in FY 1995 for supply of petroleum products (i.e. FO, LDO and HSD) at DTPS. Post FY 2011-02, RInfra-G has progressively reduced the dependence on FO/HFO on account of reduced outages and discontinued the usage after FY 2005 and request for the same was

communicated to M/s IOCL to discontinue the supply of FO. However, the balance stock of FO maintained at DTPS suffered evaporation loss because of temperature variation for which M/s IOCL has raised a claim of Rs. 40.66 lakhs. The matter was settled after discussion with IOCL officials and the payment of Rs. 20.33 lakhs was made by RInfra as final settlement for the claim raised by IOCL. The details of the settlement are attachment as Exhibit I.

ii) Thus, RInfra-G submits that the number 254 KL is the physical loss of HFO stock maintained by M/s IOCL, on account of evaporation loss for the period pertaining to period prior to FY 2005-06, for which RInfra-G has made a payment of Rs. 20.33 lakhs to IOCL, which cost, in the formats, is merged with the cost of LDO. RInfra-G submits that since there is no actual consumption of HFO, therefore the heat contribution has not been mentioned.

35. Thus, there was no HFO consumption during FY 2010-11 in the power plant. However, the Appellant showed HFO consumption of 254 KL in the format submitted with the petition and later explained that it was evaporation loss of HFO stored in the plant and the use of HFO had been discontinued since FY 2005. The Appellant reached a settlement with the oil company in respect of cost of 254 KL HFO for Rs. 20.33 lakhs which was paid by the Appellant to the oil company during FY 2010-11. The Appellant included this amount of Rs. 20.33 lakhs in the LDO cost without showing any quantum of heat contribution from HFO as there was no actual consumption of HFO in the plant during FY 2010-11.

36. The Commission accepted cost of Rs. 20.33 lakhs towards the evaporation loss of HFO and decided that since it was allowing the cost incurred due to evaporation loss for truing up, the quantum lost has to be considered as consumption of fuel oil for the purpose of truing up. Therefore, the State Commission calculated specific consumption of 0.057 ml/kWh of HFO. The specific oil consumption of LDO actually

used in the power generation was 0.135 ml/kWh. Therefore, the State Commission approved specific oil consumption of 0.192 ml/kwh (0.057 + 0.135) against the claim of 0.135 ml/kWh of the Appellant.

37. The Appellant has argued that the State Commission should have approved only LDO consumption of 0.135 ml/kWh in the truing up and HFO consumption should not have been considered as no HFO was actually consumed and it was only adjustment on account of evaporation loss.

38. We find that the Appellant had claimed the cost of HFO which was the settled amount with the oil company in its petition for true up of accounts. Once the amount incurred on HFO is being claimed, the corresponding consumption of HFO has also to be included. If the Appellant had not claimed the amount of Rs. 20.33 lakhs incurred by them on account of HFO cost, then the State Commission may not have included its consumption in calculating the specific oil consumption. Once the amount incurred on HFO has been included in the expenses of secondary oil, we can not find fault with the State Commission for including the corresponding secondary oil consumption of HFO in the true up. Accordingly, this issue is decided against the Appellant.

39. The fourth issue is regarding carrying cost on past recoveries raised in Appeals no. 215 and 211 of 2013.

40. The issue relates to the manner of computation of interest on past recoveries. According to the Appellant, the starting point for grant of carrying cost should be the mid year of the cost of incurrence and the end point to be the mid year in which the same is approved to be recovered. The revenue gap for FY 2010-11 approved to be recovered

in FY 2013-14 should carry the cost from the mid of FY 2010-11 till mid of FY 2013-14. However, the State Commission in impugned order dated 13.06.2013 in respect of RInfra-T has computed the carrying cost from the end of FY 2010-11 till end of FY 2012-13. The cost is incurred evenly throughout the year and the recovery would also be spread out evenly throughout the year. The impugned order does not grant carrying cost for the year in which the past recoveries had occurred and for the year in which the same is approved to be recovered. In impugned order dated 13.06.2013 in respect of RInfra's generation business, the State Commission has computed carrying cost till mid year of the year in which the recovery is permitted, the starting point is nonetheless the end of the year in which such gap had arisen.

41. According to Learned Counsel for the State Commission, determination of under/over recovery can only happen at the end of the year at the time of truing up.

42. We find that for carrying cost the State Commission has considered the revenue gap to be applicable from the end of the year of the occurrence of revenue gap upto the middle of the year in which the same is proposed to be recovered. This is not correct. The interest should be calculated for the period from the middle of the financial year in which the revenue gap had occurred upto the middle of the financial year in which the recovery has been proposed. Thus, for the revenue gap of FY 2010-11, the Commission has to consider interest from middle of FY 2010-11 to middle of FY 2013-14 in which the recovery is proposed. This is because the expenditure is incurred throughout the year and its recovery is also spread out throughout the year.

Admittedly, the revenue gap will be determined at the end of the financial year in which the expenditure is incurred. However, the under or over recovery is the resultant of the cost and revenue spread out throughout the year. Similarly, the revenue gap of the past year will be recovered throughout the year in which its recovery is allowed. Therefore, the interest on revenue gap as a result of true up for a financial year should be calculated from the mid of that year till the middle of the year in which such revenue gap is allowed to be recovered.

43. To explain this point let us assume that there is a revenue gap of 12 crores in the true-up of FY 2010-11. If the cost and the revenue and the permitted expenditure had been properly balanced this gap of 12 crores would have been recovered throughout the 12 months of FY 2010-11. Now this revenue gap is allowed to be recovered in tariff during FY 2013-14. The recovery of gap of Rs. 12 crores from the distribution licensee consumers will be spread over the 12 months period of FY 2013-14. Therefore, the carrying cost would be calculated from the middle of FY 2010-11 to middle of FY 2013-14 i.e. 3 years.

44. Accordingly, this issue is decided in favour of the Appellant.

45. The fifth issue is regarding rental income from building considered as non-tariff income in the impugned order raised in Appeal no. 274 of 2013.

46. RInfra-D has, amongst several offices, an office at one of the location referred to herein as Devidas Lane office. RInfra's corporate office building at another location i.e. Santacruz (East) is presently under construction. According to the Appellant, some of the corporate office employees i.e. employees of other group companies of RInfra are

accommodated temporarily at RInfra-D's Devidas Lane office till such time the building at Santacruz (East) is constructed and occupied. RInfra-D in view of the provision of Section 51 of the Electricity Act, 2003 read with Regulation 8.1 of the MYT Regulations considered such rental income as "Income from other business" and accordingly an amount equal to one-third of the revenue from such business was deducted from its ARR. The State Commission in the impugned order, however, approved the income as non-tariff income and not income from other sources and reduced 100% of the amount received from rent of the building from Appellant's ARR.

47. According to Learned Counsel for the Appellant, under Section 51 of the Electricity Act, 2003, the distribution licensee is entitled to engage in any business for optimum utilisation of its assets. The proviso to the said section states that a proportion of revenue derived from such business as may be specified by the State Commission be utilized for reducing its charges for wheeling. Regulation 2 (42) of the Tariff Regulations provides for Non-tariff income relating to the regulated business other than from tariff and excluding other business and income from wheeling and receipts from cross subsidy surcharge and additional surcharge. Regulation 80.1 provides that one third of income from other business after deduction of all costs attributed to such other business shall be deducted from the ARR in determining the wheeling charges of the wires business of the Distribution Licensee. The building in question is utilized by RInfra-D as part of its other business and is not income relating to regulated business as stipulated under the Tariff Regulations. The rental income has been generated by RInfra-D by utilizing its regulated resources viz. land and building, optimally. The

rent income has not occurred between the regulated businesses of the same parent company but between the Regulated distribution business and the corporate office of RInfra.

48. Learned Counsel for the State Commission argued that income in consideration is merely a book adjustment between the distribution and transmission segment of the Appellant parent company. Some part of the premises in question are occupied by transmission arm of the Appellant (RInfra-T). The rent credited to the distribution from the transmission arm of the Appellant is charged ultimately to the consumers in the form of intra-State transmission tariff. Thus, recovery of the said sum has been done from the consumers in the same business of electricity. What Appellant is proposing is that 2/3rd of his income should be allowed to be taken away by the distribution segment to the exclusion of the regulated segments by treating it as income from other business and only 1/3rd be treated as income of distribution segment. This will result in undue enrichment of the Appellant.

49. Let us examine the MYT Regulations, 2011.

50. Non-Tariff Income is defined as income relating to regulated business other than from tariff, excluding any income from other business and, in case of retail supply business of a Distribution Licensee, excluding income from wheeling and receipts on account of cross-subsidy surcharge and additional surcharge on charges of wheeling.

51. Regulation 79.1 provides that the amount of non-tariff income relating to the distribution business shall be deducted from the ARR in determining the wheeling charges of Distribution Wires Business of the Distribution Licensee.

52. Regulation 80.1 provides that where the Distribution Licensee is engaged in any other business, an amount equal to one third of the revenue from such other business after deduction of all direct and indirect cost attributed to such other business shall be deducted from the ARR in determining the wheeling charges of the Distribution Wires Business of the Distribution Licensee. The first proviso to Regulation 80.1 provides that the Distribution Licensee shall follow a reasonable base for allocation of all joint and common costs between the distribution business and other business and shall submit the allocation statement to the Commission along with its application for determination of wheeling charges.

53. Section 51 of the Electricity Act provides for other business of distribution licensee as under:

"Section 51. Other businesses of distribution licensees.-A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling:

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business."

54. Thus, as per Section 51 of the Electricity Act, 2003, RInfra-D with prior intimation to the State Commission can engage in any other business for optimum utilisation of its assets. A proportion of revenue derived from such business as specified by the State Commission shall be

utilized for reducing the wheeling charges of the Distribution Licensee. The Distribution Licensee shall maintain a separate account of such business undertaking to ensure that the distribution business neither subsidises such business undertaking nor encumbers its distribution assets in any way to support such business.

55. The basic difference between the Non-Tariff Income and Income from other Business is that the former is income relating to the regulated business which in this case is distribution and retail supply of electricity, and the latter is not relating to the regulated business but by some other business by optimally utilizing the assets of the distribution company. The examples of Non-Tariff Income are service line charges and deposit works charges recovered from the consumers relating to supply of electricity. The undisputed examples of other business are telecommunication business utilizing the transmission infrastructure, consultancy services utilizing the existing resources of the distribution company, hoarding or billboard for advertisement utilizing the distribution infrastructure, etc. The income from leasing out space in building owned by the distribution company will fall under income from other Business as it is not a regulated business and is optimum utilisation of the assets of the distribution company. However, the rental income from other regulated business of the Appellant has to be treated as Non-Tariff income. Thus, the portion of rent recovered by RInfra-D from RInfra-T which is passed on the RInfra-D and ultimately to the consumer in the form of intra-State transmission has to be treated as Non-Tariff income as it is derived from other regulated business of the Appellant and is an expense to be passed on in tariff in that regulated business.

56. It is argued by the Learned Counsel for the Appellant that the income from letting out space for telecommunication towers and income from advertisement kiosks are considered by the State Commission under income from other Businesses. By the same logic and as per the explanation given by us above, the income from rental income from accommodation in Devidas Lane office of the Appellant given to RInfra's corporate office i.e. employees of other group companies of RInfra, should be considered as Income from other Business. Thus only one third of the rental income shall be deducted from the ARR in determining the wheeling charges of the wires business of the Distribution Licensee. However, the rental income from RInfra-T recovered by RInfra-D which is again passed on as an expense of R-Infra-T to the consumers in the form of intra-State transmission tariff has to be treated as Non-Tariff income. Accordingly decided.

57. The sixth issue is regarding Power Purchase Cost from FY 2009-10 in respect of Day Ahead Bilateral Transaction raised in Appeal no. 160 of 2012 relating to distribution business.

58. In the final truing up of Power Purchase Cost of day ahead transactions for FY 2009-10, the State Commission disallowed Rs. 8.94 crores in respect of the day ahead transactions through traders on 17.08.2009, 01.09.2009 to 22.09.2009 and 10.10.2009 to 12.10.2009 on the ground that the rates were higher than the Maximum Market Ceiling Price ("MCP") on the Power Exchange (IEX and PXIL) on the respective dates.

59. The Appellant has submitted that these transactions ought to have been allowed for the following reasons:

i) The decision to enter into power purchase transaction is taken ex-ante considering the prevailing market conditions. However, on actual date of supply, the MCP in the exchange could turn out to be lower or higher than such contract, but this is known only in hindsight. At the time of entering into the bilateral contract, the prevailing exchange prices only provides guidance to the licensee. Maximum MCP at the power exchange is no yardstick for assessing the prudency of day head power transaction because the MCP of exchange is known post facto.

ii) Power price on exchange fluctuate on day to day basis and in different hours of the day. Power sourced through bilateral contracts cannot and should not be compared with Day Ahead Power Exchange on ex-post basis as the decision to procure power from power exchange in a shortage scenario is saddled with availability and price risks.

iii) The Appellant enters into bilateral contracts to ensure availability of power, availability as against procurement from exchange, where it is likely that bid is not cleared or partially cleared, thereby causing non-availability and load shedding.

iv) In respect transactions for M/s. GMRETL and M/s. Lanco (Item nos. 2 and 3 of Table 57 of the impugned order) the power was sourced through Mumbai Power Management Group (“MPMG”), an informal group comprising representatives of all three Mumbai Discoms for joint power procurement and sharing the same in a pre-determined ratio. Part of the power so sourced was also utilized by Respondent nos. 3 and 4 and the landed cost in

respect of the same has been approved by the State Commission in the respective truing up petitions of the Respondent nos. 3 and 4 while passing orders in orders dated 15.02.2012 and 16.03.2012. In such case, the same transaction ought not to have been treated as imprudent for the Appellant.

v) The transaction for 17.08.2009 at item no.1 was entered into by the Appellant taking into consideration price trend for the period 08.08.2009 to 14.08.2009 wherein the Buy Bids on IEX were almost 2 times the sale bids for hours for which power was purchased and the prices had touched as high as Rs. 17 per unit. Considering the price of power prevailing at the power exchange during that period, the price of power entered in the transaction for 17.08.2009 was also correspondingly higher.

60. Learned Counsel for the State Commission relied on the findings of this Tribunal in Appeal no. 85 of 2012 dated 20.05.2013 wherein the Tribunal upheld the findings of the State Commission regarding non-approval of certain bilateral Day Ahead Transactions at price higher than the Maximum Power Exchange Price.

61. The Appellant has furnished Market Snapshot data for the period 09.08.2009 to 14.08.2009 for IEX to show that purchase bids were higher than sell bid and the MCP for the period 09 to 17 hours and 17 to 21 hours was higher than the rate at which the Appellant had procured power on 17.08.2009. This data was not furnished before the State Commission.

62. We find that in the earlier proceeding for final true up for FY 2009-10 in case no. 126 of 2011, the State Commission could not carry out prudence check of the Day-Ahead Power Purchase Cost in the

absence of data. The Appellant had not even submitted the actual power purchase rates. Therefore, the State Commission by order dated 27.02.2012 approved costs of Rs. 197.09 crores as against Rs. 295.64 crores as claimed by the Appellant and decided that once the Appellant submits the necessary data and justification, the balance cost of Rs. 98.55 crores would be considered in future orders subject to prudence check. In the proceedings in case no. 180 of 2011 which resulted in the impugned order dated 15.06.2012, again we find that adequate justification was not given by the Appellant. Now some justification has been given before us at the Appeal stage. Here also the Appellant has not furnished the dates on which the various bilateral agreements for the three transactions were entered into with the traders from whom the power was procured and the corresponding market data on the dates when such bilateral agreements were signed and price trend in the market in the immediately preceding period. No justification has been given for entering into bilateral power purchase agreements for the period 01.09.2009 to 22.09.2009 and 10.10.2009 to 12.10.2009 at high rates when market rates in power exchange were much lower. It is not known on which dates the corresponding agreements were entered into and what were the prevailing market rates on the day the arrangement was agreed to and the market rate trends in the immediately preceding period. It is also not clear that when market rates were running low during the procurement under bilateral arrangement at higher cost, whether under the provision of the short term agreement it was not possible for the Appellant to suspend or reduce purchase of power through costlier bilateral agreement and

take power through the power exchange or through another bilateral agreement at comparable prices.

63. We find that despite the second opportunity provided by the State Commission to justify procurement of power at higher rates, the Appellant failed to provide adequate justification for procurement of power at higher rates before the State Commission.

64. According to the Appellant, the State Commission allowed power procurement from 01.09.2009 to 21.09.2009 and 10.10.2009 and 12.10.2009 (2^{nd} and 3^{rd} transaction) to the other Distribution Licensee viz. Tata Power and BEST and to substantiate the same, orders of the State Commission dated 15.02.2012 and 16.03.2012 approving the power purchase costs of Tata Power and BEST have been produced before us. From these orders it is only seen the actual short term power purchase of these Distribution Licensees has been allowed but it is not clear if these companies also procured power at the same rates as the Appellant on the above mentioned dates. The Appellant has to provide full justification for procurement of power at high rates independent of the approval granted to other Distribution Licensees by the State Commission in another proceeding the details of which are not before us.

65. Accordingly, we do not find any reason to interfere with the findings of the State Commission.

66. The seventh issue is regarding disallowance of Power Purchase Cost on the alleged ground that the same was avoidable since the Appellant had sufficient banked power during the relevant period raised in Appeal no. 160 of 2012 and 164 of 2013.

67. The Appellant has submitted that the power demand in the Appellant's area is very low during winter months and it is maximum during summer months and in October and November months of the year. There is also significant variation between demand during the day and night hours. In the months when the demand on Appellant's area is low, and it is surplus (winter & monsoon months), the rate in the external market is very low. On the other hand when the demand in Appellant's area is high (summer and October/November months) there exists sufficient demand in rest of the country as well, leading to high rate of power in external market. The Appellant also banks power by entering into banking arrangements which is as per the forecast duly arrived at taking into consideration several factors. Such banking is done by the Appellant in respect of the power already tied up by the Appellant so that the Appellant can bank such power when required. Thus, power is banked by the Appellant during off-peak hours/months with other State utilities which need power during such hours/months and the same is returned by such utilities to the Appellant in times when it needs power to meet its demand.

68. According to the Appellant, in order to meet its demand during peak months/hours, the Appellant has option of either purchasing power from external market or consuming banked power. In the impugned order the State Commission has disallowed two third of the costs of power purchase for FY 2009-10 and 2010-11 by the Appellant for the periods in question treating the same as avoidable power purchase. According to the Appellant, disallowance of two third of the costs of Day Ahead Purchase is without any basis. According to the Appellant, the banking was based on forecast which by its very nature is done in

advance based on assumptions, which assumptions have neither been gone into by the State Commission now ruled on. The purchases are miniscule as compared to the power that was banked.

69. Let us examine the findings of the State Commission. The relevant findings are summarized as under:

(i) To demonstrate prudency of banking arrangements, the licensee must submit cost-benefit analysis considering avoidable power purchase cost at the time of forward banking and saving accrued at the time of return banking.

(ii) The licensee has to exhibit prudent behaviour while selecting short term bilateral Round the Clock contracts for the quantum, purchase rates, minimum off-take commitments, penalty provisions, etc.

(iii) RInfra-D has referred to the website of respective RLDCs to submit the schedules of power banked directly from source during FY 2009-10.

(iv) The Commission observed the status of bilateral power purchase from various sources for the respective time blocks when power banking was under progress. When the surplus power was being banked, the Commission noticed that actual power purchase through same firm contracts were higher than their respective minimum off-take commitments or required off-take to meet the demand.

(v) Moreover, RInfra-D had purchased power from Day Ahead contracts which had no minimum off take commitments.

(vi) On the basis of its analysis, the State Commission highlighted avoidable power purchases of 9.49 MU with cost of Rs. 6.35

crores out of total banking of 177.17 MU during FY 2009-10. The Commission observed that RInfra-D had done avoidable power purchase when banking was active. The data examined by the Commission and the circumstances would go to show that there have been incidences of creation of artificial surplus of power, to bank the excess power above its demand, which in the view of the Commission was unreasonable.

(vii) The Commission felt that it cannot carry out the micro analysis to quantify the exact impact of such imprudent power purchase and avoidable power purchase cost and therefore disallowed 2/3rd of the cost of Rs. 6.35 crores on account of such avoidable power purchase done from costlier firm/Day Ahead contracts which amounts to Rs. 4.23 crores.

(viii) In truing up for FY 2010-11 also the State Commission has given similar findings and disallowed 2/3rd of the cost of Rs. 22.94 crores on account of avoidable power purchase done from costlier firm/DA contracts amounting to Rs. 15.29 crores.

70. We find that the State Commission has given detailed findings and computed avoidable power purchase after analysis of the data furnished by the Appellant. The Appellant has not succeeded to justify power procurement from expensive sources while banking power. We do not find infirmity in the findings of the State Commission. Accordingly we do not find any reason to interfere with the findings of the State Commission in this regard.

71. The eighth issue is regarding carrying cost on banking raised in Appeals 164 of 2012 and 160 of 2012.

72. The Appellant for FYs 2009-10 and 2010-11 in case no. 126 of 2011 had proposed claim of carrying cost of Rs. 12.13 crores for FY 2009-10 and Rs. 7.47 crores for FY 2010-11 in respect of banking transactions.

73. In the order dated 27.02.2012 in case no. 126 of 2011 the State Commission held that the Appellant was not in a position to establish the prudence of power banking arrangement by the Appellant and had approved only a portion of such costs and deferring the balance costs for consideration on submission of necessary information and justification. The State Commission observed that the Appellant was not entitled for carrying cost on account of power banking arrangement. However, the State Commission in the said order deferred 2/3rd of the cost of power banked and further held that once the Appellant submits necessary information and justification, the balance cost of Rs. 127.99 crores may be considered in future orders subject to prudence check. The State Commission, however, disallowed the carrying costs. By the impugned order, the State Commission has allowed the cost of power banked by the Appellant for FY 2009-10 and FY 2010-11. According to the Appellant, since the entire cost of power banked has been allowed in the impugned order in FY 2011-12, the Appellant is entitled to carrying costs in respect of such power for the period during which such costs was incurred till such costs was passed on the consumers by way of power purchase cost.

74. The Appellant has submitted that in case of power banking, the cost of power banked though paid for by the Appellant is not accounted in the year in which banking is carried out. When the said banked power is returned in the following year, the cost of purchase of such power is accounted along with carrying cost for the time for which power

remained banked. Therefore, when in the impugned order the cost of banked power is permitted, the same should be allowed with carrying cost. In not allowing the carrying cost for deferment of accounting of banking costs, the State Commission has not applied the ratio of the decision of this Tribunal in Appeal no. 173 of 2009.

75. Let us examine the findings of the State Commission in order dated 27.02.2012 in case no. 126 of 2011 wherein the banking costs for FY 2009-10 and 2010-11 were deferred. The findings are summarized as under;

i) RInfra-D informed the State Commission that the energy banked during 2009-10 was directly from source (inter-State) for which hourly details cannot be provided as the schedules for the same would have been agreed between the seller and the buyer with whom power is banked. RInfra-D is not provided with those schedules and only energy banked during a month is available which has been provided. However, during various meeting held in Commission's office, RInfra-D had stated that banking of power was done by RInfra from its surplus power and such banking was not done by the generating source.

(ii) The Commission felt that RInfra-D did not have any control over the timing and quantum while banking energy. According to the Commission, being primary party to the said power banking arrangement, RInfra-D should have details about schedules of energy banked. It is expected from RInfra-D to assess the genuineness of surplus power situation and accordingly undertake energy banking.

(iii) RInfra did not submit the status of bilateral power purchase form various sources for respective time blocks when power banking was under progress. RInfra-D also did not submit the details of minimum off-take committed for other sources of power while banking was under progress.

(iv) A licensee needs to establish the genuineness of surplus power situation and then decide upon the terms of power banking. A Licensee needs to negotiate for competitive 'return ratio' and other transaction costs while resorting to power banking. A Licensee needs to minimize avoidable costlier purchase while the surplus power is getting routed for power banking.

(v) RInfra-D has classified 'banking return' of only 1.69 MU in the information furnished to the Commission. Other banking returns could not be located in the information furnished by RInfra-D. Therefore, the State Commission has considered claim of Rs. 191.98 crore (excluding carrying cost) against 'banking return' of Rs. 287.23 MU.

(vi) In the absence of needful information and proper justifications, the State Commission is not in a position to establish prudency of power banking arrangements entered by RInfra-D. The Commission, therefore, restricted 2/3rd of the landed cost of power sourced as 'banking return'. For the purpose of final true up for FY 2009-10, the Commission has approved 1/3rd of the claimed landed cost. Once RInfra submits the necessary information and justification, the balance cost of Rs. 127.99 crores may be considered in future, subject to prudence check.

(vii) The State Commission also rejected the carrying cost as a part of power purchase expense on account of power banking transaction as it would not be covered in the principles laid down by the Tribunal in judgment in Appeal no. 173 of 2009. Power banking was not an expenditure which was previously accepted but for which recovery is deferred.

(viii) For FY 2010-11 also the State Commission found that the "returned energy at delivery point" in banking transaction was less than "returnable energy" for which RInfra-D has not submitted any justification. RInfra-D has also not established that the said banking contracts have been negotiated for 'return ratio' (ratio of energy returned to energy banked). The Commission felt that power banking arrangements must not be a mechanism to replace long-term power procurement arrangements with short-term bilateral purchases. Distribution Licensee must establish the genuineness of surplus power situation and then decide on the terms of power banking. Distribution Licensee must negotiate for competitive 'return ratio' and other transaction costs while resorting to power banking. Costlier purchases should also be avoided while surplus power is banked. In the absence of needful information and proper justification for FY 2010-11 also the State Commission restricted the landed cost of power sourced as 'banking return' for provisional true up for FY 2010-11. However, once RInfra-D submits the necessary information and justification, the balance cost would be considered in future orders. The carrying cost of power purchase cost on account of power banking transaction was also not allowed.

76. We find that the State Commission deferred the part cost of power sources as 'banking return' as the Appellant did not provide the necessary details with justification for the transactions. When the Appellant is entering into a banking arrangement, it has to establish that the banking transaction was beneficial to the consumers. The Appellant did not submit the necessary data and the justification to establish the same due to which the State Commission could not apply prudence check in the proceedings in case no. 126 of 2011. Information was subsequently provided by the Appellant in the proceedings which led to the impugned order. The State Commission found that the Appellant had indulged in avoidable purchase of costly power while banking the energy and accordingly, a part of power purchase cost was disallowed. The final true-up of the power purchase costs was delayed as the Appellant was not diligent in submitting the necessary information with justification to the State Commission. The consumers can not be saddled with carrying cost for the delay caused by the Appellant itself.

77. As regards claim for carrying cost as a part of power purchase expenses on account of power banking transaction for FY 2009-10 and 2010-11, the same disallowed by the State Commission by the order dated 27.02.2012 which was not challenged by the Appellant. This order has since attained finality. Therefore, we cannot interfere in the matter in the present Appeal.

78. The ninth issue is regarding rent income from Santacruz land raised in Appeal nos. 164 of 2013 and 160 of 2012.

79. Land measuring 15,198 sq. mtrs. at Santacruz is an asset of the distribution business for regulatory purpose. According to the

Appellant, there are four buildings on the land out of which only one building is used as a corporate office, constructed out of corporate funds and not regulated business funds. The corporate office building measured 5365 sq. mtrs. (including 675 sq. mtrs staircase) with land foot-print of about 900 sq. mtrs. (6% of total 15198 sq. mtrs. of land). There were other buildings on Santacruz land which are exclusively used for the purpose of the distribution business. As far as corporate building is concerned, except part of one wing which was used by the EPC Division including Central Technical Services ("CTS"), all other eleven wings were exclusively used by the Appellant's distribution division and shared services (IT, Accounts and Finance, HR, Procurement, Administration, Secretarial, Real Estate, etc.) only. The EPC and CTS divisions were also doing the work related to distribution and transmission business of the Appellant without any charge or cost allocation. Therefore, use of space by them was treated as an offset against the work undertaken by them for distribution business.

80. Further, according to the Appellant, shared services were provided within the Appellant's company as a whole to different business verticals including distribution and not to any third party. Costs were treated as allocable corporate expenses and allocated to distribution business as approved by the State Commission. The entire corporate building was occupied by activities directly or indirectly related to distribution with no costs to distribution business and thereby no burden on the consumers of distribution business and, therefore, there is no question of such distributions business claiming any return for utilization of its land.

81. In the impugned order, the State Commission has determined a sum of Rs. 256.06 crores to be treated as rent income to be considered as non-tariff income for the period 2003-04 to 2011-12.

82. Learned Senior Counsel for the Appellant has made the following submissions:

a) It is not disputed in the impugned order that the corporate building has been set up entirely with corporate funds and its cost has not been loaded on the consumers. The land on which corporate office building was constructed constituted only 6% of the total plot area of 15,198 sq. mtrs. Almost entire building was used for distribution business. All the 11 wings out of the wings on six floors were being used either exclusively by distribution division or shared services. The 12th wing was used by EPC and CTS Divisions which were also offering services to the distribution business and their expenses for providing the services to the distribution business were never included in the ARR.

b) There was no basis for the State Commission determining that 1/3rd area was deemed to be occupied by employees engaged in distribution business and shared services, 1/3rd land and building being occupied by employees of EPC business and shared services activities, and 1/3rd area of land and building deemed to be occupied by employees engaged in other group company business.

c) The corporate building occupied land footprint of only 6% of the total plot area and there were other buildings on the plot.

Therefore, there was no basis of allocating 2/3rd of the land cost for EPC business or for other group businesses.

d) The disclosure document filed with SEBI wherein the market value of land and building as a corporate division was given at Rs. 310.46 crores as on 13.02.2010. The entire amount of Rs. 310.46 crores was not allocable to the land. Rs. 33.68 crores related to the premises which were not on the said land and a sum of Rs. 30.1 crores was allocated to the corporate office building and a sum of Rs. 246.68 crores was allocated for land.

e) The State Commission does not have power, authority or jurisdiction to recover rent retrospectively with effect from FY 2003-04 under any Regulation. No reason has been given for giving effect to recovery of rent from FY 2003-04 in a proceeding for truing up petition for FY 2009-10 and FY 2010-11.

f) The impugned order is liable to be set aside as being in breach of principles of natural justice.

g) No rent was liable to be paid by the corporate office as 11 wings out of 12 wings of the corporate office were occupied by the distribution division along with shared services for no charge. Even the 12th wing occupied by EPC and CTS Divisions were providing services to distribution business without any cost.

h) The escalation of value by 5% p.a. is without any basis.

i) Without prejudice to the aforesaid, it was submitted that rent income of 2/3rd of the purported yearly rent in the impugned order is contrary to Regulation 65 and 79 of Tariff Regulations where only 1/3rd of recoveries from other business after deducting all direct and indirect cost attributable to that business has to be

deducted from the Annual Revenue Requirement in determining the wheeling charges of the distribution licensee.

j) The State Commission has erred in assuming a period of 7 years while determining rent from FY 2003-04 to FY 2008-09 which is actually 6 years.

k) Without prejudice to above, if the rent is applicable and payable at all, the amount of rent for FY 2003-04 to FY 2011-12 is only to the tune of Rs. 10.34 crores. Further, if EPC and CTS Department were liable to pay rent towards occupation of the 12th floor, the rental income would be only Rs. 0.54 crores for the above period.

83. Let us examine the impugned order. The findings of the State Commission are summarized as under:

(a) The State Commission in case no. 126 of 2011 (truing up proceedings for FYs 2009-10 and 2010-11) had directed the Appellant to furnish documents regarding ownership, occupancy and rental income details of the Santacruz building. However, the Appellant did not furnish the requisite documents. While passing order in case no. 126 of 2011, the State Commission directed RInfra-D to make detailed submissions on the said matter within one month. Thereafter, RInfra, submitted the information on 31.03.2012 explaining that the corporate building was primarily used for distribution related activities (exclusive and shared services) and no rent has been paid/received by the RInfra-D in FY 2009-10 and 2010-11.

(b) The State Commission found that the Appellant had furnished incomplete/partial information. The Commission duly

communicated to RInfra-D by email dated 16.04.2012 about non-submission/incomplete submission of information sought earlier, also giving the details required by it.

(c) However, the requisite information was not provided by RInfra-D. As RInfra-D did not furnish the details, the Commission decided that 1/3rd area be deemed to be occupied by the employees engaged in activities pertaining to RInfra-D and shared services employees providing services to Mumbai Licensed area operations; 1/3rd of land and building by employees engaged in EPC business and shared activities providing services to other than Mumbai licensed area and remaining 1/3rd of land and building by the employees engaged in other group company business.

(d) The State Commission took market value of land and building at Santacruz as on 13.02.2009 as per the disclosure document filed with SEBI by the Appellant as Rs. 310.46 crores. The same was considered for determining the notional rent to be recovered from FY 2003-04 to FY 2009-10. For subsequent years, appreciation in market value was considered @ 5% for each year. Based on above, the Commission treated rental income for the period 2003-04 to 2011-12 amounting to Rs. 256.06 crore as non-tariff income.

84. In the first place, we have already held that rental income of the Distribution Licensee's asset is to be treated as income from other business. Accordingly, the rental income from Santacruz properly from corporate office and other group companies of the Appellant has to be treated as income from other business as held by us above and

1/3rd of rental income shall be deducted from the Annual Revenue Requirement as per the Regulations.

85. Secondly, the rent from 2003-04 to 2008-09 has been considered as a period of 7 years whereas it should be 6 years. This needs to be corrected.

86. Let us now examine the issue regarding quantification of notional rental income from Santacruz land.

87. We find that the Appellant did not furnish the details sought by the State Commission to assess the rental income from Santacruz property despite reminders. Learned Counsel for the State Commission has argued that the majority of the material statements by the Appellant before the Tribunal have not been made during the proceedings before the State Commission and the said submissions are also not supported by evidence. Further, the Appellant has not adduced any documentary evidence to assert that the building in question was not constructed out of the Regulated Business Funds.

88. We find that the Appellant is giving details of use of land owned by RInfra-D for the first time before this Tribunal at Appeal stage and the same was never furnished before the State Commission. Such submissions cannot be admitted at the Appeal stage. However, in the present case we find that the State Commission in the Annual Revenue Requirement for FY 2011-12 has determined the notional rental income from Santacruz assets from FY 2003-04 onwards. We feel that the Appellant should have been given an opportunity to offer its comments on the procedure adopted by the Commission to assess the rental income from Santacruz assets from FY 2003-04 onwards. Therefore, we give liberty to the Appellant to furnish full details with supporting

documents to establish its claim that the corporate office building was not constructed from the Regulated Business Funds, total area and value of Santacruz property, land foot-print of corporate office building, area of corporate office, etc. and any other information necessary to work out the notional rental income from FY 2003-04 onwards sought by the State Commission.

89. To avoid any controversy we direct the following principle may be used for determining the rental income if it is established that the corporate office was not constructed from the funds of the Regulated Business.

(i) Valuation of land may be decided on the basis of the supporting documents to be furnished by the Appellant.

(ii) The valuation of land may be apportioned to the corporate office building in proportion to the land foot-print of the corporate office building as according to the Appellant, there are other buildings owned by RInfra-D on the Santacruz land. .

(iii) The notional annual rent on valuation of land apportionment to corporate office may be determined based on the data furnished by the Appellant or any other valid supporting document instead of ad-hoc value of 1% per month. One possible method is rateable value of land in question by the Municipal Corporation or similar land in the same area may be considered for working out the notional rent.

(iv) If the Appellant is able to establish the proportionate use of the building in question by RInfra-D by supporting documents then the annual rental value of land may be apportioned to use by corporate office and RInfra-D as per the actual use. If RInfra-D is not able to establish the actual use by supporting documents,

the formula of 1/3rd area use each by employees engaged in the activities pertaining to RInfra-D and shared services employees providing services to Mumbai licensed area operations, 1/3rd of land and building by employees engaged in EPC business and shared services providing services to other than Mumbai licensed area and 1/3rd of land and building by the employees engaged in other group company business as decided by the State Commission in the impugned order may be considered.

(v) 1/3rd of above 2/3rd rent may be considered for reduction of Annual Revenue Requirement of RInfra-D.

(vi) If it is found that the corporate building has been constructed out of funds from the regulated business of the Appellant then the valuation of building will also be considered along with the valuation of land. In that case the rent for the building will also have to be added to notional rental income to be decided to be on the above principles.

90. Accordingly, we remand the above issue to the State Commission for reconsideration.

91. The tenth issue is regarding disapproval of contract entered into by the Appellant with Global Energy Private Ltd. ("GEPL") for purchase of power for FY 2011-12 raised in Appeals 164 of 2013 and 160 of 2012.

92. The Appellant has explained the following sequence of events of the above dispute.

(a) On 04.06.2010, the Appellant executed a Power Purchase Agreement with Wardha Power Co. Ltd. for 260 MW power for

FY 2011-12 to 2013-14 at a levellised tariff of Rs. 4.85 per unit. However, till December 2010, Wardha Power had not executed Fuel Supply Agreement and therefore it failed to comply with the condition subsequent as given in the Power Purchase Agreement.

(b) On 25.06.2010 Tata Power issued notice that it would be withdrawing supply of power to the Appellant with effect from 01.04.2011.

(c) On 18.12.2010, the Appellant issued Letter of Intent to Global Energy Pvt. Ltd. for supply of 300 MW power from Jindal Power Ltd. on firm basis from 01.04.2011 to 31.03.2014. The Letter of Intent had a compensation claim of Rs. 2.07 per unit for failure to off-take 80% of the contracted quantum of power. The LOI was issued in view of the perceived uncertainty of availability of power from Wardha Power by reason of there being no FSA and to make alternate arrangement for supply by the Appellant to its consumers.

(d) On 25.01.2011, the Appellant filed Case no. 12 of 2011 before the State Commission for adoption of tariff under Section 63 of the Act in respect of Power Purchase Agreement entered into by the Appellant with another generator as well as for an “in principle” approval of LOI dated 18.12.2010 issued to Global Energy. At this stage, Case no. 11 of 2011 filed by Wardha Power for adoption of tariff under Power Purchase Agreement dated 04.06.2010 and thereafter amended by challenging subsequent termination by the Appellant was pending before the State Commission.

(e) Appellant then filed a separate petition being case no. 29 of 2011 for approval of LOI issued to GEPL for 300 MW.

(f) On 07.03.2011, the Appellant issued termination notice to Wardha Power.

(g) On 19.03.2011, the Appellant modified the arrangement for purchase of power from Global Energy under the LOI dated 18.12.2010 by splitting the same for two supply period i.e. one year (FY 2011-12) and two years (FYs 2012-13 and 2013-14).

(h) The Appellant commenced taking supply from Global Energy under short term LOI for a period of one year.

(i) On 11.04.2011, on the directions of the State Commission the Appellant submitted details of short term contracts to the Commission and also informed that it had split up the LOI dated 18.12.2010 in two parts in order to supply uninterrupted power to its consumers.

(j) Pursuant to interim orders of the State Commission, the Appellant commenced taking supply from Wardha Power from 15.04.2011.

(k) On 31.05.2011, the Sate Commission by order in Case no. 11 of 2011 directed the Appellant to honor the Power Purchase Agreement executed with Wardha Power for 260 MW

(l) On 26.06.2011, the Appellant modified arrangement for off-take of power under LOI (for one year) with Global Energy by which the compensation payable was revised to Rs. 0.95 per unit and trading margin of Rs. 0.06 per unit for amended quantum of 200 MW as against the compensation of Rs. 2.07 per unit for a quantum of 300 MW.

(m) The Appellant paid compensation to Global Energy for 160 MW being 80% of the contracted quantum as per the LOI for the period October 2011 to March 2012.

(n) On 23.09.2011, the State Commission passed order in case no. 29 of 2011 wherein it held that power procurement for medium term is required to be done through competitive bidding.

(o) On 15.06.2012, the State Commission in the impugned order held that it had disapproved the parent bilateral medium term contract between the Appellant and Global Energy by its order dated 23.09.2011 and any liability arising out of such contract or its residual contracts cannot be charged to the consumers.

93. According to the Appellant, it had entered into agreement with Global Energy to meet its universal supply obligation for ensuring continuous supply to its consumers in view of uncertainty in supply from Wardha Power and, therefore, the compensation payable to Global energy for not off-taking the power ought to have been allowed by the State Commission.

94. We find from the impugned order dated 15.06.2012 (Appeal no. 160 of 2012) that the State Commission in case no. 29 of 2011 by order dated 23.09.2011 had ruled as under:

"Admittedly, the offer from GEPL did not come through competitive bidding process despite the total quantum requirement having been approved by the Commission on earlier occasion on a petition filed by RInfra for procurement through competitive bidding process.

If a gap arises, vis-à-vis the total power procurement quantum approved by the Commission to be contracted through competitive bidding, the gap must be met through competitive bidding only. The efforts to procure power through competitive bidding cannot be a sham. There is no question of granting in-principle approval as sought for

under the present petition in the aforesaid circumstances. It is not only a question of procuring power at negotiated lower rates for the benefit for consumers, but it is also a question of upholding the sanctity of Section 63 of the 2003 Act which lays down the requirement of transparent process of bidding in accordance with the guidelines issued by the Central Government."

95. Thus, the State Commission by earlier order dated 23.09.2011 had disapproved the parent bilateral medium term contract between RInfra-D and Global Energy. Therefore, the State Commission decided that any liability arising out of such contract or its residual contract cannot be charged to the consumers.

96. We feel that the State Commission has correctly disallowed the compensation amount paid to Global Energy for contracted minimum off-take for the period October 2011 to March 2012 for the following reasons:

i) The State Commission has set aside the termination notice dated 07.03.2011 and subsequent termination of Power Purchase Agreement of Wardha Power. The decision of the State Commission was also upheld by the Tribunal in an Appeal filed by the Appellant. Therefore, the termination of the Power Purchase Agreement with Wardha Power was illegal and cannot be held as a prudent action.

ii) The Appellant did not undertake a competitive bidding process before awarding a medium term LOI to Global Energy. Accordingly, the State Commission did not correctly grant approval for procurement of power from Global Energy

iii) When the State Commission did not approve the mother contract for procurement of power from Global energy without undertaking

competitive bidding, there is no question of passing on the consequences of such contract to the consumers.

iv) Splitting up the same medium term contract with Global Energy which is disapproved by the State Commission into short term contract to avoid the requirement of competitive bidding is not permissible.

In view of above, this issue is decided against the Appellant.

97. The eleventh issue is regarding disallowance of Solar Power Purchase Cost over and above RPO target raised in Appeal no. 274 of 2013 relating to the distribution business.

98. The brief facts of this issue are as under:-

(a) On 07.06.2010, the State Commission notified the Renewable Purchase Obligation Regulations, 2010.

(b) In case no. 57 of 2011 filed on 18.03.2011, the Appellant requested the State Commission to allow the Appellant to waive the compliance of annual targets under RPO Regulations relating to solar power for FY 2010-11 and 2011-12 and in the alternative allow the Appellant to meet its solar RPO on cumulative basis for the entire control period i.e. FY 2010-11 to FY 2015-16. The Appellant also informed that it had entered into an 'Energy Purchase Agreement ("EPA") for purchase of 40 MW Solar PV capacity with Dahanu Solar Power Pvt. Ltd. at preferential tariff applicable as per the State Commission's Tariff orders and the project would be set up with effect from 31.03.2012.

(c) In the above case no. 57 of 2011 the State Commission did not take any decision and decided that it would take a view for FY 2010-11 and FY 2011-12 cumulatively at the end of FY 2011-12.

(d) On 05.12.2012, the State Commission in case no. 101 of 2012 decided that the cumulative shortfall in procurement of renewable energy by the Appellant during FYs 2010-11 and 2011-12 would be carried forward to FY 2012-13 by relaxing the provision of Regulation 7 of RPO Regulations.

(e) The Appellant in the proceedings of Business Plan in case no. 158 of 2011 made submissions that Dahanu's 40 MW solar plant has been supplying power from 08.03.2012 at Commission's determined preferential tariff. Balance energy shall be banked appropriately each year and it shall be used to meet the target in the subsequent year and so on. For the purpose of Business Plan, the Appellant considered RPO target of 169 MU from FY 2012-13 to 2015-16, while not considering the cost of estimated banked energy which shall be considered when the energy is returned.

(f) In MYT Petition in case no. 9 of 2013, the Appellant submitted that in FY 2012-13 to 2015-16, there would be surplus in solar power purchase with regard to obligation for the respective years as a result of migration of consumers to TPC-D, by reasons fo which the Appellant's own sales and power purchase requirement is lower than that estimated at the time of contracting with Dahanu Solar Project.

(g) In the impugned order dated 22.08.2014, the State Commission disallowed the cost claimed by the Appellant for purchase of solar power in excess of its solar RPO obligations.

(h) The Appellant has challenged the disallowance of power purchase cost over and above the rate being the highest rate in

merit order of power purchase at short term power purchase rates for the respective years in MYT on the quantum of power which is over and above the minimum quantum of power required for fulfillment of the Solar RPO under the RPO Regulations, 2010.

99. The Appellant has made the following submissions:

a) The Solar RPO were required to be complied with during FY 2010-11. In case no. 57 of 2011 filed by the Appellant with regard to relaxation of compliance of Solar RPO for the control period 2010-11 to 2015-16 in view of difficulties faced in procurement of solar power, the Appellant intimated the State Commission that it had entered into an agreement for purchase of 40 MW Solar Power with Dahanu Solar Power Ltd. at preferential tariff as per the order passed by the State Commission. It was informed that with effect from 31.03.2012, the Solar Power Project would be set up. The Appellant sought compliance of RPO cumulatively aggregating to 217 MUs. It was also informed that Dahanu is a group company of the Appellant.

b) In the said case 57 of 2011, the State Commission did not reject the contract with Dahanu Power. The State Commission only postponed the decision.

c) In a subsequent order dated 05.12.2012 in suo motu case no. 101 of 2012, the State Commission relaxed the RPO for FYs 2010-11 and 2011-12 and carried forward the shortfall to FY 2012-13.

d) Thus cumulative compliance for FYs 2010-11 and 2011-12 of 39.58 MU was permitted by the State Commission from the agreement with Dahanu Solar Power Project.

e) In the petition for Business Plan for MYT being case no. 158 of 2011, the Appellant submitted that the surplus energy from Dahanu Solar Power over and above the RPO would be banked appropriately each year and would be utilized to meet the RPO in the subsequent year and so on. The State Commission noted the submissions of the Appellant but did not rule on banking.

f) The State Commission in the impugned order did not consider the submissions of the Appellant that as a result of migration of consumers to Tata Power there would be a surplus in Solar energy. Further, over contracting is prudent considering uncontrollable events such as increase in sales, reduction in solar output due to bad weather or malfunctioning of solar panels.

g) The State Commission at all times was aware of the contract with the group company of the Appellant and has never disallowed the same and has in fact permitted cumulative compliance till FY 2012-13 out of the said contract. The impugned order nowhere holds that there is over contracting at the time of signing the contract.

100. Learned Counsel for the State Commission argued that the Appellant has admittedly submitted that energy Purchase Agreement of 40 MW was entered into not only to meet the RPO target cumulatively for the control period, but also to cater to future demand and consequent increase in RPO target expected after FY 2015-16. This submission of

the Appellant also makes it amply clear that it was aware of the fact at the contracting stage itself that it would end up contracting a higher capacity of solar power than the requirement of the solar RPO targets. Considering the high purchase price of power from solar power project and being a regulated entity, the Appellant was well aware of the fact that any over contracting from such source would result in passing on of the excessive costs to the consumers.

101. We find that the State Commission did not permit excess purchase for FY 2012-13 to 2015-16 of solar energy over and above RPO as it felt that it would cause burden on the consumers. Accordingly, the State Commission allowed the power purchase cost for the excess solar purchase energy at the highest rate in merit order stack of power purchase at the short term power purchase rate of the respective years.

102. We find that the State Commission did not take decisions on the petition filed by the Appellant being case no. 57 of 2011 filed on 18.03.2011 to either waive off the compliance of RPO targets relating to solar power for FY 2010-11 and 2011-12 or alternatively allow the Appellant to meet the solar RPO on cumulative basis for the entire control period. However, State Commission in case no. 101 of 2012 by order dated 05.12.2012 directed that the shortfall in RPO during 2010-11 and 2011-12 would be carried forward to FY 2012-13.This order was passed when 8 months of FY 2012-13 were already over. The shortfall in Solar RPO for FYs 2010-11 and 2011-12 was 39.94 MU. The RPO specified for 2012-13 was 38.51 MU. Thus, cumulative Solar RPO to be fulfilled during FY 2012-13 was 58.22 MU. Thus, the Solar

RPO obligation for the Appellant for the period 2012-13 to 2015-16 including the carry forward for FY 2010-11 and 2011-12 to be made good during FY 2012-13 was as under:

	FY 2012-13	2013-14	2014-15	2015-16
Solar RPO 'Million Units' (including carry forward of period 2010-12 to 2012-13)	58.22	38.51	39.49	40.80

Thus, the Solar RPO for FY 2012-13 was much more than the Solar RPO for the following three years. It is a well known fact that the cost of solar energy has been decreasing every year over the years. Therefore, the prudent decision to meet the RPO of the Appellant for the year 2012-13 would have been to procure part of Solar RPO through the long term agreement and partly through purchase of REC to avoid saddling the distribution licensee with long term contract for Solar energy tied up in FY 2012-13 at a high tariff for the operational life of the Solar project. The Report on Short Term Market in India for FY 2012-13 available in public domain indicates that the Central Commission had set the forbearance price of Solar REC at Rs. 13400 per MWH (or Rs. 13.40 per kWh) for FY 2012-13. Thus, the specified RPO for FY 2012-13 at the anticipated consumption could have been through the long term PPA and the balance RPO which were carried forward from the period 2010-12 to FY 2012-13 through REC. For meeting the increased quantum of Solar RPO in the future years it would be prudent to tie up contract for additional quantum of Solar

energy in the respective years when the price of Solar energy is expected to be more favourable.

103. We do not agree with the Appellant that over contracting for solar energy was prudent considering the possible increase in sales and reduction in solar generation. We feel that over contracting for solar energy when the trend of capital cost of solar power is declining is not prudent. The Solar RPO have to be tied up corresponding to the approved estimated sales in the ARR. Non- fulfillment of RPO due to increase in RPO due to actual increase in sales over the estimated sales approved by the State Commission in the ARR or due to reduction in solar generation due to reasons beyond the control of the Distribution Licensee can be carried forward to the next year. Similarly if there is reduction in energy sales due to migration of consumers to the other licensee and due to which the procurement of Solar energy is more than the RPO at actual sales, the excess Solar energy procured upto the RPO at the estimated sales has to be allowed as a pass through in the Annual Revenue Requirement. The Solar energy against the Solar RPO for a Financial Year has to be planned and procured corresponding to the estimated sales as approved by the State Commission in the ARR. Therefore, there is no issue regarding excess Solar energy due to reduction in sales due to migration of consumers to the second licensee.

104. In view of above, we do not find any infirmity in the Commission's finding in not allowing entire power purchase cost for solar energy over and above the Solar RPO in the Annual Revenue Requirement. We want to make it clear that the energy to be procured to fulfill RPO is proposed on the basis of the estimated consumption in the Annual

Revenue Requirement as approved by the State Commission. If the actual energy consumption is less and the Distribution Licensee has procured RPO corresponding to the estimated consumption then the Power Purchase Cost of excess energy over the RPO requirement at actual energy consumption has to be allowed. We also want to add that if the Appellant wants to discharge Dahanu Solar Power Co., the group company of the Appellant, of part of the quantum contracted in the Power Purchase Agreement to be able to sell balance power to other obligated entities or selling power in REC mode subject to the Regulations, in future, the same shall be permitted.

105. **The twelfth issue is wrongful denial towards capitalization of non-DPR schemes raised in Appeal no. 121 of 2013 relating to the generation business of the Appellant.**

106 According to the Appellant this issue is covered by judgments of this Tribunal in Appeal no. 139 of 2009, Appeal no. 199 of 2010 and Appeal no. 17, 18 and 19 of 2011. In all these judgments, the State Commission has been directed to consider capitalization of expenditure incurred on non-EPR schemes by carrying out a prudence check. The Non-DPR schemes which may exceed 20% of the DPR Schemes are required to be considered by the State Commission in order to check the veracity of the expenditure which may be incurred due to certain exigencies.

107. We find that the findings of this Tribunal in Appeal no. 17 of 2012 and batch on the above issue was based on the decision of this Tribunal in appeal no. 199 of 2010. In judgment dated 04.08.2011 in Appeal no. 199 of 2010, this Tribunal observed that the State Commission vide order dated 17/18.08.2009 had decided the principle of restricting the

non-DPRs scheme related to capital expenditure to not to exceed 20% of the DPR scheme. The State Commission, however, decided that the non-DPR scheme of less than Rs. 10 crores each could be clubbed and convert into a DPR scheme with combined capital cost of Rs. 10 crores and more and in-principle approval of the State Commission could be obtained for such scheme. However, the Tribunal found substance in the argument of the Distribution Licensee that when these directions were given, part of FY 2009-10 was already over. The Tribunal felt that these directions could not be applied retrospectively. Therefore, the Tribunal decided that instead of restricting the expenditure on non-DPR Schemes for FY 2008-09 and 2009-10, the expenditure on such non-Annual Performance Review schemes should be allowed after prudence check. The Tribunal also felt that as far as FY 2010-11 is concerned, the Appellant was bound by the directions of the State Commission to club similar non-DPR schemes for approval of the State Commission and restricting DPR schemes to 20% of the expenditure proposed for DPR schemes.

108. In the present case the State Commission was considering the capitalization for FYs 2010-11 and 2011-12 in the truing up petition. Therefore, the directions of the Tribunal given in the FY 2010-11 were binding on the State Commission. The State Commission in the impugned order had stated that the direction regarding capitalization of Non-DPR schemes only to the extent of 20% of capitalization allowed for DPR scheme was given in order dated 28.05.2009 in case no. 120 of 2008. Therefore, the Appellant had to follow these directions.

109. The State Commission for FY 2010-11 found that out of Rs. 14.15 crores capitalization claimed, the expenditure towards DPR schemes

was Rs. 9.04 crores and towards non-DPR scheme Rs. 5.11 crores. However, some DPR scheme were yet to receive in-principle approval of the State Commission. The State Commission allowed expenditure of 6.84 crores on approved DPR schemes and restricted the non-DPR schemes to 20% of the capitalization approved for DPR schemes. The State Commission also disallowed the expenditure incurred on DPR schemes which are yet to receive in-principle approval. Similar decision has been taken for FY 2011-12.

110. We do not find any infirmity in the State Commission restricting the capital expenditure on non-DPR schemes to 20% of the capitalization approved for DPR scheme. However, we feel that the DPR schemes which had not been approved and were awaiting approval of the State Commission should be considered by the State Commission and allowed after prudence check. Accordingly directed.

111. The thirteenth issue is regarding principle of sharing standby charges payable to MSEDCL raised in Appeal no. 160 of 2012 relating to the distribution business.

112. In view of the counter affidavit in reply made by the State Commission, the Appellant may file a separate petition before the State Commission for approval in the change in methodology for charging standby charges and make other utilities respondents to the case. The Appellant has craved leave to approach the State Commission by filing an appropriate petition.

113. In view of the counter affidavit filed by the State Commission we give liberty to the Appellant to file an appropriate petition before the State Commission.

114. The fourteenth issue is regarding CSS determination raised in Appeal no. 160 of 2012.

115. According to the Appellant, the said issue is covered by judgment dated 02.12.2013 in Appeal no. 178 of 2011 relating to retrospective recovery of CSS, so far as the period of recovery is concerned, against a part of which the Appellant has preferred civil Appeal no. 4929 of 2014 in the Hon'ble Supreme Court. The said judgment dated 02.12.2013 has given the methodology of computation of CSS which is unchallenged and in the submission of the Appellant, the methodology is no longer Res-Integra. The said issue would thus depend upon the outcome of Civil Appeal no. 4929 of 2014 pending in Supreme Court.

116. In view of the judgment of this Tribunal in appeal no. 178 of 2011 and the civil Appeal filed by the Appellant before the Hon'ble Supreme Court , this issue would not survive in the present Appeal.

117. The fifteenth issue is regarding commercial loss not considered as part of wheeling loss as per the Tribunal's order in Appeal no. 150 of 2009 raised in Appeal no. 160 of 2012 relating to distribution business of the Appellant.

118. LT loss borne by the Appellant's consumers is 9.99% whereas the State Commission in the impugned order has allowed 9% LT loss for change over consumers. According to the Appellant, the consumers who migrate to Tata Power are still a part of the system of the Appellant and use the Appellant's network. It is incorrect for the State Commission to contend that they leave Appellant's system on migration. The change is that the meter reading for billing is the responsibility of Tata Power which in fact fortifies the Appellant' s contention that the same is susceptible to commercial loss by reason of

inaccurate meter reading, faulty meters, non-recording of units by reason of theft, etc. Thus, the State Commission ought to have allowed the same LT loss (9.99%) for FY 2011-12 as borne by the Appellant's consumers.

119. According to the Appellant this issue has been decided by the Tribunal in judgment dated 23.03.2012 in Appeal no. 150 of 2009. We have examined the judgment of this Tribunal dated 23.03.2012. We find that the Tribunal in the above judgment has only decided that the change over consumers at LT level have to pay for losses in LT system and HT system. The findings of the Tribunal are as under:

"28. According to the Appellant, the Wheeling loss level provided by the State Commission is at the rate of 9% for drawal at the LT level whereas the total loss of the Appellant occurred in its distribution system is at the rate of 10.5%. It is stated by the Appellant that if the HT losses are considered at 1.5% as approved by the State Commission, LT losses are bound to be 11.64%. Consequently, there will be losses up to 10.5%. Therefore, the Appellant requested this Tribunal through this Appeal to direct the State Commission to reset the loss level for LT wheeling at 11.64%."

"32. As indicated above, the wheeling losses for the LT level has been determined by the State Commission using the methodology of the State Commission on the basis of the tariff petition filed by the Appellant. Therefore, the present contention raised in the amended application is contrary to the stand taken by the Appellant before the State Commission. Even in that Appeal, the stand taken by the Appellant is different from the stand taken by the Appellant in various written submissions filed by them before this Tribunal. In the first written submissions the Appellant has urged that the LT losses must be grossed up by the HT losses for the purpose of arriving at the wheeling losses for open access transactions. In the second written submissions, the Appellant has claimed that in case the consumer is opting for open access on the Appellant's Distribution system, the

Appellant is responsible for the aforesaid activities. The Appellant has now contended that in respect of open access transactions, the technical losses only can be considered and technical plus commercial losses may be considered for change over consumers. This fundamental contention raised now by the Appellant has admittedly not been raised before the Commission.

33. According to the Appellant, the LT losses of 9% ought to be grossed up by the HT losses of 1.5% to arrive at the total wheeling losses. It is also contended by the Appellant that the said total wheeling losses has to be borne by the open access consumers. Both the contentions are fundamentally wrong. The contention that open access consumers must bear even the commercial losses of the Distribution Company is unfair to the consumers. Admittedly, the State Commission has been consistently taking the view that commercial losses ought not to be factored into wheeling losses to be borne by the open access consumers. Similarly, the contention of the Appellant that the LT losses levels ought to be grossed up by the HT losses was mathematically incorrect logic.

34. The learned Counsel for the Commission submitted that the HT and LT losses are calculated on different parameters. These two cannot either be mathematically added or even one grossed up by the other. Since the denominator for calculation of HT losses and LT losses is completely different, the question of one being grossed up by the other cannot arise.

35. We have examined the issue in detail. The Losses in LT system and losses attributable to LT consumers are two different propositions. Appellant's submission in its ARR petition that losses in its LT system were of the order of 9% would not mean that losses attributable to LT consumers migrating to TPC would also be 9%. Admittedly power is generated at remote generating station and transmitted to load centers on EHT transmission system. At load centers power is stepped down to 33 kV and 11 kV and distributed in bulk. It is again stepped down to LT Voltage (400 Volts) for retail supply. Therefore, a consumer who avails supply at LT level is liable to bear losses occurred in the system i.e. from generating end to its premises. Thus a consumer connected at LT level to Appellant's system is paying for system losses for LT system as well as for HT system. Therefore, a migrating consumer at LT level

has to pay for losses in LT system and HT system. Otherwise the differential losses would be loaded on the remaining consumers of the Appellant.

36. In view of the reasoning given above, the submissions made by the Appellant appear to be correct and tenable. Accordingly, the same is accepted and the State Commission is directed to carryout necessary amendment in the impugned order."

120. The combined reading of the judgment shows that the Tribunal has only considered contention of the Appellant regarding LT consumers bearing the technical losses of LT and HT system. There is no finding that the commercial losses of the Appellant have to be borne by the change over consumers. Accordingly this issue is decided as against the Appellant.

121. In view of above the Appeals are allowed in part as indicated above. The State Commission is directed to pass the consequential order at the earliest preferably within three months of the communication of this judgment. No order as to cost.

122. Pronounced in the open court on this **8*th* *day of April, 2015.***

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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REPORTABLE/NON-REPORTABLE

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