

**Appellate Tribunal for Electricity, New Delhi  
(Appellate Jurisdiction)**

**Appeal No. 79 of 2014**

**Dated: 2<sup>nd</sup> February 2016**

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

**IN THE MATTER OF:**

Raj West Power Limited  
Office No. 2&3  
7<sup>th</sup> Floor, C-44  
Man Upasana Plaza, Sardar Patel Marg  
C-Scheme, Jaipur-302001

**Appellant(s)/Petitioner**

***Versus***

1. Rajasthan Electricity Regulatory Commission  
Vidyut Viniyamak Bhawan  
Near State Motor Garage  
Sahakar Marg, Jaipur – 302005
2. Jaipur Vidyut Vitran Nigam Limited  
Vidyut Bhawan, Janpath, Jaipur – 302 005
3. Ajmer Vidyut Vitran Nigam Limited  
Old Power House, Hathi Bhata  
Ajmer – 305 001 (Rajasthan)
4. Jodhpur Vidyut Vitran Nigam Limited  
New Power House, Industrial Estate  
Jodhpur – 342 003 (Rajasthan)

5. Secretary (Energy)  
Government of Rajasthan  
Secretariat, Jaipur – 302 005 (Rajasthan)
  6. Rajasthan State Mines and Minerals Limited  
4, Meera Marg, Udaipur – 302 005 (Rajasthan)  
Rajasthan
  7. Rajasthan Rajya Vidyut Utpadan Nigam  
Jyoti Nagar, Vidyut Bhawan  
Jaipur – 302005 (Rajasthan)
  8. Barmer Lignite Mining Company Limited  
Office No. 2 & 3  
7<sup>th</sup> Floor, C-44  
Man Upasana Plaza, Sardar Patel Marg  
C-Scheme, Jaipur – 302001
- ... Respondent(s)**

Counsel of the Appellant(s)	Mr. M.G. Ramachandran Ms. Ranjitha Ramachandran Ms. Poorva Saigal Ms. Anushree Bordhan and Mr. Shubham Arya Ms. Swagatika Sahoo
Counsel of the Respondent(s)	Mr. Raj Kumar Mehta Ms. Himanshi Andley Mr. Abhishek Upadhyay for RERC/R-1 Mr. P.N. Bhandari Dr. Harsh Surana Mr. Elangbam P.S. for R-1 Ms. Ishita C. Dasgupta for R-1

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

### **PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

1. This Appeal has been filed against the Order dated 13.01.2014 passed by the Rajasthan Electricity Regulatory Commission (hereinafter called the 'State Commission') in Petition No. RERC-244/11 & 245/11 whereby the State Commission has declined to entertain the claim of the Appellant herein, that the Appellant should be released of all the financial liabilities & responsibilities of the mining development operations to be organized by Respondent No. 8 for extraction of lignite from the linked mines of Kapurdi and Jalipa, including consequences of failure to supply lignite consequent to the earlier orders passed by the State Commission and this Tribunal holding that the Appellant cannot be given the mine development operations on nomination basis as envisaged in the Implementation Agreement dated 29.5.2006; and that the mining operation should be undertaken by an entity selected through Competitive Bidding Process.

2. The Appellant/Petitioner is Raj West Power Limited (Generating Company). The Respondent No. 1 is Rajasthan Electricity Regulatory Commission. The Respondent Nos. 2-4 are the Distribution Licensees and the Respondent No. 5 is Government of Rajasthan (State Government). The Respondent No. 6 is Rajasthan State Mines and Minerals Limited (RSMML), is a State-owned company engaged in the business of mining of coal, lignite and other minerals and is majority shareholder (51%) of the joint venture company. The Respondent No. 7 is Rajasthan Rajya Vidyut Utpadan Nigam, a generating company and the Respondent No. 8 is Barmer Lignite Mining Company Limited.

3. **BRIEF FACTS OF THE CASE**

3.1 On 25.11.2011, the Appellant no. 2 filed a petition for clarification of the order dated 17.08.2011 before the State Commission. By order dated 5.1.2012, the State Commission disposed of the above petition holding that no clarification is required to be given.

3.2 On 16.02.2012, aggrieved by the Order of the State Commission dated 05.01.2012 and Order dated 17.08.2011,

the Appellant and Respondent No. 8 filed an Appeal before this Appellate Tribunal being No. 76 of 2012 vide Judgment dated 08.04.2013.

3.3 On 07.05.2013, the Appellant/Petitioner filed a Petition under section 120 of the Electricity Act for review and clarification of the Order dated 08.04.2013, passed by this Tribunal. This Tribunal passed an Order dated 28.5.2013 in Review Petition being No. 8 of 2013 and granted liberty to the Appellant to raise the issue regarding their contractual and the financial liability in respect of the mining operations before the State Commission directing that the State Commission shall consider them and pass appropriate orders in accordance with law keeping in view smooth operation of mining and power projects.

3.4 Aggrieved by the Order dated 08.04.2013, passed by this Tribunal in Appeal No. 76 of 2012, the Appellant/Petitioner filed a Civil Appeal being no. 23889 of 2013 before the Hon'ble Supreme Court under section 125 of the Electricity Act, 2003. The Hon'ble Supreme Court by Order dated

6.9.2013 has admitted the Appeal and the Civil Appeal is pending before the Hon'ble Supreme Court.

3.5 The Appellant filed an application on 6.6.2013 before the State Commission for clarification and for orders in terms of the Order dated 28.5.2013 passed by this Tribunal, without prejudice to the contentions raised in the Civil Appeal pending before the Supreme Court.

3.6 The State Commission passed an Order on 13.01.2014 on two applications filed by the Appellant, which has been assailed in this Appeal.

4. Heard the arguments of Learned Counsel for the Appellant Mr. M.G. Ramachandran and Learned Counsel for Respondent Nos. 2, 3 and 4 (Discoms), Mr. P.N. Bhandari and after going through the submissions made by the Learned Counsels of the parties and Impugned Order dated 13.1.2014, the only issue arising in the Appeal is as under:

**Whether the Appellant can be relieved from its obligation of financial liabilities, responsibilities and other related matters with respect to mining of lignite ore for the generation of power for the generating station of the Appellant in view of the selection of mining contract through International Competitive Bidding process?**

**5. The following are the submissions made by the Learned Counsel of the Appellant:**

5.1 that if the mine development operation has to be undertaken by the selected bidder in pursuance of the selection under a Competitive Bidding Process and not by the Appellant on nomination basis, the natural consequence thereof is that such selected party should assume all the financial liabilities, responsibilities and exposure in regard to the mine development operation. The Appellant should stand released from all such financial liabilities, responsibilities and exposure. It cannot be that the Appellant or its nominee will not be undertaking the mine development operation but the Appellant will have to bear all financial liabilities, responsibilities and exposure.

5.2 that in terms of the Implementation Agreement (supra), the mining contractor was to be nominated by the Appellant for the following reasons –

- (a) The mining operation required significant capital investment and financial exposure to ensure availability of lignite.
- (b) The lenders were not willing to finance and fund the mining project based on the finances of Respondent No. 8

and accordingly, the Appellant was required to take the entire responsibility of supplying lignite and indemnify Respondent No. 8.

- (c) To ensure that the entity mining the lignite fulfills its obligations and provides the required supply of lignite mined from the designated mines to the generating station.

In terms of the above and as a necessarily implication, the Appellant was also required to assume all financial obligations of mining activities to the exclusion of Respondent No. 8.

5.3 that in view of the decision taken that the mine development operation will be awarded to the selected bidder under the Competitive Bidding Process and not on nomination basis to the Appellant, the privity of dealing in regard to the mine development operation is between the Respondent No. 8 and the selected bidder and that the Appellant as a power project will have no role in the same.

5.4 that the terms of the Implementation Agreement dated 29.05.2006 cannot be interpreted in a selective manner by holding that the provisions contained in the Implementation Agreement for allowing the mine development operation to be on nomination basis by the Appellant is not to be given

effect to but at the same time the Appellant will continue to have the financial risk and liabilities in regard to the operation of the mine development and making available the requisite quantum of lignite for operation of the power project.

5.5 that it is a settled principle of law that Agreements need to be read as a whole. In this regard, the Appellant craves reference to the following decisions:

**(a) Vimal Chand Ghevarchand Jain v. Ramakant EknathJadoo, (2009) 5 SCC 713**

*“28. A document, as is well known, must be construed in its entirety. Reading the said document in its entirety, there cannot be any doubt whatsoever that it was a deed of sale. It satisfies all the requirements of a conveyance of sale as envisaged under Section 54 of the Transfer of Property Act.”*

**(b) Novartis Vaccines & Diagnostics Inc., United States of America v Aventis Pharma Limited, 2010 (2) Bom.C.R. 317**

*“38. Where parties enter into any kind of Joint Venture and/or partnership to do particular business and/or to establish particular business or company and, accordingly, enter into various contracts/agreements, it is always on the foundation of meeting of mind with an intention to do the joint business in cooperation, in Trust and in good faith for the common advantage & benefit. The commercial contracts always need to be respected and considered from the above point of view. The scheme, the object and the intention of the parties to enter into such type of agreement/contract need to be read together by reading and by considering the whole*

*documents as well as the purpose and the object behind formation of such partnership/company. No provision is made for a partner to do rival or competing business freely. Both the parties are governed by JVA, shareholders agreement & the Article of Association of CBVPL. Both the partners are aware of their respective, written & unwritten obligations, liabilities, duties.*

*39. I have considered while dealing with and while reading the purpose and the object of such commercial documents/agreements in Unity Realty and Developers Ltd. v. BW Highway Star Pvt. Ltd. & in Arbitration Petition No.423/2009 on 24.09.2009 as under:*

*"8 The Apex Court recently in Vimal Chand Ghevarchand Jain &ors. vs. RamakantEknathJajoo, 2009 (5) SCALE 59 2009 has observed while dealing with the construction of a commercial contract as under : "A document, as is well known, must be construed in its entirety"*

*I have observed in Reliance Natural Resources Ltd. v. Reliance Industries Limited, 2007 (Supp.) Bom. C.R. 925 2007 as under:*

*"93 Apart from that the following extracts from Chitty on Contracts (27th Edition), 1994 in para 12.053 is also useful:*

*"Every contract is to be construed with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated word or clause."*

Thus, in terms of the above, if the nomination rights, as envisaged in the Implementation Agreement are not to be vested with the Appellant, the other aspect of the Implementation Agreement, namely, the financial liabilities

and responsibilities of the mining operation cannot also be fastened on the Appellant.

5.6 that if in terms of Regulation 12(7) of the Tariff Regulations which provides for determination of fuel transfer price at mine mouth (final or provisional), the State Commission is exercising its jurisdiction to go into the price of lignite and in the process disturbing the scheme envisaged by the Implementation Agreement, then the State Commission ought to decide all matters relating to the financial obligations, responsibilities and exposure of the Mine Development Operator. The State Commission cannot relegate such issues as being outside its purview.

5.7. that the relief claimed by the Appellant from the State Commission is independent of the rights and obligations which the Appellant may have under the Joint Venture Agreement with Respondent No. 6. The Joint Venture Agreement was also entered into in pursuance of the Implementation Agreement dated 29.5.2006 and the provisions of the two agreements cannot be considered in isolation. Thus, the right to manage and control the affairs

of the Respondent No. 8 along with Respondent No. 6 cannot in any manner impose financial obligations, responsibilities and exposure on the Appellant.

6. **Per Contra**, the following are the submissions made by the Learned Counsel of the Respondent No. 2, 3 and 4:

6.1 that the present Appeal is the grossest abuse of the process of law. The Appellant is time and again raising the same issues which have been decided long back not only by the Commission but even by this Tribunal.

6.2 that the present Appeal has once again raised the same issues which the Appellant had raised earlier before the Tribunal and which were turned down earlier by the Tribunal as none of the issues had been raised before the Commission in the original petition. No party can be allowed to introduce through the backdoor, fresh issues under the garb of clarificatory applications. This is gross abuse of the process of law.

6.3 that the appointment of Shri N.S. Bohra as an “independent person” and the so called scrutiny by Shri Bohra had no

legal basis under the Electricity Act. Hence the Commission has rightly refused to take cognizance of any such report by Shri Bohra.

6.4 that the replacement of the presently technically and financially non qualified Mining Contractor by a new Mining Contractor through transparent competitive bidding does not even remotely affect the role and functions of the stakeholders. It is absurd to argue that the Appellant can discharge its functions effectively only if the Mining Contractor is nominated by it. An overwhelming majority of contracts all over the country whether in public sector or private sector are based on transparent competitive bidding without any right of nomination.

6.5 that the status of the Appellant Raj West and Barmer Lignite Mining Co. Ltd. (in brief BLMCL) being separate entities is only a paper fiction. Both of them are fully interlinked and inter connected. Notwithstanding 51% government share in BLMCL, the management of both Raj West and BLMCL is common. Even the Managing Director of the BLMCL is appointed by Raj West. Time and again, joint

petitions and appeals have been filed by these two companies before the Commission and the Tribunal. There is no conflict of interest or objectives between the two.

6.6 that mere replacement of the Mining Contractor, through transparent competitive bidding cannot in any way adversely affect that working.

## **7. Our Consideration and Conclusion on this issue**

7.1 The Appellant/Petitioner, Raj West Power Limited is a successful bidder for establishing a Lignite Thermal Power Station (8 units of 135 MW) at District Barmer, Rajasthan. The Appellant RWPL entered into Implementation Agreement (**IA**) with the Government of Rajasthan on 29.05.2006 for implementation, operation and maintenance of lignite mining-cum-thermal-power plant with associated facilities and 500 MW (total 1000 MW) based on lignite mine from Jalipa and Kapurdi mines, District Barmer.

7.2 The contention of the Appellant/Petitioner is that the State Commission has failed to consider the integrated nature of the rights and obligations provided in the Implementation Agreement dated 29.05.2006, namely, the financial

liabilities, responsibilities and exposure of the Appellant in regard to the mine development operations were provided for in the Implementation Agreement as a consequence of the provision relating to the nomination of the Appellant or its nominee to undertake the mine development operation. Accordingly, if the mine development operations have to be undertaken by any person in pursuance of the selection under a Competitive Bidding Process and not on nomination basis, the natural consequence thereof is that such selected party should assume all the financial liabilities, responsibilities and exposure in regard to the mine development operation, releasing the Appellant from all such financial liabilities, responsibilities and exposure.

7.3 The salient features agreed by the Appellant/Petitioner, in Implementation Agreement, are as under:

- i) Raj West was selected by the State Government for setting up lignite mining-cum-thermal power project.
- ii) A Joint Venture Company of Raj West and RSMML would be formed for mining component of the project. All investments in mining would be done by Raj West with RSMML having no financial liability.
- iii) Raj West would enter into a Power Purchase Agreement for sale of power with the distribution licensees.

- iv) Mining lease would be transferred to the Joint Venture Company after obtaining necessary approvals.
- v) Joint Venture Company would enter into a Fuel Supply Agreement with Raj West for supply of lignite for 30 years.
- vi) Joint Venture Company would enter into mining contract with Raj West or its consortium members for extraction and supply of lignite on nomination basis. The mining contract would provide for indemnification of the Joint Venture Company by the mining contractor against any liability under the Fuel Supply Agreement.
- vii) The transfer price of lignite would be determined on cost plus basis. The cost of extraction of lignite has to be scrutinized by an expert appointed by the State Government.
- viii) Finally, the State Commission would assess the transfer price of lignite to be supplied by the Joint Venture Company to the power plant.

7.4 The Appellant/Petitioner RWPL has entered into Joint Venture Agreement (JVA) with the Rajasthan State Mines and Minerals Limited (RSMML), a company incorporated under the Companies' Act 1956 (the Government of Rajasthan enterprise), on 27.05.2006.

7.5 Accordingly to Joint Venture Agreement (JVA), the Appellant/Petitioner, RWPL shall provide management

support and the entire investments to the Joint Venture Company.

7.6 Let us examine the undertaking given by the RSMML and RWPL in the Joint Venture Agreement(JVA), which is as under:

**3.2 RSMML shall and undertakes to take all actions necessary or required to:**

- (i) Obtain the mining leases for the Mines from the Government of Rajasthan and transfer the same to the JV Company;**
- (ii) Obtain all the necessary licenses, government and regulatory approvals and consents, including without limitation the approval of the Government of India and/or the approval of the Government of Rajasthan, for the use, operation, development and management of the Mines all of which shall be valid and existing during the term of this Agreement;**
- (iii) Obtain all government and regulatory approvals and consents including the approval from GOI/GOR for the transfer of all its rights including surface rights under the mining licenses with respect to the use, operation, development and management of the Mines to the JV Company;**
- (iv) Inform RWPL in case of any change in composition of its shareholding.**

**All the expenses incurred/to be incurred by RSMML under this Agreement including but not limited to**

**expenses with respect to (i), (ii) and (iii) above shall be borne by the JV Company/RWPL.**

**3.3 RWPL shall and undertakes to:**

- (i) make all investments in the JV Company and agrees that RSMML shall have no financial liability with respect to the JV Company including for holding 51% Equity Shares in the JV Company at all points of time;**
- (ii) for ensuring the timely payment to RSMML of all expenses incurred/to be incurred by RSMML under this Agreement, including but not limited to the expenses with respect to RSMML's obligations under Clause 3.2 (i), (ii) and (iii), RWPL shall open an escrow account on the date of signing of this Agreement (the "Expense Escrow Account") and shall ensure that the Expense Escrow Account shall have sufficient funds to meet RSMML's expenses under this Agreement. RSMML shall have full authority to operate the Expense Escrow Account and withdraw from it such amounts required by it for Mining Project related expenditures;**
- (iii) make all arrangements for timely payment of compensation and other expenses required for acquisition of land for the Project as required/demanded by RSMML, or as determined by the GOR, by depositing the required sums in the Expenses Escrow Account; and**
- (iv) in case the Mining Project is abandoned, take all necessary formalities as may be required to wind up the JV Company. In case any liability is actually fastened on RSMML due to winding up of**

***the JV Company as aforesaid, RWPL shall discharge/make good such liability;***

***(v) agree on behalf of the JV Company, to indemnify, defend and hold harmless RSMML, and their respective lawful successors and assigns, their directors, officers, employees, agents and representatives from and against any and all losses, liabilities, claims, damages suits, actions, proceedings, demands, penalties, fines, judgments, awards, costs and expenses (including reasonable legal fees and disbursements in connection therewith and interest chargeable thereon), asserted against or incurred by RSMML, arising out of or in relation to this Agreement, unless such liability is on account of non-performance of RSMML's obligations, under this Agreement.***

Thus, the Appellant/Petitioner, RWPL has taken the responsibly of all the financial liabilities of the Joint Venture Agreement and ensured the timely payment to RSMML of all expenses incurred/to be incurred by RSMML under this Agreement.

7.7 Further, on the date of signing Joint Venture Agreement, the Appellant, RWPL has opened an Escrow Account and agreed that RSMML shall have full authority to operate the Expense Escrow Account.

7.8 The Joint Agreement clearly specifies the responsibilities of RSMML and RWPL. RSMML shall undertake the responsibilities of mining lease from the government of Rajasthan and transfer the same to JV company and also other approvals, licenses, etc and RWPL has given undertaking stating that all the expenses of RSMML for development and execution of mining, etc. will be the obligation of the Appellant.

Thus, according to Implementation Agreement and Joint Venture Agreement, the Appellant RWPL is liable to bear all the financial expenditures for performing mining operation by RSMML. Hence, RWPL has the obligation of developing the generating station including the development and operation of the identified mines at Jalipa and Kapurdi.

Accordingly, the Appellant is bound by the Implementation Agreement that the entire responsibility including the financial liability has to be of Raj West Power Limited without any liability to the Respondent No. 6, RSMML.

7.9 We have observed in the order dated 17.08.2011 that the State Commission had directed fresh bidding to be

undertaken in accordance with the State Commission Order dated 19.10.2006. Further, the Appellant, RWPL filed an Appeal No. 76 of 2012 against the State Commission's Order dated 05.01.2012 and 17.08.2011 and this Tribunal decided it vide Judgment dated 08.04.2013 and held as under:

**“36. Summary of findings:**

- (i) The State Commission in its order dated 19.10.2006 did not state that the price for mining contract would be discovered through a competitive bidding process to enable awarding of the mining contract to Raj West or its consortium member at the price discovered through the competitive bidding or the competitive bidding would be with the condition that Raj West or consortium member would have Right of First Refusal. Such an important condition of the bidding process has to be clearly and unambiguously decided in the findings and cannot be considered as implied as it was not specifically disallowed. The order dated 19.10.2006 was not challenged and has since attained finality.***
- (ii) The State Commission in the impugned order has correctly held that the bidding for lignite mining undertaking by the consultant of Raj West has been vitiated on account of a number of flaws as indicated in the judgment.***
- (iii) It was open for the State Commission to decided for competitive bidding for development of mine either with the condition of Right of Refusal to Raj West or its consortium member provided they participate in the competitive bidding and qualified the qualification criteria or through open competitive bidding without any Right of First Refusal as both the arrangements would have been legal. However, in***

***the present case, the two part open competitive bidding without any Right of First Refusal to any party appears to be more prudent and should be preferred for attracting competition in mining and would not be detrimental to the smooth functioning of the project and will be in consonance with the principles laid down in Section 61 of the Act.***

***iv) In view of above we do not like to interfere with the findings of the State Commission for conducting of competitive bidding for mining contract by the Joint Venture company without any Right of First Refusal to Raj West or their consortium member”.***

7.10 The RWPL filed a Review Petition against this Tribunal’s Judgment dated 08.04.2013 in Appeal No. 8 of 2013 and Appeal No. 76 of 2012 and this Tribunal passed an Order dated 28.05.2013 and held as under:

***“8. As regards other issues raised by the Review Petitioner/Appellant relating to mining operations by the Barmer Lignite Mining Co. Or the successful bidder and their financial and contractual liability etc., we find that these issues were not part of the Appeal and they were not argued in the main Appeal. Therefore, these issues which may be relevant for smooth operation of the mining and power project may have to be dealt with by the State Commission.***

***9. Accordingly, we give liberty to the Review Petitioner/Appellant to raise these issues before the State Commission and the State Commission shall consider them and pass appropriate orders in accordance with law keeping in view of smooth operation of mining and power projects”.***

7.11 The Appellant, RWPL filed a Civil Appeal being No. 23889/2013 of 2013 against the Judgments dated 8.4.2013 and 28.5.2013 passed by this Tribunal and the Appeal is still pending in the Hon'ble Supreme Court.

7.12 The Petition Nos. RERC-244/11 & 245/11 filed by the Raj West Power Ltd. and Barmer Lignite Mining Co. Ltd., respectively before the State Commission for implementation of Tribunal Judgment dated 28.05.2013 pleading that "it shall be the responsibility of the selected bidder to undertake mining and make available the requisite quantum of lignite for operation of the Power Projects and assume all financial risk and liability in regard to the same including the consequences of not undertaking mining or making available the quantum of lignite required for the Power Projects".

7.13 The Commission after hearing the parties, passed an Order dated 13.01.2014 (Impugned Order). The relevant part of the Order is as under:

***"39.Outsourcing of lignite extraction is a standard industrial practice. There is another lignite based power project in the State, that of***

***NLC (a Central Govt. undertaking), which has a captive lignite mine but where lignite mining is entrusted to a party selected through competitive bid. The power company doesn't nominate a party to undertake lignite extraction. However, it does not mean that lignite mining in NLC gets separated from power project just because Power Company does not have a right to nominate a mining contract. Even RSMML undertakes lignite extraction in its mines through a party selected through competitive bid and is supplying lignite to Giral Power Plant.***

***40. Lignite mines assigned to the JV company are captive to the power developer to the extent of requirement of lignite for the power project for 30 years, as agreed in IA. Not only this, the nominee of power developer as MD has enormous control over all lignite mining related matters, as discussed earlier.***

***41. In view of the said position, it is incorrect to say that power developer is no more responsible for mining venture. Mutual rights and obligations as agreed in JV agreement do not get wiped out in to just because the stipulation in JV Agreement of nomination for lignite extraction has not been accepted by the Commission. It may be noted that RSMML has advanced arguments on the similar lines and Commission is in agreement with that.***

***55. In the above context, it would be worth noting that Commission while passing order dated 17.8.2011 had given consideration to the fact that selection of mining contractor would take some time and accordingly BLMCL was asked to work out lignite transfer price for the interim period***

***and accordingly adhoc interim lignite transfer price was allowed by the Commission vide its order dated 30.9.2011. It was obviously done to enable generation of power based on supply of lignite.***

***57. In view of the above, we see no reason at this stage to issue any order for continuation of interim arrangement. It would be appropriate for the mining entity i.e. BLMCL to file a petition at the earliest for extension of adhoc lignite transfer price beyond 31st March, 2014 along with a clear time frame within which the bidding for selecting mining contractor would be finalised. The adhoc lignite transfer price pending selection of a party for lignite extraction through competitive bidding was first issued vide order dated 30.9.2011 and more than 2 years have elapsed since then but tenders have yet not been invited. The Commission has noted the delay with grave concern and there cannot be an interim arrangement for an indefinite period”.***

7.14 Thus, the Commission has not decided while passing the Impugned Order regarding relieving the Appellant, RWPL from the financial liability towards mining operation. In our opinion, after going through all the above, the Appellant RWPL is liable to bear of the financial expenditure for mining and lignite transfer of lignite from the mines to the generating station.

7.15 Further, during the arguments, the Counsel of the Appellant stated that the agency for mining of lignite has not yet been decided and Engineers India Ltd. (a Public Enterprises Company) has been given responsibilities for selection of bidder through International Competitive Bidding (ICB).

7.16 Further, we noted that the Appellant's nominee is mining the lignite and supplying to the generating unit of the Appellant, hence the existing arrangements should not be disturbed till the selection of new mine development operator through International Competitive Bidding (ICB) for lignite mining.

7.17 The Commission also observed that the ad hoc lignite transfer price pending selection of a party for lignite extraction through competitive bidding was first issued vide order dated 30.9.2011 and more than 2 years have elapsed since then, but tenders have yet not been invited. The Commission has noted the delay with grave concern holding that there cannot be an interim arrangement for an indefinite period.

7.18 The Judgment cited by the Petitioner clearly specifies that both the partners are governed by JVA, shareholders Agreement. Both partners are aware of their respective, written & unwritten obligations, liabilities, duties etc. Thus in the present JV Agreement, the Appellant agreed to bear all the financial liabilities and also to meet the day to day expenses for lignite mining by RSMML.

7.19 We do not agree with the contention of the Appellant/Petitioner seeking relieve from financial liabilities as the Government/Commission had gone for international bidding for selection of Mining Agency for operation of the lignite mining. Thus, at this stage, the Appellant cannot escape from the financial liabilities and operation of the mining.

7.20 We, therefore, direct the Appellant to continue with the existing arrangements until an agency is finalized for mining operation through International Competitive Bidding (ICB).

7.21 Further, as per Section 3.5(iv) of the Implementation Agreement, the Appellant/Petitioner agreed that all the investments will be made by the Appellant with no financial

liability on RSMML and also according to Section 3.5(vii), the Joint Venture Company would enter into a exclusive Fuel Supply Agreement with RWPL for a period of 30 years. Thus, the Appellant has to take the responsibility of financial expenditures of mining apart from generation of electricity and accordingly the Appeal is dismissed.

**ORDER**

The instant Appeal No. 79 of 2014 captioned as Raj West Power Ltd., vs. Rajasthan Electricity Regulatory Commission and others, is hereby dismissed. The Impugned Order is upheld.

There shall be no order as to cost.

Pronounced in the open court on this **2<sup>nd</sup> day of February, 2016.**

**(T. Munikrishnaiah)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

**Dated, 2<sup>nd</sup> February, 2016.**

**REPORTABLE / ~~NON-REPORTABLE~~**