

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**APPEAL NO. 48 OF 2014**

**Dated: 27<sup>th</sup> May, 2016**

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER  
HON'BLE MR. T. MUNIKRISHNAIAH, TECHNICAL MEMBER**

**IN THE MATTER OF**

**NTPC Limited**

NTPC Bhawan, SCOPE Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi – 110003

**..... Appellant/  
Petitioner**

**VERSUS**

- 1. Central Electricity Regulatory Commission**  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi- 110001
- 2. Tata Power Delhi Distribution Ltd,**  
Delhi Distribution House,  
Hudson Lines, Kingsway Camp,  
Delhi -110009
- 3. BSES Rajdhani Power Ltd. (BRPL)**  
BSES Bhawan, Nehru Place,  
New Delhi 110019
- 4. BSES Yamuna Power Ltd., (BYPL)**  
Shakti Kiran Building,  
Karkardooma, Delhi 110092
- 5. New Delhi Municipal Council,**  
Palika Kendra Building,  
Opposite Jantar Mantar,  
Parliament Street,  
New Delhi-110001
- 6. Chief Engineer Delhi Zone**  
Military Engineering Service,  
Delhi Cantt.,  
New Delhi-110010

**..... Respondents**

Counsel for the Appellant	...	Mr. M.G. Ramachandran Ms. Ranjitha Ramachandran Ms. Poorva Saigal Ms. Anushree Bardhan Mr. Shubham Arya
Counsel for the Respondent(s)...		Mr. K.S. Dhingra for R-1 Mr. Alok Shankar for R-2 Mr. R.B. Sharma for R-3

## **J U D G M E N T**

### **PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by NTPC Limited (in short, the '**Appellant**'), a generating company, against the Order, dated 23.5.2012 (in short, the '**Impugned Order**') passed by the Central Electricity Regulatory Commission (in short, the '**Central Commission**') in Petition No. 332 of 2009 for determination of generation tariff for Badarpur Thermal Power Station (705MW) (in short '**Badarpur Station**') for the tariff period from 1.4.2009 to 31.3.2014, wherein, the Central Commission has erroneously (a) deferred additional expenditure of Rs. 519.90 lakh on replacement of Condenser Tubes and of Rs. 951.50 lakh on Generation Transformer for Unit 4, even though it had been incurred in terms of the schemes approved by the Central Electricity Authority (**CEA**) and had been put to use; and (b) not considered appropriate cumulative repayment adjustments on the de-capitalization of assets when the amounting is on Net Asset basis as distinguished from accounting based Gross Asset basis.

2. According to the Appellant, the Central Commission has not considered the following aspects while disallowing the claim of the NTPC -

- i) The expenditure on the replacement of the Condenser Tubes and for procuring Generation Transformer (GT) for Unit 4 which has been incurred in terms of R&M schemes approved by the CEA under the main plant package.;

- ii) The beneficiaries of the sale of power from the generating station duly get benefited by the use of such assets for generation of electricity for supply to them and become obligation to service such capital expenditure;
- iii) The additional capitalization claimed on condenser tubes and Generation Transformer is akin to additional capitalization incurred on certain other similar CEA approved R & M packages like augmentation of ESPs and R & M of 220 KV switchyard, etc, considering that the benefit of such works are already available to beneficiaries.
- iv) The Badarpur Station's tariff is based on Net Fixed Asset method and not Gross Fixed Asset basis accordingly, the Central Commission ought to have adjusted 70% in loan repayment and balance 20% in equity while carrying out adjustment in repayment due to de-capitalization of assets and revise the fixed charges, consistent with the principles followed in Net Fixed Asset, where the 90% depreciation recovered had been considered for both loan repayment and for reduction in equity.
- v) The methodology adopted for full cumulative repayment adjustment in loan due to 90% of depreciation allowed in the event of de-capitalization of assets in Net Fixed Asset tariff determination will cause serious loss and prejudice to NTPC.
- vi) **The Central Commission has erroneously concluded that such additional capitalization on condenser tubes and generation transformer will be considered only after completion of main plant package during the tariff year 2014-15 i.e. next control period.**

3. The Appellant is a Government of India Undertaking and is engaged in the business of generation and sale of electricity to various

purchasers/beneficiaries in India. Badarpur Thermal Power Station (705 MW) is one of the generating stations of the Appellant and, the electricity generated from this Station, is supplied to the Respondents 2 to 6.

4. The Respondent No.1 is the Central Commission, which is empowered to discharge its functions as per the provisions of the Electricity Act, 2003 including determination of tariff, etc. The Respondent No. 2 to 6 are engaged in distribution business.

5. The relevant facts for the purpose of deciding the instant Appeal, are as under:

(a) that the Appellant/petitioner filed the said petition, being Petition No. 332 of 2009, before the Central Commission for approval of generation tariff for Badarpur Thermal Power Station (705 MW) for the period from 1.4.2009 to 31.3.2014, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the “**Tariff Regulations, 2009**”). The generating station with a capacity of 705 MW comprises of three units. The tariff of the generating station for the period from 1.4.2004 to 31.3.2009 was determined by the Central Commission by its order, dated 9.5.2006, in Petition No. 40/2004, based on the capital cost of Rs. 46,807 lakh as on 1.4.2004. Subsequently, the tariff of the generating station for the period from 1.4.2004 to 31.3.2009 was revised vide order, dated 28.9.2010, in Petition No.194/2009 after considering the impact of additional capital expenditure incurred from the date of transfer of the generating station to the petitioner i.e from 1.6.2006 to 31.3.2009 based on the capital cost of Rs. 45,128.25 lakh as on 31.3.2009;

(b) that the fixed charges for the generating station were computed on Net Fixed Asset methodology. After adjusting the cumulative depreciation of Rs. 27,940.86 lakh from the Gross Block of Rs. 45,128.25 lakh, the Net Fixed Assets (NFA) works out to Rs.

17,187.39 lakh as on 31.3.2009. For the purpose of computing the fixed charges for the period 2006-09, the admitted capital cost of Rs. 45,128.25 lakh (NFA of Rs. 17,187.39 lakh) as on 31.3.2009, the un-discharged liabilities of Rs. 7.29 lakh as on 31.3.2009 were excluded from the capital cost as on 31.3.2009;

- (c) that, thereafter, in Petition No. 324/2009 filed by the petitioner under Regulation 10(1) of the Tariff Regulations, 2009 for in-principle approval of Renovation and Modernization (R&M)/Life Extension of the generating station, the Central Commission, by its order, dated 12.5.2011, approved in-principle an expenditure of Rs. 74,104.83 lakh for R&M works and other works for Unit Nos. 4 and 5 for life extension of the generating station during the period 2009-14. However, the net expenditure allowed was Rs. 70,964.83 lakh after exclusion of Rs. 3,140 lakh towards IDC and FC and de-capitalisation of assets amounting to Rs. 5,340.92 lakh, being replaced during R&M. However, the R&M expenditure was allowed by the Central Commission in the said order with the following observations:

*"The benefits of reduction of Heat Rate and increase in unit capacity shall be passed on to the beneficiaries with effect from 1.4.2013, subject to the actual performance test conducted on the units by 30.9.2013. We direct the petitioner to furnish the actual heat rate and MW output of units Nos. 4 and 5 of the generating station after conducting the performance tests on these units by, 30.9.2013".*

- (d) that the aforesaid petition, being Petition No. 332 of 2009, filed by the Appellant/petitioner, has been disposed of by the Central Commission, vide impugned order, dated 23.5.2012, which we have detailed above. The impugned order, dated 23.5.2012, is under challenge by the Appellant/petitioner in the instant Appeal.

6. We have heard Mr. M.G. Ramachandran, learned counsel for the Appellant/petitioner, Mr. K.S. Dhingra, learned counsel for the Respondent No.1, Mr. Alok Shankar, learned counsel for the Respondent No.2 and, Mr. R.B. Sharma, learned counsel for the Respondent No. 3. We have deeply gone through the material available on record including the impugned order passed by the Central Commission.

7. The following issues arise for our consideration in this Appeal:

**(A) Whether the Central Commission is justified in Deferment of additional expenditure of Rs. 519.90 lac on replacement of Condenser Tubes and of Rs. 951.50 lac on a Generation Transformer for Unit 4?**

**(B) Whether the Central Commission is justified in Non consideration of appropriate cumulative repayment adjustments on the de-capitalization of assets when the accounting is on NET ASSET BASIS as distinguished from accounting based on Gross Asset basis?**

**ISSUE-WISE CONSIDERATIONS ARE AS FOLLOWS:**

8. **Issue (A) : DEFERMENT OF ADDITIONAL EXPENDITURE ON ASSETS PUT TO USE:**

8.1 On this issue, the following contentions have been made by the Appellant:

(a) that the Central Commission has deferred the claims of the Appellant/petitioner for capitalization of the condenser tubes and the Generation Transformer only on the ground that the complete benefits of Renovation & Modernization would be passed on to the beneficiaries after completion of the entire works of Renovation & Modernization of the Main Plant Package in the next tariff control period, i.e. 2014-19;

(b) that the deferment of the servicing of such capital assets, namely the Condenser Tube and the Generator Transformer, which are clearly identifiable as a separate asset and have been clearly put to use, ought not to have been deferred till the completion of the Renovation and Modernization activities;

- (c) that such deferments are contrary to the basic tariff principles that once asset is put to use under cost plus regime, the servicing of such assets in the tariff should commence. In this regard, the Central Commission has correctly observed in its order, dated 22.8.2013, passed in Petition No. 1/RP/2013 in the case of SJVN Limited v Punjab State Power Corporation Ltd and Ors that the expenditure claimed by the petitioner has actually been incurred by the petitioner and the beneficiaries-respondents have reaped the benefits of such expenditure during 2004-09. Denying the benefit of tariff to the petitioner for the assets, which have been capitalized and put to use, would result in denying recovery of reasonable cost of supply of electricity by the petitioner and servicing of the said expenditure incurred by the petitioner cannot be postponed to a future date and should be governed by the regulations prevailing at the time of the actual capital expenditure;
- (d) that this Appellate Tribunal, vide judgment, dated 6.9.2013, in Appeal No.2 of 2013, in the matter of Haryana Vidyut Prasaran Nigam Limited v Harayana Electricity Regulatory Commission and Ors, in paragraph 25, has held that return is to be allowed only on such assets that are commissioned and put to use and not on works which are in progress and not yet put to use. The consumers could not be expected to pay the Return on Equity capital deployed on the projects which had not been commissioned and put to use;
- (e) that the expenditures on the Condenser Tubes have been incurred in terms of the Renovation & Modernization schemes approved by the Central Electricity Authority (CEA) Renovation and Modernization Approval, dated 22.2.2008. These schemes are for the Renovation & Modernization/life extension and the same have been split in to workable packages and are being executed progressively. The purpose of doing so is to

progressively bring improved and better performance of the power station instead of waiting for the entire main plant package to be completed in all respects in one go. There is, therefore, no rationale in deferring the capitalization of such expenditures from the date from which the assets are put to use particularly when a substantial amount of expenditure has already been incurred on the assets by the Appellant in 2012-13 and 2013-14 (upto December 2013);

- (f) that the asset put to use optimizes the plant performance and, further, the replacement of condenser tubes and installation of Generation Transformer are required for the performance of Unit-5 & Unit-4 respectively. The benefit of such improved performance goes to the beneficiaries immediately and there is no reason for deferring the servicing of such capital expenditure to the next control period of 2014-19;
- (g) that this Appellate Tribunal, vide judgment, dated 17.4.2014, in Appeal No. 245 of 2013, in the case of another generating station of NTPC, namely, Kawas Gas Power Station has granted liberty to NTPC to claim the additional capitalization actually incurred in the period 2012-13 and 2013-14 during the Truing Up for the control period 2009-14;
- (h) that the same issue is covered by judgment, dated 10.9.2015, passed by this Appellate Tribunal in Appeal No. 250 of 2013.

8.2 **Per contra**, the following contentions have been made on behalf of the Respondent No.1/Central Commission including the other Respondents on this issue:

- (a) that as the major portion of CEA approved Main Plant Package was to be completed by 31.3.2013, the Central Commission directed the Appellant to pass-on to the beneficiaries the benefits of reduction of Heat Rate and increase in Unit capacity

accruing as a result of implementation of R&M scheme, with effect from 1.4.2013. The said direction is extracted below:

*“31. The benefits of reduction of Heat Rate and increase in Unit capacity shall be passed on to the beneficiaries with effect from 1.4.2013, subject to the actual performance test conducted on these units by 30.9.2013. We direct the petitioner to furnish the actual Heat Rate and MW output of Units Nos. 4 and 5 of the generating station after conducting the performance tests on these units, by 30.3.2013.”*

This direction of the Central Commission has not been complied-with till date by the Appellant;

- (b) that without complying-with the direction of the Central Commission, mentioned in the earlier paragraph, the Appellant, in the meantime, had filed the impugned petition, being Petition No 332/2009, for approval of tariff for the period 2009-14 in respect of the said generating station under the Tariff Regulations, 2009. In the said petition, the appellant was directed to furnish the following information regarding the R&M schemes:
- i. Revised phasing of R&M expenditure in line with the order, dated 12.5.2011, in Petition No. 324/2009;
  - ii. Details of the packages/schemes corresponding to the revised phasing, and;
  - iii. The expected date of completion of R&M works.
- (c) that the Appellant, in response, filed the details of revised phasing of expenditure under its affidavit, dated 5.7.2011, from which, it is noticed that in the revised phasing of expenditure submitted by the appellant, against an expenditure of Rs. 48,694.05 lakh projected to be incurred on R&M of Main Plant Package, an expenditure of Rs. 24,100.39 lakh during 2009-14 and Rs. 24,548.66 lakh during 2014-15 was claimed. Thus, a major part of R&M expenditure (more than 50%) on Main Plant Package was proposed to be incurred by the appellant during

the year 2014-15 (next tariff period). Accordingly, the Appellant was directed to explain as to why the expenditure on R&M should be allowed during the period 2009-14, despite the fact that based on revised phasing of expenditure the benefits of R&M could be passed on to the beneficiaries during the next tariff period only after completion of R&M schemes;

- (d) that the Central Commission, after considering the reply of the Appellant, was not satisfied that the Appellant should be allowed capitalization of the expenditure, the benefit of which was to accrue to the beneficiaries during 2014-15;
- (e) that the Appellant sought review of the decision/order by filing the Review Petition No. 18/2012 on the ground that condenser tubes and generator transformer were put to use during 2009-10 and that these assets were rendering service to the beneficiaries. In the said Review Petition, it was pointed out by BSES Rajdhani Power Ltd that the Appellant had sought capitalization of expenditure of Rs. 1,474 lakh without explaining the benefit of reduction in Heat Rate and increase in Unit capacity during 2009-14. Despite the objection raised by BSES Rajdhani Power Ltd, the Appellant did not place on record any evidence to show that the benefits were accruing to the users of the generating station as a result of expenditure of Rs. 1,474 lakh condenser tubes and generator transformer;
- (f) that, in the present Appeal, the Appellant has vaguely suggested that the beneficiaries of the generating station duly benefit by the use of the assets for generation of electricity for supply to them and become obligated to service such capital expenditure, without listing the benefits being enjoyed by the beneficiaries of the generating station or the improvement in its performance;

- (g) that R&M of the generating station had been approved as part of life extension scheme. The useful life of the generating station can be extended only on completion of works on the Main Plant Package. For this reason also, the capitalization of condenser tubes and generator transformer is to be considered along with capitalization of entire Main Plant Package and not separately from it;
- (h) that the similar view was taken by the Central Commission in its earlier order, dated 1.8.2013, in Petition No. 25/GT/2013, in the case of NTPC Ltd vs Madhya Pradesh Power Trading Company Ltd and others, pertaining to truing up in respect of Kawas GPS owned by the Appellant. The appellant had filed an Appeal, being Appeal No. 245 of 2013, titled as NTPC Ltd vs Central Electricity Regulatory Commission and ors, against the said order, dated 1.8.2013, and this Appellate Tribunal dismissed the Appeal, vide its judgment, dated 17.4.2014. The same issue has again been considered by this Appellate Tribunal in Appeal No 250 of 2013, in the matter of NTPC Ltd Vs CERC and ors. in respect of Auraiya GPS of the Appellant and this Appellate Tribunal, vide its judgment, dated 10.9.2015, has upheld the view of the Central Commission to defer capitalization of the expenditure to the tariff period 2014-19 under similar circumstances as applicable to the generating station.

### 8.3 **Our consideration on Issue (A):**

- (a) We have narrated above the relevant facts and the issues involved in the present Appeal along with rival contentions of the parties including earlier decisions of this Appellate Tribunal on this issue. We do not feel any need to repeat the same here again.

- (b) Before reaching our own conclusion, we deem it proper to reproduce the relevant part of the impugned order, dated 23.5.2012, which is as under:

*“29. We are not convinced with the submissions of the petitioner. Since, the benefits of R&M would be passed on to the beneficiaries only after completion of R&M of Main Plant package during the year 2014-15 of the next tariff period, the expenditure of Rs.41231 lakh projected to be incurred for R&M of main plant package could only be considered in the next tariff period. Similarly, the actual expenditure of Rs. 1474 lakh pertaining to R&M of the main plant package incurred during 2009-10 has also not been allowed by this order, and the said expenditure would be considered during the next tariff period with the passing of the benefits of R&M to beneficiaries. In view of this, the corresponding de-capitalization has also been ignored.”*

- (c) The main reason for deferment of the said assets as given in the impugned order is that since, the benefits of R&M would be passed on to the beneficiaries only after completion of R&M of Main Plant package during the year 2014-15 of the next tariff period, the expenditure projected to be incurred for R&M of main plant package could only be considered in the next tariff period. Hence, the Central Commission has ignored the corresponding de-capitalization.
- (d) This Appellate Tribunal, in its judgment, dated 10.9.2015, in Appeal No 250 of 2013, in the matter of NTPC Ltd vs CERC and ors, in respect of Auraiya GPS of the Appellant, has upheld the decision of the Central Commission and found that the Central Commission was legally justified in deferring the additional capitalization incurred in respect of certain capital assets only on completion of the R&M activities of the GTs. The relevant part of the judgment, dated 10.9.2015, is as under:

*“10.13 Further, we are unable to accept this contention of the Appellant that the determination of tariff under the cost plus mechanism requires all the assets to be serviced because only those assets which have been admitted by the Central Commission, subject to prudence check, can be serviced.*

10.14 Further, we are also unable to accept the contention of the Appellant that any scheme or mechanism or methodology once allowed in the tariff petition, cannot be disallowed in a true-up petition because the Central Commission, in the impugned order, has not disallowed the R&M but deferred to the next tariff period i.e. 2014-19 at the instance of the Appellant that the Appellant was not in a position to complete the scheme during 2009-14 tariff period. The Central Commission, in the impugned order, has not changed any scheme or methodology while dealing with the true up petition and passing the impugned order. Once the Central Commission, at the instance of the Appellant considering urgency or assurance of the Appellant, exercised its 'Power to Relax' in regulation 44 of the Tariff Regulations, 2009 allowed additional capitalization but subsequently, when the Appellant itself informed that the completion of the same R&M works was not possible in the present tariff period i.e. 2009-14, but will be done only in the next tariff period i.e. 2014-19, the Central Commission has passed the impugned order. Thus, the impugned order on legal scrutiny is found to be correct, just and legal one requiring no interference from us in this Appeal.

10.15 Thus, the Central Commission is legally right and justified in deferring the additional capitalization incurred in respect of certain capital assets only on completion of the R&M activities of the GTs. In view of the above discussions, both these issues are decided against the Appellant and the present Appeal is liable to be dismissed.

#### **ORDER**

*The instant Appeal, being Appeal No. 250 of 2013, is hereby dismissed and the impugned Order, dated 6.8.2013, passed by the Central Electricity Regulatory Commission, in Petition No. 28/GT/2013 for the revision of tariff (True-Up) for the tariff period 1.4.2009 to 31.3.2014 for the Appellant is hereby affirmed. There shall be no order as to costs."*

Since, the same issue is covered by our earlier judgment, dated 10.9.2015, in Appeal No 250 of 2013 (*supra*), **accordingly, this issue, being Issue (A), regarding deferment of additional expenditure on assets put to use, is decided against the Appellant.** We do not find any merit or substance in the contentions of the Appellant. The same view, we have taken in our recent judgment, dated 22.3.2016, in Appeal No. 47 of 2014 in the matter

NTPC Ltd. vs. Central Electricity Regulatory Commission & Ors. in respect of the same Badarpur Thermal Power Station of the Appellant.

**9. Issue (B): NON CONSIDERATION OF APPROPRIATE CUMULATIVE REPAYMENT ADJUSTMENTS ON THE DE-CAPITALIZATION OF ASSETS:**

9.1 On this issue, the following contentions have been made by the Appellant:

- (a) that the Badarpur Thermal Station was earlier owned by the Government of India and the accounting was on Net Asset basis. Whereas, the accounting in the case of generating stations of NTPC was on Gross Asset basis. This generating station then got vested in NTPC and accounting on Net Asset Basis continued;
- (b) that in Net Asset Basis accounting, the assets are depreciated first to be adjusted for repayment of loan and once loan is repaid, the equity base is also depreciated. In Gross Asset basis equity remains in perpetuity without reduction;
- (c) that in view of the above, when gross asset basis is followed upon de-capitalization and recapitalization, the cumulative repayment of loan gets adjusted without any change in the equity. However in the net asset basis as the equity also gets reduced through depreciation upon de-capitalization and recapitalization, the cumulative repayment the of loan and equity needs to be adjusted in the applicable debt equity ratio;
- (d) that in the impugned order, the Central Commission has considered the full adjustment of 90% in loan repayment while giving effect to the adjustment of de-capitalization assets in cumulative repayment. The Central Commission did not consider that the generating station, in question, i.e. Badarpur Station's tariff, is based on Net Fixed Asset method and not Gross Fixed Asset basis. The Central Commission has erred in

following the same methodology as is applied to other generating stations where gross asset basis is followed without considering the special case of Badarpur Station having followed a distinct Net Asset basis;

- (e) that when the tariff determination is based on the Net Fixed Asset basis, wherein, both loan repayment and equity contribution is progressively adjusted based on depreciation allowed, there is no rationale in giving effect to de-capitalization of assets in loan repayment only, and ignoring the equity portion;
- (f) that the Central Commission ought to have adjusted 70% in loan repayment and balance 20% in equity while carrying out adjustment in repayment due to de-capitalization of assets and revise the fixed charges, consistent with the principles followed in Net Fixed Asset, where the 90% depreciation recovered had been considered for both loan repayment and for reduction in equity.

9.2 **Per contra**, the following contentions have been made on behalf of the Respondents on this issue:

- (a) that in accordance with clause (2) of Regulation 17 of the Tariff Regulations, 2009, the salvage value of an asset is to be considered as 10% and depreciation is to be allowed up to maximum of 90% of the capital cost of the asset. Accordingly, the Central Commission, in the impugned order, considered adjustment of cumulative depreciation of 90% against loan repayment;
- (b) that the Appellant is aggrieved against the said view of the Central Commission because according to the appellant, cumulative depreciation should be adjusted against repayment of loan (70%) and equity (20%). The Appellant has urged that

where the tariff is determined on Net Fixed Asset basis, as in the case of the generating station, and not on Gross Fixed Asset basis the cumulative depreciation is to be adjusted against loan as well as equity;

- (c) that this issue was also raised by the Appellant in the Review Petition No. 18/2012 seeking review of the impugned order. The learned Central Commission, vide its order, dated 8.2.2013, while rejecting the Review Petition, has held as under:

*“14. The matter has been examined and we are of the view that there is no error apparent on the face of the order. The tariff of the generating station is based on NFA method wherein adjustments on any account are considered through loan component and in case of any balance then the same is adjusted through equity. Hence, there is no error apparent on the face of the order and the submissions of the petitioner are not acceptable. Thus, review on this ground fails.”*

- (d) that the Central Commission has considered it a sound principle of financial accounting that in case where Net Fixed Assets (NFA) approach is followed, accumulated depreciation of the asset de-capitalized (negative capitalization) is first adjusted against repayment of loan and the balance depreciation, if any, is adjusted against equity. The principle that the accumulated depreciation is adjusted against repayment of loan is incorporated in clause (3) of Regulation 16 of the Tariff Regulations, 2009, which provides as under:

*“(3) The repayment for the year of the tariff period 2009-14 shall be deemed to be equal to the depreciation allowed for that year.”*

- (e) that the said approach has been uniformly followed by the Central Commission in all cases where NFA approach is adopted, for example TPS-I and TPS –II (Stage 1 and Stage 2) of Neyveli Lignite Corporation;
- (f) that the methodology adopted by the Central Commission on this issue is based on sound principle which has been

consistently followed by the Central Commission and also has the backing of the Tariff Regulations, 2009. Hence, there can be no departure from the established methodology for the mere reason that the Appellant suffers monetary loss

### 9.3 **Our consideration on Issue (B):**

After considering the rival contentions of the parties and going through the impugned order and Regulation 16 and 17 of Tariff Regulations, 2009, we do not find infirmity or perversity in the method adopted by the Central Commission on this issue. The Central Commission has taken a correct view and applied just, proper and correct method which is in accordance with Regulation 17(2) and Regulation 16 of the Tariff Regulations, 2009. **Accordingly, this issue, being Issue No. (B), regarding non-consideration of appropriate cumulative repayment adjustments on the de-capitalization of assets, is also decided against the Appellant.**

10. Since, both the issues have been decided against the Appellant, the instant Appeal, being Appeal No. 48 of 2014, merits dismissal.

### **ORDER**

11. The present Appeal, being Appeal No. 48 of 2014, is hereby dismissed being without merits and the Impugned Order, dated 23.5.2012, passed by the Central Electricity Regulatory Commission, in Petition No. 332 of 2009, is hereby upheld. There shall be no order as to costs.

**PRONOUNCED IN THE OPEN COURT ON THIS 27<sup>TH</sup> DAY OF MAY, 2016.**

**(T. Munikrishnaiah)**  
Technical Member

**(Justice Surendra Kumar)**  
Judicial Member

**√ REPORTABLE/NON-REPORTABLE**

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