

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Review Petition No. 7 of 2012 in
Appeal No. 40 of 2011

Dated: 3rd October, 2012

Present: HON'BLE MR. JUSTICE P S DATTA, JUDICIAL MEMBER
HON'BLE MR. V J TALWAR, TECHNICAL MEMBER,

Damodar Valley Corporation,
DVC Towers,
VIP Road, Kolkata -700 054.

...Appellant

Versus

- (i) Central Electricity Regulatory Commission,
3rd and 4th floor, Chanderlok Building,
Janpath, New Delhi – 110001.
- (ii) West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan,
Block `DJ', Sector-11,
Salt Lake City, Kolkata – 700091.
- (iii) Jharkhand State Electricity Board,
Engineering Building, HEC,
Dhurwa, Ranchi – 834 004.
- (iv) Madhya Pradesh Power Trading Company Ltd.
Shakti Bhawan, Vidyut Nagar,
Jabalpur-482008. ...Respondents

Counsel for the Appellant : Mr M G Ramachandran

Counsel for the Respondent : Mr Nikhil Nayyar for R-1
Mr R B Sharma for R- 3
Mr Manoj Dubey for R-4

JUDGMENT

PER MR. V J TALWAR TECHNICAL MEMBER

1. This Review Petition has been filed by Damodar Valley Corporation against the judgment dated 1.5.2012 of this Tribunal in Appeal No. 40 of 2011 relating to determination of Tariff for Mejia Thermal Power Station Units 5&6 (2x250 MW) from the date of Commercial Operation.
2. In this Review Petition the Petitioner/Appellant has raised the issue relating to Notional Interest during Construction in regard to excess equity (over and above the normative equity of 30%) contributed by the Petitioner/ Appellant during the construction of Mejia Unit 5 and 6.
3. The learned counsel for the Review Petitioner/Appellant has submitted that this Tribunal has decided the issue against the Petitioner/Appellant giving the reason that *“if the contention of the Appellant is accepted then the interest on ‘normative’ loan would be payable when the equity is more than 30% but when the loan is more than 70% interest on actual loan would have to be provided”*. The Appellant has submitted that this Tribunal had proceeded on the basis that the interest on normative loan is being claimed by the Petitioner/Appellant as payable when the equity is more than 30% and when the loan is more than 70%, the interest on actual loan would be provided. However, the Petitioner/Appellant did not claim the interest on actual loan when the loan had exceed the 70% and its

plea before the Commission as well as this Tribunal was to that if at any time the actual loan is more than 70%, the interest during construction to be restricted to 70% and excess loan may not be subjected to any interest during construction. Thus, there is an error in the decision of the Tribunal on the issue of notional interest on notional loan and the same is required to be rectified.

4. We have examined the matter. Let us quote the relevant para of the this Tribunal's Judgment in Appeal No. 40 of 2011 dated 1.5.2012.

“Bare perusal of the Regulation 20 reproduced above would reveal that debt – equity ratio of 70:30 is to be considered as on date of commercial operation and for the purpose of determination of tariff. It does not provide that the debt - equity ratio of 70:30 would be considered during construction of the project or after its commercial operation. Factually, debt component of the capital cost has to be repaid as per term of the loan and equity component of capital would remain constant during the life of the project. Therefore, debt – equity ratio would vary from time to time and after repayment of loan only equity would remain. Similarly, Capital would be injected during construction of the project depending upon the requirement and availability of funds either from loan or from equity and debt – equity ratio would vary. In the present case debt – equity ratio had been varying from quarter to quarter throughout the construction period. In the beginning equity component was 100% and during some months it was as low as 10%. If the contention of the Appellant is accepted then interest on ‘normative’ loan would be payable when equity is more than 30% but when loan is more than 70%, interest on actual loan would have to be provided. This would result in unjust increase in the capital cost of the project. As brought out above, the Appellant’s claim of ‘notional interest’ on ‘notional loan’ during construction period is in fact a claim on return on equity during construction which is not permissible. The issue is accordingly decided against the Appellant.”

5. Perusal of the above would clarify that we had explained the impact of Regulation 20 of Central Commission's 2004 Tariff Regulations and had not indicated that the Petitioner/Appellant had claimed interest on the loan where the actual loan has exceeded 70%. Thus there is no error apparent in the face of the record in the decision of this Tribunal on the issue of notional interest on notional loan in Appeal No. 40 of 2011.
6. The Review Petition is dismissed. However, there is no order as to costs.

(V J Talwar)
Technical Member

(Justice P S Datta)
Judicial Member

Dated: 3rd October, 2012

REPORTABLE/NOT REPORTABLE