IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 212 OF 2017

Dated : 28.02.2025

Present : Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of :

NTPC Tamil Nadu Energy Company Ltd
Vallur Thermal Power Project
P.O. Vellivoyal Chavadi,
Thiruvallur, Chennai- 600103 Appellant

Versus

1. **A.P. Transmission Corporation Limited**
Through its Managing Director
Vidyut Soudha, Khairatabad,
Hyderabad-500082

2. **A.P. Central Power Distribution Company Ltd.**
Through its Managing Director
2nd floor, house No.6-1-50, Mint Compound,
Hyderabad-500063

3. **A.P. Eastern Power Distribution Company Ltd.**
Through its Managing Director
P&T Colony, Seemandhara,
Vishakapatnam-503013

4. **A.P. Southern Power Distribution Company Ltd**
Through its Managing Director
Beside Srinivassakalyana Mandapam,
Tiruchanur Road, Kesavayana Gunta,
Tirupati- 517501

5. **A.P. Northern Power Distribution Company Ltd**
Through its Managing Director
House No. 1-1-504, opp. NIT Petrol Pump,
Chaitanapuri Colony Hanmkonda,
Warangal- 506004

6. **Power Company of Karnataka Ltd.**
Through its Managing Director
KPTCL complex, Kaveri Bhawan,
Bengaluru- 560009

7. **Bangalore Electricity Supply Company Ltd.**
Through its Managing Director
Krishna Rajendra circle,
Bangalore- 506001

8. **Mangalore Electricity Supply Company Ltd.**
Through its Managing Director
Paradigm plaza, AB Shetty circle,
Mangalore- 575001

9. **Chamundeshwari Electricity Supply Company Ltd.**
Through its Managing Director
927, L J Avenue, New Kantharaj Urs Road
Saraswatipuram, Mysore- 570009

10. **Gulbarga Electricity Supply Company Ltd.**
Through its Managing Director
Main Road, Gulbarga- 585102

11. Gulbarga Electricity Supply Company Ltd.
Through its Managing Director
Navanagar, PB Road,
Hubli- 580025

12. Kerala State Electricity Board
Through its Secretary
Vaidyuthibhavanam, Pattom,
Thiruvananthapuram- 695004

13. Tamil Nadu generation & Distribution Corporation Ltd.
Through its Managing Director
NPKRR Maaligai, 144, Anna Salai,
Chennai- 600002

14. Electricity department
Through its Secretary
Govt. of Puducherry,
137, Netaji Subhash Chandra Bose Salai,
Puducherry- 605001

15. Central Electricity Regulatory Commission
Through its Secretary
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi- 110001 Respondents

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ritu Apurva

Counsel on record for the Respondent(s) : Anusha Nagarajan
S. Vallinayagam for Res. 13

<u>J U D G M E N T</u>

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal is directed against the order dated 08.02.2016 passed by respondent No.15 Central Electricity Regulatory Commission (hereinafter referred to as "the Central Commission" or the "CERC") in petition No.198/GT/2013 thereby determining tariff of NTPC Vellore Thermal Power Project (1500 MW) for the period from respective dates of commercial operation of the units 1 & 2 of the power project till 31.03.2014 in terms of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "2009 Tariff Regulations").

2. The appellant NTPC Tamil Nadu Energy Company Limited (in short NTECL) is a joint venture company of NTPC Limited and Tamil Nadu Electricity Board, both having equal shareholding in it. It has been established for the purpose of setting up Vellore Thermal Power Station in Village Vellore, District Thiruvallur, Tamil Nadu with a capacity of 1500 (3x500) MW. The three units of the power project i.e. unit No.1, unit No. 2 and unit No. 3 achieved

commercial operation on 29.11.2012, 25.08.2013 and 26.02.2015 respectively.

3. In the year 2009, the CERC framed Tariff Regulations, *inter alia,* providing for the norms and parameters for determination of tariff of the generating stations for the tariff period from 01.04.2009 to 31.03.2014.

4. In terms of these 2009 Tariff Regulations, appellant NTECL filed petition No.198/2013 before the Commission for the approval of tariff of its Vellore Thermal Power Station from the anticipated Commercial Operation Date (COD) of unit 1 i.e. from 31.08.2012 to 31.03.2014.

5. Vide orders dated 24.12.2012, the Commission granted provisional tariff of unit 1 of the power project from its COD i.e. 29.11.2012 till the COD of unit 2 i.e. 21.08.2013, pending final determination of tariff. Vide subsequent order dated 20.11.2013, the Commission granted provisional tariff combinedly in respect of the units 1 & 2 from 21.08.2013 till 31.03.2014.

6. Since the third unit was declared under commercial operation in the subsequent tariff period 2014-19, appellant has filed a separate petition for

approval of tariff for the said unit in terms of the subsequent Tariff Regulations 2014.

7. By impugned order dated 08.02.2016, the Central Commission decided the petition No.198/GT/2013 and determined the tariff for units 1 & 2 of Vellore Power Station for the period from COD of the two respective units till 31.03.2014.

8. The appellant NTECL filed a petition on 06.05.2016 before the Commission seeking review of the order dated 08.02.2016 on the following aspects: -

> *(i) Pro-rata reduction of overhead expenses on account of disallowed time overrun not undertaken separately for Unit-I and Unit-II while calculating the amount disallowed for IEDC;*
>
> *(ii) Deduction of revenue earned from sale of infirm power from the capital cost despite the said revenue having already been adjusted in capitalization (deducted) along with the respective Unit-I, II and III;*

(iii) Disallowance of actual capital expenditure till the completion of COD for Units-I and II despite there not being any increase in prices in contract packages due to time overrun;

(iv) Disallowance of the claim for share application money as part of equity for claiming return on equity despite the same having been converted into equity when shares have been issued to the shareholders;

(v) Disallowance of notional IDC claimed @10.75% per annum applicable up to the first drawal of loan for the period from 2003-04 to 2007-08;

(vi) Rate of interest on loan for FY 2013-14 under Phase-II drawal being considered as 11.25% instead of 11.27% as claimed by the Petitioner;

(vii) Allowance of capital cost as on CODs of Unit I and II by deducting undischarged liabilities twice;

(viii) Allowance of IDC in entire loan capital;

(ix) Apportionment of projected additional capital beyond COD of Unit-II undertaken in the ratio of equity as on COD of Unit-I; and

(x) Computation of fixed charges upto COD of Units I and II on pro-rata basis by not indicating them on annualized basis."

9. The review petition was partly allowed by the Commission vide order dated 18.04.2017 in respect of issue Nos.(ii), (vi), (vii) & (ix) noted hereinabove and was rejected on the remaining aspects. Accordingly, the appellant in this appeal has agitated following issues: -

(i) Non-consideration of notional IDC, not even allowing it up to COD and restricting it till SCOD;

(ii) Non-consideration of share application money as part of equity for the purposes of determining the return on equity (RoE);

(iii) Disallowance of Rs.23.58 crores from the actual expenditure in respect of the civil packages on account of delay / time overrun;

(iv) Pro-rata reduction of overhead expenses;

(v) Suo-moto correction issued by the Commission in the review order dated 18.04.2017.

10. We may note here that only respondent No.13, Tamil Nadu Generation and Distribution Corporation Limited (in short "TANGEDCO"), has contested the appeal. None of the other respondents has chosen to appear and contest the appeal.

11. We have heard learned counsel for the appellant as well as learned counsel for respondent No.13. We have also perused the impugned tariff order, review order dated 18.04.2017 as well as the written submissions submitted by the learned counsels.

12. We shall take these issues one by one for adjudication.

Issue No.1: -

Non-consideration of notional IDC, not even allowing it up to COD and restricting it till SCOD;

13. The appellant had claimed notional Interest During Construction (IDC) for the period from 2003-04 to 2007-08 using the interest rate of 10.75% per

annum which was the rate applicable to the first drawdown of the loan. This notional IDC was also claimed up to the date of scheduled COD.

14. In the impugned order dated 08.02.2016, the CERC has considered the fact that no actual loan was in place either for the power station or for the appellant before 26.06.2008, and hence, no weighted average rate of interest was available to calculate the notional IDC prior to the actual loan drawdown. Accordingly, it held that no IDC could be allowed for the period before actual drawdown of the loan in terms of Regulation 16(5) of 2009 Tariff Regulations.

15. According to the appellant, the decision of the Commission on this issue is not only arbitrary but also contrary to the regulations notified by the Commission itself as also to the previous decisions of this Tribunal and the principles laid down by the Hon'ble Supreme Court on application of deemed fiction.

16. It is argued that the term "notional IDC" itself denotes that there is a deeming fiction and even if there is no actual loan, notional IDC is to be allowed when the project proponent invests some money during the construction of the

project. In this regard, reference is made to Regulations 7 and 16(5) of the 2009 Tariff Regulations.

17. It is argued that the power project was executed on a fast-track basis and accordingly, initial deployment of funds was entirely from the shareholders fund and the first drawal of actual loan was only on 26.06.2008 in the first quarter of 2008-09. It is submitted that the excess equity, namely more than 30%, from time to time, is therefore, to be treated as notional loan and notional IDC is also to be allowed on the same. It is further submitted that the appellant's claim of notional IDC @ 10.75% per annum up to first drawl of loan from Rural Electrification Corporation (REC) was exactly as per the Regulations 7 and 16(5). On this aspect, reliance is placed upon judgment dated 03.10.2019 of this Tribunal in appeal No.231 of 2017 in case of Power links Transmission Limited v. CERC and Ors., and judgment dated 10.12.2008 in appeal No.151 & 152 of 2008 in case of NTPC Limited v. CERC and Ors. It is argued that if the notional IDC is not given on the excess equity deployed, the whole objective of allowing IDC on excess equity contemplated against Regulation 7 is rendered reductant.

18. Appellant's counsel further submitted that the impugned order suffers from another error also in so far as IDC has been granted by the Commission only till Scheduled Commercial Operation Date and not up to the actual Commercial Operation Date. It is pointed out that even when the period of time overrun has been condoned, the appellant has been denied notional IDC till actual COD, for which there appears to be no reason or rationale.

19. Per contra, it is argued by the learned counsel for the 13th respondent that the decision of the Commission on the issue under consideration is in line with the 2009 Tariff Regulations particularly Regulation 16(5) which specifies that interest can be calculated only on the actual loans drawn and not on notional loan amounts. It is argued that prior to 26.06.2008, when the actual loan was drawn for the first time by the appellant, no actual loan was available and therefore, regulatory framework did not permit the application of claimed interest rate for the earlier period. It is submitted that appellant's claim for IDC prior to the actual loan drawdown is inconsistent with the 2009 Tariff Regulations, and therefore, has been rightly rejected by the Commission.

Our Analysis :

20. Regulation 7 and 16(5) of the Tariff Regulations, 2009 are material for deciding this issue and are quoted herein below :-

> ***"7. Capital Cost.*** *(1) Capital cost for a project shall include:*
>
> *(a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed,* ***by treating the excess equity as normative loan,*** *or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project........"*
>
> *……………………..*
>
> *16.* ***Interest on loan capital.*** *(1) The loans arrived at in the manner indicated in regulation 12 shall be considered as gross normative loan for calculation of interest on loan.*
>
> *(2) The normative loan outstanding as on 1.4.2009 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2009 from the gross normative loan.*
>
> *(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:*
>
> *(4) Notwithstanding any moratorium period availed by the generating company or the transmission 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,.*

(5) <u>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 project:</u>

<u>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:</u>

<u>Provided further that if the generating station or the transmission system, 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 as a whole shall be considered.</u>

(6) The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.

(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations,1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiary or the transmission customers shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan."

21. As per Tariff Regulation 7, in order to determine the capital cost of a power project, the loan taken by the Generator and the equity infused by it for raising the funds for construction shall have to be taken in the ratio of 70:30. Further, in case the actual equity deployed by the generator is in excess of 30% of the funds deployed, and the excess equity shall have to be treated as normative loan and in case the actual equity is less than 30% of the funds deployed, the actual loan amount shall be taken into consideration.

22. Regulation 16 is with regard to the interest on loan capital. Clause (5) provides that the rate of interest shall have the weighted average rate of interest to be calculated on the basis of actual loan portfolio at the beginning of each year applicable to the project. First proviso attached to this Clause states 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. The 2nd proviso attached to this clause states that if the generating station or the transmission system, 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 as a whole shall be considered.

23. In the instant case, admittedly, the Appellant had not taken any loan before 26th June, 2008. According to the Appellant, initial deployment of funds till 26th June, 2008 was entirely from shareholder's fund. The Commission has disallowed the notional IDC for the period 2003-4 to 2007-08 on the consideration that there was no actual loan for the generating station or the Appellant Company before 26th June, 2008 and accordingly no weighted average rate of interest was available to work out the notional IDC before the actual drawl of loan.

24. We are unable to countenance these findings arrived at by the Commission on this issue. It would not only unjust but also contrary to the Regulations to deny notional IDC to the Appellant for the period 2003-04 to 2007-08 merely on the ground that it has not taken any actual loan before 26th June, 2008. Admittedly, the Appellant had deployed funds from its own resources i.e. shareholders fund for construction of the project till 26th June, 2008. It was the commercial decision of the Appellant Company not to borrow money from the market for the purposes of incurring expenditure on the construction of the project and instead it used funds from its own resources.

We cannot lose sight of the fact that every type of funding, even if it is from own resources or in internal approvals, comes with a cost and, therefore, IDC cannot be denied on such funding. Further, there is nothing in Regulation 16(5) of the Tariff Regulation, 2009 to suggest that notional IDC cannot be allowed in the absence of actual loan of the generating station. In fact, two provisos attached to the said Regulation make out a clear case for allowing notional IDC even if there is no actual loan for the generating station for a particular period. Our views in this regard are fortified by the previous judgement of this Tribunal in the case of Powerlink's Transmission Ltd. (supra), the relevant paragraph of which is extracted herein below :-

> *"(ix) The Central Commission should have taken into consideration the aspect that whatever be the types of funds it is never free of cost.* ***There is always a cost of funding. The argument that no actual loan for additional capital expenditure was taken and therefore it is not admissible for any normative IDC is wrong. It is the commercial decision of the Appellant whether to borrow the money from the market for the purpose of additional capitalisation or use its internal accruals. In either case, the capitalisation deserves to be given the Interest During Construction.*** *For the simple reasons that if the internal accruals were not to be used as additional capital than it would have been invested in the market in any interest earning instrument. Additional capitalisation is therefore entitled to be compensated in*

terms of normative IDC. The Central Commission should have considered this aspect that no funds are free funds."

25. Hence, we are of the opinion that since no weighted average rate of interest was available in this case to work out the notional IDC, the Commission ought to have decided rate of interest based on some other criteria for calculation of notional IDC instead rejecting the Appellant's claim in this regard.

26. We are also in agreement with the submissions made on behalf of the Appellant that when the Commission condoned some part of delay in achieving commercial operation date by the Appellant and shifted the SCOD to a further date, the IDC ought to have been allowed up to the re-scheduled commercial operation date and should not have been restricted to the commercial operation date originally scheduled as per the LOA.

27. Accordingly, we set aside the findings of the Commission on this issue and remand the same back to the Commission for calculation of notional IDC afresh to be allowed to the Appellant for the period 2003-04 to 2007-08 in accordance to what we have observed herein above.

Issue No. 2

Non-consideration of share application money as part of equity for the purposes of determining the return on equity (RoE);

28. The Commission, in the impugned order, has rejected the Appellant's contention to treat share application money as part of equity for the purposes to determine RoE on the ground that since the amount had not been converted into equity before its utilization and has been pending for allotment of shares and could be refunded to the share applicants if shares are not allotted, it would not be prudent to consider this amount as equity for purposes of calculating RoE. At the same time, the Commission has granted liberty to the Appellant to approach it again with all the details in this regard along with supporting documents at the time of revision of tariff based on truing up exercises in terms of Regulation 6(1) of 2009 tariff Regulations.

29. Learned Counsel for the Appellant submitted that the Commission has proceeded on erroneous assumption that share application money had not been converted into equity without raising any such query during the proceedings before it and without giving the Appellant an opportunity to

produce record in this regard. She submitted that the whole amount of share application money was converted into equity by issuing all shares to the share applicants, which fact is supported by the Minutes of Board meeting of the Appellant Company dated 14th December, 2012 and 24th March, 2014.

30. In this regard, we may note that share application money in itself cannot be classified as share capital for the reason that there is an obligation to return the money to the share applicant if the shares are not allotted in exchange for the share applicant's money received from him/her. It, therefore, follows that unless and until the shares are actually allotted, the amount received as share application money does not become part of share capital as the company is duty bound to return the money to the share applicant if shares are not allotted. On this aspect, we concur with the observations of the Income -Tax Appellate Tribunal, Pune Bench in S. R. Thorat Milk Products Pvt. Ltd. Vs. The Asstt. Commissioner of Income Tax, the relevant paragraph of which is extracted herein below:-

> *"10. In the light of the decision of the Co-ordinate Bench of ITAT, we find considerable merits in the argument of the assessee. We also find*

substance in the various contentions raised on behalf of the assessee. We are of the view that the share application money per se cannot be characterized and equated with share capital. The obligation to return the money is always implicit in the event of non-allotment of shares in lieu of the share application money received. Allotment of share are subject to certain regulations and restrictions as provided under the Companies Act. Therefore, receipt by way of share application money is not receipt held towards share capital before its conversion. Therefore, payment of interest of share application money cannot be treated differently in the Income-tax Act. Once the contention of the assessee that the money has been utilized for the purpose of business remains un-converted, there is no justification to hold the issue against the assessee. Accordingly, the claim of interest expenditure on share application money as revenue expenditure deserves to be allowed. The Assessing Officer is thus directed to delete the addition on merits. In the result, the assessee succeeds on this issue."

31. In view of the said legal position, we are unable to find any error in the findings of the Commission on this issue. However, as we have already noted herein above that the Commission has granted liberty to the Appellant to approach it again with all details along with the supporting documents at the time of truing up exercises. Therefore, in view of the submissions made on

behalf of the Appellant that the whole amount of share application money has been converted into equity by allotment of shares to the share applicants, we direct the parties to approach the Commission again with the relevant documents upon consideration of which the Commission shall decide the issue afresh.

Issue No. 3

Disallowance of Rs.23.58 crores from the actual expenditure in respect of the civil packages on account of delay / time overrun;

32. The Commission has disallowed an amount of Rs.23.58 crores to the Appellant from the actual expenditure claimed by it in respect of Civil packages on account of delay/time over-run of 5.63 months for Unit-I and 6.5 months for Unit-II. The reasoning given by the Commission in doing so is contained in paragraph No. 38 of the impugned tariff order which is extracted herein below:-

> *"38. As per the information furnished by petitioner vide its affidavits dated 20.6.2014 and 12.11.2014, there is cost overrun due to time overrun. On account of the delay in the declaration of commercial operation of the units, the Overhead expenses in Establishments under IEDC, such as salary, transportation, Office*

expenditure etc. have increased. This requires a pro-rata disallowance of overhead expenses for the period of 5.63 months as on COD of Unit-1 and 6.5 months as on COD of Unit-II. The petitioner vide affidavit dated 12.11.2014 has submitted that there has not been any increase in prices in contract packages due to time overrun from scheduled COD to actual COD. It has also submitted that there is increase in works cost (contract price) from original estimate to actual award since estimate was done in November, 2007 and major packages could be awarded only after investment approval of Phase-II and due to this package cost has increased by the time they were actually awarded. However, the petitioner has stated that there has not been any increase in contract price from awarded value due to time overrun from scheduled COD to actual COD as of now (Form 5D).

33. It is thus evident that the claim of the Appellant for actual expenditure on the civil packages has been rejected by the Commission on the basis of the affidavits dated 20th June, 2014 and 12th November, 2014 submitted by the Appellant itself in which the Appellant had stated that there was no increase in prices of contract packages due to time over-run from the scheduled COD to the actual COD.

34. It is contended on behalf of the Appellant that increase in prices occurred as the initial estimate for the project was prepared in November, 2007 and the prices calculated at that time did not account for the inflation as well as subsequent changes in the market conditions and other factors that would

contribute to increase in costs by the time the work was actually completed. It is further contended that the actual expenditure for the contract packages up to the actual COD also included the value of material issued by the Appellant itself such as reinforcement, steel, cement and other construction material which were part of the project but not initially accounted for in the original estimate. It is submitted that these materials were provided at no cost to the contractors but had a value that should be considered in the overall financial picture of the project and inclusion of these materials further contributes to the higher actual expenditure as compared to the initial estimate.

35. On behalf of Respondent No. 13 – TANGEDCO, it has been pointed out that these arguments were introduced by the Appellant for the first time during the proceedings of the Review Petition and the same being a totally new argument which had not been advanced during the proceedings of the tariff petition, have been rightly rejected by the Commission.

36. It is the case of the Appellant itself that the auditors certificate certifying that the actual expenditure incurred by the Appellant as on COD was inclusive of free issued materials, was filed along with Review Petition.

37. In these circumstances, we find that the impugned order dated 8th February, 2016 passed by the Commission is based on the information available on record of the Commission and, therefore, no infirmity can be found on the same. However, at the same time, we note that the Appellant is in possession of certain documents which may justify its claim for actual expenditure on the civil packages, which documents had remained to be filed during the proceedings of the original petition before the Commission. On behalf of Respondent No. 13 also, it is stated in the Written Submissions filed before this Tribunal that in the event this Tribunal considers remand of this issue to the Commission for fresh consideration in the wake of facts/documents sought to be presented by the Appellant during the proceedings of the Review Petition, the Respondent ought not to be saddled with the burden of interest such period of 7 years. Considering over all facts and circumstances as discussed herein above and taking note of the statement made by the Respondent No. 13 in the written submissions, we think it in the interest of justice to remand the issue back to the Commission for fresh consideration in the light of fresh facts/documents to be submitted by the Appellant. We,

accordingly, direct so. In view of the delay on the part of the Appellant in furnishing the requisite facts/documents to the Commission to support its contentions on this issue, we further direct that in case the Commission, upon reconsideration, allows the claim of the Appellant on this issue, no interest shall be payable by the Respondents on the said amount for the period of delay.

Issue No. 4

Pro-rata reduction of overhead expenses

38. According to the Appellant, the Commission has not considered the Incidental Expenses During Construction (IEDC) of Rs.131.53 crores, as on COD of Unit I (28th November, 2012) and Rs.244.72 crores as on COD of Unit-II (24th August, 2013) as stated by the Appellant in its affidavit dated 20th June, 2014. Instead, the Commission has considered IEDC of Rs.92.8682 crores for Unit-I and Rs.255.18 crores for Unit-II. This, according to the Appellant, is based on incorrect method of computation.

39. It is submitted by Learned Counsel for the Appellant that the Commission has accounted for the pro-rata reduction of overhead expenses for Unit-I twice namely, once independently and again along with Unit II. It is submitted that

while computing the pro-rata reduction in overhead expenses, the Commission ought to have considered the IEDC for Unit-I and Unit-II separately by subtracting the IEDC of Unit I from the accumulative figure of IEDC up to COD of Unit-II.

40. On behalf of Respondent No. 13, it is argued that various discrepancies were found by the Commission in the amounts reflected in form 4 and form 9(A) submitted by the Appellant and, therefore, the Commission, in its record of proceedings dated 13th October, 2014 directed the Appellant to provide a detailed breakdown of the increase in IEDC but the Appellant, in its affidavit dated 12th November, 2014, submitted only the consolidated IEDC value of Rs.255.18 crores as of 24th August, 2013 without providing the break-down for Unit-I and Unit-II as sought by the Commission. In support of her submissions, Learned Counsel for the Respondent referred to below quoted portion of the order dated 18th April, 2017 of the Commission vide which Review Petition of the Appellant was dismissed :-

> *7...... I. Accordingly, as per submission of the petitioner in Form 5B, the total IEDC as on COD of unit-II (25.8.2013) works out to '244.72 crore. It is further noticed*

that the petitioner in Form 9A had submitted the amount of IEDC as '92.87 crore as on COD of Unit-1 and ‘165.5136 crore as on COD of unit-II which works out to ‘258.38 crore as on COD of unit-II. Thus there is a difference in the value of IEDC considered by the petitioner in Form 5B and Form 9A of the petition. The petitioner was directed to furnish the detailed break- up of increase in IEDC and the petitioner vide affidavit dated 12.11.2014 had submitted the consolidated value of IEDC as ‘255.18 crore as on 24.8.2013 but had not furnished the break-up of IEDC in unit-I and II...... Having considered the submissions of the petitioner in affidavit dated 12.11.2014, while passing the order dated 8.2.2016, the petitioner cannot dispute the said amount of ‘255.18 crore. The submission of the petitioner that the amount indicated in Form 5B should have been considered has no basis since no explanation has been submitted by the petitioner as regards the reasons for the variation in the figures in the forms and affidavits furnished by the petitioner. It is also noticed that petitioner vide affidavit dated 12.11.2014 had not furnished the unit wise bifurcation of IEDC and hence the Commission had considered the IEDC of ‘92.87 crore as per Form 9A of the petition. As the IEDC of ‘92.87 crore as on COD of unit-1 and ‘255.18 crore as on COD of unit-II was considered by the Commission in order dated 8.2.2016 based on the submission of the petitioner, there is no error apparent on the face of the record. Accordingly, there is no reason to review the order on this count. As regards the submission of the petitioner that there is double deduction of pro- rata reduction of IEDC of Unit-1 as on COD of Unit-1 and II, we find no merit as the closing gross block of '6035.65 crore as on COD of Unit-II considered in order dated 8.2.2016 also included IEDC of ‘92.87 crore for unit-I. In this background, we find no error apparent on the face of the record and review on this ground is rejected.

41. It is, therefore, evident that the Appellant was given ample opportunity to provide a detailed breakdown of the IEDC but it failed to do so. In these

circumstances, the determination of pro-rata reduction of overhead expenses done by the Commission on the basis of non-availability of record cannot be faulted with. At the same time, we may also note that the Respondent in its Written Submissions has stated that in the event this Tribunal considers remand of this issue to the Commission for fresh consideration Respondent ought not to be saddled with the burden of interest for the delay of 7 years.

42. Thus, having regard to the overall facts and circumstances of the case discussed herein above, we think it in the interest of justice to provide one opportunity to the Appellant to submit the requisite material to the Commission upon consideration of which the Commission would render its fresh decision on this issue. Accordingly, we direct so. In view of the delay on the part of the Appellant in furnishing the requisite facts/documents to the Commission to support its contentions on this issue, we further direct that in case the Commission, upon reconsideration, allows the claim of the Appellant on this issue, no interest shall be payable by the Respondents on the said amount for the period of delay.

Issue No. 5

Suo-moto correction issued by the Commission in the review order dated 18.04.2017.

43. This issue relates to the suo-moto correction issued by the Commission in the order dated 18th April, 2017 dismissing the Appellant's Review Petition. Para Numbers 38, 39 & 40 of the order dated 18th April, 2019 are material in this regard and thus extracted herein below :-

Suo moto Correction

"38. It has been noticed that there has been gap of funding of actual cash expenditure as per Form 14-A.

		As on COD of Unit-I	***As on COD of Unit-II***
A	*Capital expenditure (Form 14-A)*	*697090.00*	*785116.00*
B	*Equity (Share capital)*	*189800.00*	*228721.22*
C	*Debt (Actual)*	*482233.00*	*544343.00*
D	*Share application money*	*19921.22*	*13500.00*
E	*Gap in Funding (A-B-C-D)*	*5135.78*	*(-)1448.22*

39. Accordingly, debt equity ratio has been revised as under :

		As on COD of Unit-I	***As on COD of Unit-II***
A	*Capital expenditure (Form 14-A)*	*697090.00*	*785116.00*
B	*Equity (share capital)*	*189800.00*	*228721.22*
C	*Debt : Debt (Actual) + share application money*	*502154.22*	*557843.00*
	Total	***691954.22***	***786564.22***
	Debt in percentage	*72.57%*	*70.92%*
	Equity in percentage	*27.43%*	*29.08%*

40. The gap in the funding for Unit-I of the generating station given in the above table has not been explained by the petitioner. Accordingly the said gap in for Unit-I has been considered as un-discharged liability and has been deducted from the capital cost allowed for the purpose of tariff on the respective COD. As per balance sheet, an amount of Rs.267.66 lakh for Unit-I and Rs.5651.04 lakh for Unit-II has been shown under Reserve and Surplus as negative entries. For the purpose of calculation of debt equity ratio, the negative entries as above have not been considered while determining the equity capital as on COD of Units-I and II. In addition to this, certain linkage errors in Annexure-I of the order dated 8.2.2016 pertaining to calculation of

weighted average rate of interest on actual loan has been rectified and the same is annexed to this order."

44. It is the contention of the Appellant that these corrections are prejudicial to the interests of the Appellant and have been issued without hearing the Appellant on these aspects.

45. On behalf of Respondent No. 13, it is argued that the Commission had observed certain arithmetical errors as well as linkage errors in the order dated 8th February, 2016 and has accordingly, rectified the same by issuing suo-moto correction in the order dated 18th April, 2017.

46. We note that while deciding the Review Petition of the Appellant vide order dated 18th April, 2017 it was not open to the Commission to rectify the arithmetical/linkage errors discovered in the order dated 8th February, 2016 and that too without hearing the Appellant. Undoubtedly, the Commission is empowered to correct any arithmetical/clerical error occurring in any of its orders but the same has to be done after putting both the parties involved in the proceedings to notice and upon hearing them. Such corrections cannot be made without hearing the parties.

47. Therefore, we set aside the suo-moto corrections made by the Commission in the order dated 8th February, 2016 while deciding the Review Petition of the Appellant. We may add that the Commission is free and within its right to correct any arithmetical /clerical error in the said order but after following the proper procedure as noted by us herein above.

48. The Appeal stands disposed of in above terms.

Pronounced in open court on this the 28th day of February, 2025

(Virender Bhat) Judicial Member	(Sandesh Kumar Sharma) Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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