

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APL No. 459 OF 2024 & IA No. 1647 OF 2024

Dated: 21st April, 2025

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Smt. Seema Gupta, Technical Member (Electricity)**

In the matter of:

**THE TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION
LIMITED (TANGEDCO)**

*Rep. by its Chairman cum Managing Director,
N.P.K.R.R Maaligai,
No.144, Anna Salai,
Chennai 600002.*

... Appellant(s)

VERSUS

1. TAMIL NADU ELECTRICITY REGULATORY COMMISSION

*Represented by its Secretary,
4th Floor, SIDCO Corporate Office Building,
Thiru Vi Ka Industrial Estate
Guindy, Chennai - 600032*

... Respondent No.1

2. M/S. SEPC POWER PRIVATE LIMITED

*Through its Vice President,
MEIL House, First Floor,
395, Anna Salai, Teynampet,
Chennai – 600018.*

... Respondent No.2

Counsel on record for the Appellant(s) : Anusha Nagarajan for App. 1

Counsel on record for the Respondent(s) : Poonam Verma Sengupta
Gayatri Aryan
Rajesh Jha
Saunak Kumar Rajguru
Priyakshi Bhatnagar
Subham Bhut for Res. 2

JUDGMENT

PER HON'BLE SMT. SEEMA GUPTA, TECHNICAL MEMBER (ELECTRICITY)

1. The present Appeal has been preferred by the Appellant - **Tamil Nadu Generation and Distribution Corporation Limited ("TANGEDCO")** challenging the order dated 13.08.2024 passed by the Respondent No.1- **Tamil Nadu Electricity Regulatory Commission ("TNERC/ State Commission")** in DRP No. 3 of 2024, whereby the State Commission has allowed Respondent No. 2's claim for fixed costs and also directed the Appellant to make payment of such fixed costs along with interest at the rate of 12% per annum up to the date of actual payment.

2. The Appellant, **Tamil Nadu Generation and Distribution Corporation Limited**, is the distribution licensee for the State of Tamil Nadu and is wholly owned by the State Government and is the successor of the erstwhile Tamil Nadu Electricity Board, formed pursuant to its unbundling under a transfer scheme, in terms of Section 131 of the Electricity Act 2003 ("**EA 2003**").

3. Respondent No. 1, The **Tamil Nadu Electricity Regulatory Commission** is a statutory body set up in accordance with the provisions of the EA 2003. Respondent No. 2, **SEPC Power Private Limited ("SEPC")**, is a power generating company and has set up a 525 MW coal-based thermal power plant in the State of Tamil Nadu.

4. The Appellant and the Respondent No. 2 executed a Power Purchase Agreement ("**PPA**") for Tuticorin Thermal Power Project, Stage-IV – 01x525 MW (the "**Project**") and Addendum 1 to the PPA was executed on 30.10.1998. Though the PPA was signed in 1998 but the project remained on paper for 12 years. It was only on 18.08.2009, after the Appellant

expressed the need for power from the Project to meet the power requirement of the State, the Respondent No. 2 filed a Petition being M.P. No. 18 of 2010 before the State Commission, seeking directions for implementation of the Project. Pursuant to the directions of the Commission dated 09.05.2011, on 10.01.2012, the parties signed Addendum 2 to the PPA to incorporate norms in line with the TNERC (Terms and Conditions for determination of Tariff) Regulations 2005.

5. In the P.P.A.P. No. 5 of 2012 filed by Respondent No.2 seeking approval of Addendum 2 to the PPA, the State Commission vide its order dated 30.04.2015 approved the capital cost of INR 3514 Crores for the Project subject to condition that the Respondent No. 2 shall achieve financial closure within 3 months from the date of the order and that COD shall be achieved within a period of 39 months from such financial closure; The Respondent No. 2 achieved financial closure on 30.10.2015 and filed Petition M.P. No. 27 of 2016 seeking approval of the financial closure achieved on 30.10.2015. Thereafter, on 06.03.2018, the Respondent No.2 submitted the Coal Supply and Transportation Agreement ("**CSTA**") executed on 09.02.2018 with Jera Global Markets Ltd. ("**JERA**") and the Coal Handling Agreement ("**CHA**") executed on 26.02.2018 with Seaport Logistics Pvt. Ltd. for the Appellant's approval. The Appellant proposed that Variable Fixed Charge ("**VFC**") shall be subject to ceiling mechanism based on domestic coal price and the Respondent No 2, by way of Affidavit filed before the State Commission offered a fixed discount for a period of three years, which were subject to review after three years.

7. On 10.01.2020, the State Commission passed an order in M.P. No. 27 of 2016, approving the revised financial closure date of 30.10.2015, the CHA and the CSTA, and directed that the revised Scheduled COD will be 6 months from the date of availing start-up power. The State Commission

further issued directions to amend the CSTA, CHA and PPA as per the order and submit for its approval. In line with the directions issued in the State Commission Order, the Addendum 3 to the PPA was signed, in which ceiling mechanism was incorporated; the ceiling VFC was determined based on the annual merit order cut off, and where no such cut-off is determined or published, then on the basis of domestic coal price from Talcher mines subject to review at the end of three years of operation and a fixed discount of INR 0.225 per unit on the variable cost was applicable for the first three years. As per Addendum 3, the Respondent No. 2 committed to achieve COD within six months from the date of start-up power of 09.10.2020. Subsequently, the relevant portion of the CSTA was amended by way of Amendment Agreement No. 9 on 27.04.2021 between Respondent No 2 and JERA, according to which, the price of coal was to be selected on the basis of the cheapest of the lowest price among the approved coal indices of API3, API5, ICI2 and average of API3, API5, ICI2 and ICI3.

8. The State Commission vide its order dated 09.11.2021, approved the Addendum 3 to the PPA in the petition M.P. No. 26 of 2021 filed by Respondent No 2 and directed Respondent No. 2 to bring its plant into operation without further delay considering the power situation in Tamil Nadu.

9. The Respondent No. 2 achieved COD on 30.11.2021, however it tripped the generator after 72 hours trial run test since the Consent to Operate (“**CTO**”) issued by the Tamil Nadu Pollution Control Board (“**TNPCB**”) for the Respondent No. 2’s plant expired on the same day as the COD. The Respondent No. 2 received the CTO from TNPCB on 30.03.2022.

10. In the meantime, on 02.02.2022, the Respondent No. 2 filed a Petition in M.P. No. 3 of 2022 before the State Commission seeking permission to terminate the CSTA with JERA, and for permission to execute a fuel supply agreement with domestic coal supplier and consequently for removal of the ceiling price mechanism, and for amendment of the PPA to incorporate such changes.

11. The Appellant vide its letter dated 29.04.2022 informed Respondent No. 2 that the Appellant would allow for pass through of coal price for power to be supplied by the Respondent No. 2 for a period of one month, which may be extended up to December 2022, as one time measure by deviating from the provisions of PPA. After resolution of power crisis, power will be procured as per the provisions of PPA. Respondent No. 2 commenced supply of power by purchasing coal through stock on sales basis and e-auction tender.

12. On 05.05.2022, the MoP issued directions under Section 11 of the EA 2003 that all imported coal based generators to generate power to their full capacity and rates at which power shall be supplied to PPA holders, shall be worked out by a Committee formed by MOP and had given an option to the PPA holders, such as the Appellant, to purchase at benchmark rate so worked out by Committee or any price negotiated with the generator, and if it is not feasible, then the contracted quantum shall be sold in the power exchanges. The Section 11 Directions were in place upto 31.12.2022. On 07.05.2022, the Appellant asked the Respondent No. 2 to supply power as per the MoP directions. MoP, GoI on 28.06.2022 issued another clarification to its directions dated 05.05.2022 prescribing the procedure to be followed by Discoms, stating that in case they did not wish to requisition power under the directions, then the Discoms were required to give a minimum of three-days' notice to the generator, and in the event of non-

requisitioning of power by PPA holder, Generator may generate and sell power to any other distribution licensee at the benchmark rates determined by the Ministry of Power plus the fixed charges.

13. The Appellant vide its letter dated 23.11.2022, informed the Respondent – SEPC that it will no longer procure power on pass through basis as per Section 11 Directions of MoP from 01.12.2022 and power shall be procured only as per the Provisions of PPA/Addendum from 01.12.2022; to which, Respondent SEPC vide letter dated on 29.11.2022, informed that it had already made arrangements for coal based on its assurance to procure power upto 31.12.2022, Section 11 Directions have been extended upto 31.12.2022 and the withdrawal of consent by the Appellant to procure power on pass through basis has resulted in an idle stock worth Rs 117 crores and requested for off take of power on Pass through basis till end of December 2022. The Appellant vide its letter dated 01.12.2022 reiterated its stand that SEPC shall supply power as per the provisions of the PPA and sought confirmation to this extent, and from 01.12.2022, power from SEPC was not scheduled. Respondent-SEPC vide its letter dated 17.12.2022 informed the Appellant that JERA, had issued a notice of termination of CSTA on 07.10.2022, and that the said agreements stood terminated on 21.11.2022. The Appellant vide its letter dated 30.12.2022 informed the Respondent No. 2 that any modification/ change in the agreements regarding procurement of coal could only be as per the directions/ approval of the State Commission and it was mandatory on the part of the Respondent No. 2 to maintain a valid agreement for fuel supply till the expiry of the term of PPA, in order to declare plant availability and raise invoices.

14. MoP, Gol vide its letter dated 20.02.2023, issued fresh Section 11 directions, similar to that of 05.05.2022 valid from 16.03.2023 to

15.06.2023, to all imported coal-based plants to supply power to PPA holders on requisition basis, either at the benchmark rates to be notified by the MoP or mutually negotiated rates, if it is not feasible, then the generator can sell the power on the exchanges.

15. On 31.08.2023, the State Commission passed the final order in M.P. No. 3 of 2022, by holding that after analysing facts and law, the VFC under Addendum # 3 having ceiling and discount was unviable considering the rise in imported coal prices. Aggrieved by the order passed in M.P. No. 3 of 2022, the Appellant has preferred an Appeal No. 910 of 2023 before this Tribunal and the said Appeal is pending adjudication before this Tribunal. Further, another order was passed by State Commission on 01.08.2024 in DRP 17 of 2023 filed by Respondent - SEPC, and allowed additional compensation over and above the benchmark ECR notified by the MoP, for the power supplied by the Respondent SEPC, which has been challenged by the Appellant before this Tribunal, being Appeal DFR No. 423 of 2024, which is pending adjudication.

16. On 05.01.2024, the Respondent – SEPC filed a Petition bearing DRP No. 3 of 2024 praying for declaration with respect to its entitlement to fixed costs for the periods of non-supply from: (i) 01.12.2021 to 27.03.2022; (ii) 28.03.2022 to 29.04.2022; and (iii) 01.12.2022 to 31.03.2023.

17. The State commission vide its order dated 13.08.2024 (**“Impugned Order”**) in DRP No. 3 of 2024, held that the Respondent No. 2 is entitled to receive fixed costs for the period from 01.12.2022 to 31.03.2023 from the Appellant, while rejecting the claim for fixed costs for the other periods. Aggrieved thereby, the Appellant has filed the present Appeal.

Appellant submissions

18. Mr P. Wilson, learned Senior Counsel for the Appellant, submitted that though for the periods from 01.12.2022 to 31.12.2022 & 16.03.2023 to 31.03.2023, Section 11 directions by MOP were in force, the Appellant through notice dated 23.11.2022 informed Respondent No.2 that it would no longer requisition power under the MoP directions and would pay tariff as per the PPA. In terms of Para 4(h) of the Section 11 direction dated 05.05.2022, of MoP, GoI read with Para 3(a) of the its clarification dated 28.06.2022, Discom's decision not to purchase power at MoP rates but at PPA or other rates, is substantively a notice of non-requisitioning of power. This is further reinforced by the Appellant's subsequent letter dated 01.12.2022, wherein Appellant explicitly stated that it had withdrawn the pass-through provisions under Section 11 Direction and intimated the same in advance, as directed in MoP letter dated 28.06.2022.

19. Referring to the contention of the Respondent No.2 that TANGEDCO/Appellant's letter dated 23.11.2022 does not constitute a notice for non-requisitioning of power under MoP directions, learned Senior Counsel submitted that, it has been contended for the first time before this Tribunal during oral submissions and Respondent-SEPC is contradicting its prior position, as SEPC in the letter dated 29.11.2022 acknowledged that the Appellant- TANGEDCO had withdrawn its approval to supply power on pass through basis in terms of MOP directive dated 05.05.2022 vide its letter dated 23.11.2022. Respondent –SEPC in its Petition before TNERC has also stated that the Appellant had withdrawn the Section 11 directions vide its letter dated 23.11.2022. The Appellant, in its reply before State Commission has explicitly asserted that it had issued advance notice in terms of MoP directions withdrawing its consent to procure power under Section 11 directions and Respondent – SEPC did not raise any argument

that the said notice dated 23.11.2022 was not a notice in terms of the MoP notification before TNERC and Respondent - SEPC never insisted that the Appellant has to procure power at Section 11 rates and sought pass-through rates, indicating its acceptance that TANGEDCO had withdrawn the requisition. Learned senior counsel further submitted that, Appellant, having withdrawn requisition under Section 11, is under no obligation to pay fixed cost for the period in question especially since Respondent – SEPC has failed to show that it had attempted to sell power to third party.

20. As regards the contention of Respondent- SEPC that the Appellant's refusal to issue an NOC for IEX membership, as sought by letters dated 11.05.2022 and 28.12.2022, prevented it from selling power to third parties, learned senior counsel for the Appellant submitted that it is misconceived and as such this contention was never pleaded before TNERC.

21. Learned senior counsel for the Appellant submitted that Respondent - SEPC relied on Regulation 16 of the TNERC Intra-State Open Access Regulations, which clearly provides that where a consumer seeks open access to the inter-State transmission system, then depending upon whether that consumer is connected to the transmission system or the distribution system, the consent of the transmission licensee or distribution licensee would be required. As Respondent – SEPC is neither a consumer nor connected to Appellant's distribution system, its reliance on this provision is untenable.

22. Learned senior counsel for the Appellant submitted that Respondent – SEPC reliance on Article 5.2 of PPA that without the concurrence of the Appellant, it is not entitled to sell power to third parties is misplaced as during the time when Section 11 directions were in force, Respondent – SEPC was entitled to sell power to third parties and as such Respondent – SEPC has only sought permission to become a member of IEX on two

occasions i.e. on 11.05.2022 and 28.12.2022, during which period, since the Appellant was procuring the entire power generated by Respondent – SEPC, there was no occasion to grant permission to the Appellant to sell power to third party.

23. Learned senior counsel pointed out that the Respondent – SEPC expressly declared availability for the relevant period on a conditional basis of pass through tariff, admitting that it was unable to operate the Project as per the PPA due to increase in prices and factors beyond its control, by letter dated 13.01.2023, it called upon the Appellant to off-take power at pass-through rates. In its petition before the TNERC, Respondent-SPEC reiterated that it did not supply power during the afore-stated period. Learned senior counsel for the Appellant submitted that SEPC sought a declaration before TNERC for entitlement to fixed costs for the periods it did not supply power, however, Respondent – SEPC having declared the availability conditional upon pass-through pricing, and when it was not ready and willing to supply power as per the PPA, it is not entitled for the said relief. Referring to “**Cauvery Coffee Traders v. Hornor**”, (2011) 10 SCC 420, learned senior counsel submitted that Respondent – SEPC having repudiated the PPA tariff fixed as per Addendum III by asking for pass through rates, cannot be permitted to rely on other provisions of the PPA.

24. Learned senior counsel submitted that the Reliance placed by the Respondent-SPEC on the decision in “**MSEDCL v. Ratnagiri Gas and Power Pvt. Ltd. &Ors.**,” (2024) 1 SCC 333 is misplaced, since in the said case, the Discom was refusing to schedule power, as the declared capacity was based on use of RLNG and was not paying fixed charges for such declared capacity; and the Court held that RLNG was a primary fuel under the PPA and that the consent of discom was not required for supply based on RLNG; while in present case, SPEC made its declaration of capacity

conditional upon an extra-contractual term by insisting on pass-through rates.

25. The contention of Respondent - SEPC that the Appellant had consented to the removal of the ceiling price is wholly misconceived since the Appellant's consent to the termination of SEPC's CSTA with JERA was conditional that no financial implications will be put on the Appellant, as also recorded in the order dated 09.03.2022 passed in MP No. 3 of 2022.

26. Learned senior counsel for the Appellant asserted that the State Commission's finding that SEPC declaration constitute "deemed generation" under the PPA, and the same could not be generated due to reasons beyond the generator's control, is erroneous. SEPC's insistence on supply of power only at pass-through rates due to an increase in the price of imported coal does not either said to be beyond its control or constitute a force majeure event, as expressly held by the Supreme Court in "***Energy Watchdog v. CERC***," (2017) 4 SCC 80. Consequently, no deemed generation occurred between 01.12.2022 and 31.03.2023 and as per Clause 7.3(a)(ii) of the PPA, the Appellant is under obligation to purchase electricity energy or pay fixed charges for deemed generation, since Respondent-SEPC neither supplied power nor established deemed generation, the Appellant cannot be held liable for the payment of any fixed charges.

27. The State Commission reliance on its order dated 31.08.2023 in MP No. 3 of 2022 to hold that the PPA tariff is unviable is misplaced, as the period in dispute in the present case pertains to 01.12.2022 to 31.03.2023, predating the said order and State Commission cannot, through the Impugned Order, accord retrospective effect to the order dated 31.08.2023.

Respondent – SEPC submissions

28. Mr Sanjay Sen, learned senior counsel representing the Respondent - SEPC submitted that the SEPC had Declared capacity (DC) before the State Load Despatch Centre and was ready to generate power for the Appellant from 01.12.2022, however the Appellant did not schedule the power, and also did not dispute the Declared Capacity of Respondent – SEPC in the State Energy accounts. SEPC operates under a two-part tariff structure, i.e. Fixed Capacity Charge (FCC) and Energy Charges; FCC is based on expenses incurred to keep the plant ready for generation of power and FCC is dependent upon availability of Plant. As such fuel availability is necessary for declaring plant availability, and SEPC had procured fuel from the spot market, rendering the source of coal irrelevant. There is no dispute on fuel availability during the period for which FCC is claimed and this fuel was later utilized for supplying power to the Appellant after 31.03.2023, which the Appellant accepted.

29. Learned senior counsel submitted that no provisions in the PPA or the applicable Tariff Regulations make FCC dependent on actual drawal or the price of VFC, the FCC is independent of fuel prices. The Supreme Court, in “**CPDCL v. CERC**”, (2007) 8 SCC 197, held that only prior to the ‘availability based tariff’ regime, the FCC was paid based on withdrawal of power.

30. Learned senior counsel, placing reliance on the Judgement “**MSEDCL v. Ratnagiri Gas and Power Pvt. Ltd. & Ors.**”, (2024) 1 SCC 333, submitted that the Supreme Court, upon interpreting the provisions of the respective PPAs, held that Ratnagiri was entitled to Fixed Capacity Charges (FCC). Besides the issue of type of fuel used, the Court also considered whether the commercial terms of usage of RLNG was approved

by MSEDCL or not and held that, despite non-compliance with Article 5.9, which mandated such approval, Ratnagiri is entitled to FCC.

31. Learned senior counsel also submitted that due to non-offtake of power by Appellant, the generation project was kept under Reserve Shut Down (RSD) and plants under RSD are entitled to FCC ("**JPVL v. M.P. Power Management Co. Ltd.**", 2021 SCC OnLine APTEL 51). Learned senior counsel further asserted that Non-offtake during the period for which FCC is sought, is attributable to the Appellant; from 01.01.2023 the Appellant contended that the supply during the said period should have been at the PPA tariff, i.e., the domestic ceiling VFC cap, rather than on a pass-through basis as suggested by Respondent –SEPC, however, the Appellant never previously insisted PPA tariff i.e. on domestic cap on VFC. Therefore, without insisting on PPA tariff in the FCC period, the Appellant cannot approbate and reprobate.

32. Learned senior counsel further contended that although the order dated 31.08.2023 passed in M.P No 3 of 2022 was issued after the FCC period, it constitutes a declaration of fact i.e., the unviability of the domestic ceiling. It is a settled principle that orders of the Commission/Tribunal ordinarily apply from their inception and must be applied for a declaratory order confirming that fact. The Order dated 31.08.2023, which affirms the unviability of the domestic coal ceiling, relates back to the period when Respondent SEPC experienced an unprecedented rise in imported coal prices (**Judgement dated 02.02.2024 in Appeal No 383 of 2022 titled UHBVNL v CERC & ors**).

33. Learned senior counsel submitted that the Impugned Order has granted FCC relief to Respondent No.2, because there is no reason to deviate from the Order dated 31.08.2023, which held the domestic ceiling mechanism under Addendum #3 to be unviable.

34. Learned senior counsel submitted that out of the FCC period of 4 months for the period from 01.12.2022 till 31.12.2022 and 16.03.2023 till 31.03.2023, Section 11 Direction of MOP in force. In fact, MOP, in view of exorbitant increase in prices of imported coal and PPAs not having a pass through provision, passed directions that in case PPA holder does not offtake power, generators shall sell the power in the Exchange. The MoP, through its letter dated 13.05.2022, clarified that the payment of FCC shall be as per the PPA. Subsequently, on 28.06.2022, MoP clarified that if a PPA holder does not wish to requisition power, it must inform the ICB in advance and in such cases, the PPA holder shall not be liable to pay FCC for the duration during which the power is sold to another DISCOM and once the intimation for non-requisitioning is given, the PPA holder shall not be entitled to receive power from the ICB plant for that period.

35. The Non-requisition under Section 11 was required to be unconditional; however, the Appellant directed Respondent –SEPC to supply power as per the PPA. The Appellant's alleged withdrawal of requisition does not constitute valid non-requisition. The Respondent – SEPC had no opportunity to sell power in the Power Exchange, as no NOC was issued by the Appellant despite Respondent No.2's requests on 11.05.2022 and 28.12.2022, since in terms of Article 5.2 of the PPA, Respondent –SEPC required the Appellant's consent to sell power to a third party, but the Appellant nowhere contended that no NOC was required for selling the power in the power exchange.

Discussion and Analysis

36. The Respondent – SEPC has sought Fixed Capacity Charges (FCC) from the Appellant for the periods 01.12.2021 to 27.03.2022, 28.03.2022 to 29.04.2022 and 01.12.2022 to 31.03.2023 by way of Petition DRP No 3 of 2024; the State commission vide its Impugned order dated 13.08.2024,

allowed the claim of FCC of Respondent – SEPC for the period 01.12.2022 to 31.03.2023, while rejecting similar claim for the other period. The Appellant – TANGEDCO, aggrieved by such finding had filed the present Appeal.

37. Heard Mr P. Wilson, learned Senior Counsel representing the Appellant, and Mr Sanjay Sen, learned Senior Counsel representing the Respondent - SEPC.

38. The Appellant has submitted that FCC claim for the period under dispute is partly covered, when Section 11 direction by MOP, Govt of India, was in force; for ease of reference, the entire disputed period is divided into three sub-periods as given below:

- 1) 01.12.2022 – 31.12.2022 (Section 11 direction under force)-Sub-Period 1
- 2) 01.01.2023- 15.03.2023(Section 11 direction not under force)-Sub-Period 2
- 3) 16.03.2023 – 31.03.2023 (Section 11 direction under force)- Sub-Period 3

Sub-Period 1 : 01.12.2022 – 31.12.2022

39. We note that the Appellant and the Respondent-SEPC have signed PPA dated 12.02.1998 for procurement of Power from Respondent – SEPC Tuticorin Thermal Power Project (1x550 MW) and subsequently signed few Addendums to the PPA, latest being Addendum #3 dated 25.02.2021 in which VFC was capped mainly on the basis of domestic coal price from Talcher Mines. The Tuticorin Thermal Power Project of SEPC had achieved COD on 30.11.2021, however, due to unprecedented rise in imported coal price and ceiling price mechanism on VFC in the PPA, the Respondent – SEPC did not supply power under the PPA and had approached the State Commission by way of Petition M.P. No. 3 of 2022, filed on 02.02.2022, seeking directions to facilitate execution of fuel supply agreement with domestic coal and for removal of VFC ceiling. The State Commission

disposed of the said petition by order dated 31.08.2023, which was subsequent to the period under dispute in the present matter.

40. In view of the severe power crisis in the State, the Appellant vide its letter dated 29.04.2022 requested Respondent – SEPC to commence supply power on pass through mechanism of VFC as special measure for an initial period of one month, which can be extended up to 31.12.2022 and thereafter the Respondent SEPC commenced supply of power with effect from 30.04.2022.

41. Subsequently, on 05.05.2022, Ministry of Power (“**MoP**”), GOI issued directions under Section 11 of the EA 2003, valid up to 31.10.2022, directing that all imported coal based generation projects shall operate and generate power to their full capacity. The relevant extract of the said order is reproduced herein below :

“4. In the light of the present emergent circumstances, the following directions are issued under Section-11 of the Electricity Act:

a. All imported coal based power plants shall operate and generate power to their full capacity. Where the imported coal based plant is under NCLT, the Resolution Professional shall take steps to make it functional

b. These plants will supply power in the first instance to the PPA holders. Any surplus power left thereafter or any power for which there is no PPA will be sold in the Power Exchanges

-d. Considering the fact that the present PPAs do not provide for the pass through of the present high cost of imported coal, the rates at which the power shall be supplied to PPA holders shall be worked out by a Committee constituted by the Ministry of Power (MOP) with representatives from MoP, CEA and CERC. This Committee shall ensure that bench mark rates of power so worked out meets all the prudent costs of using imported coal for generating power, including the present coal price, shipping costs and O&M costs etc and a fair margin.

f. The PPA holders shall have an option to make payment to the generating company according to the bench mark rate worked out by the Group or at a rate mutually negotiated with the generating company.

g. Payment at the above rates shall be made to the Generating Company on a weekly basis.

h. Where any DISCOM / State is not able to enter into mutually negotiated rates with the generating company and is also not willing to procure power at the bench mark rate worked out by the Committee; or is not able to make weekly payment then such quantity of power shall be sold in the Power Exchanges

i. The net profit, if any, by sale of power which is not sold to the PPA holder and is sold in the Power Exchanges, shall be shared between the generator and PPA holder in the ratio of 50:50 on monthly basis”

42. Ministry of Power, Gol vide its letter dated 28.06.2022, issued clarification to its Section 11 order dated 05.05.2022 stating that PPA holders to intimate the generators in advance regarding non-requisitioning of power and in such cases, the generators shall be free to sell power to any other distribution licensee at benchmark rates. The relevant extract of the said clarification is reproduced below:

“3. It has come to notice that some ICB plants, are neither able to sell power to PPA holders due to non-requisitioning nor able to sell power through the power exchanges owing to low rates. It leads to the capacity lying idle; whereas some of the States having power shortage, desire to tie up with such power as it will ensure availability of firm power for a specified duration against the uncertainty of volume getting cleared in the power exchange. As volume traded in power exchange is very less, it meets only the marginal requirement of the States. In order to ensure that the capacity does not lie idle, and to optimally utilise generation from ICB plants, resulting in improved availability of power in the grid and also saving of corresponding coal from domestic source, it is directed that the following additional mechanism shall be adopted by the ICBs:

a) If the PPA holder does not wish to requisition power from ICB plant for the following week/weeks then it will inform the ICB plant at least three days in advance indicating the period of intended non-requisitioning. The minimum period of requisitioning/non-requisitioning shall be for a minimum of one week.

b) Where a PPA holder does not send a requisition three days in advance for the following week, the ICB may generate and sell power to any other Distribution Licensee at the benchmark rate calculated by the Committee plus the fixed charge.

c) In case of sale of power under above arrangement, the PPA holder shall not be liable to pay fixed charges for the duration of sale of power to any other distribution licensee.

d) Once intimation for not requisitioning power for a specified period as mentioned above, is given, the PPA holder shall not be entitled to get power from the ICB plant for that period.

e) This arrangement shall be effective only for the period of validity of aforesaid order issued under Section 11 of the Act by MoP.

43. It is clear from Section 11 directions issued on dated 05.05.2022 and subsequent clarification dated 28.06.2022, that imported coal based generation projects were directed to operate their plant at full capacity and they shall be compensated for the energy being generated through imported coal as per the rates determined by the Committee, and as such, there was no dispute that such directions were in force till 31.12.2022. The first sub-period under dispute is for payment of fixed capacity charges for the period from 01.12.2022 to 31.12.2022, when the Appellant did not schedule power from Respondent – SEPC’s generation project. The learned Senior Counsel for the Appellant has contended that in terms of the clarification dated 28.06.2022, the Appellant has conveyed their decision for non-requisitioning of power at pass through rates vide their letter dated 23.11.2022 w.e.f 01.12.2022 and therefore the Appellant is not liable to make payment of fixed capacity charges since then, as option was always available with SEPC to sell it to other Discoms/Exchange.

“TANGEDCO vide references cited above have allowed imported coal based plants in Tamil Nadu having long term power purchase agreements to supply power on pass through basis under Section

11 of the Electricity Act 2003 till 31.12.2022 as one time measure deviating the provisions of PPA to mitigate the power crisis.

The power crisis is expected to reduce considerably during December 2022 and the average market power price from Power exchanges has fallen below the bench mark rate of the imported coal plant and hence TANGEDCO has proposed to withdraw the approval given to supply RTC power on pass through basis under Section 11 of the Electricity Act 2003 with effect from 01.12.2022 @00:00 hrs.

In this regard, M/s.SEPC Power Private Limited is hereby informed that the power shall be procured only as per the provisions of Power Purchase Agreement/Addendum from 01.12.2022 onwards.

Hence, M/s. SEPC Power Private Limited shall supply power as per provisions of PPA following the dispatch Instructions of the SLDC without any deviation subject to the provisions of grid and relating to scheduling and dispatch”

44. As per the above stated Section 11 direction and subsequent clarification, PPA holder i.e. the Appellant can exercise the option of non-requisitioning power by giving prior intimation at least three days in advance, and the generator can sell power to other Discom or exchange. From the contents of the letter dated 28.11.2022 issued by the Appellant, it appears that the Appellant conveyed that they shall not requisition the power at pass through rates under Section 11 direction, however, power shall be procured as per provisions of the PPA w.e.f 01.12.2022. Under Section 11 of the EA 2003, if the appropriate Government issues directions in the public interest for power generators to operate and supply electricity, the price at which power is supplied becomes a critical issue. In the subject Section 11 direction, Government of India has acknowledged that on one hand, there is shortage of power and on the other hand, the generators based on imported coal are not able to generate power in the absence of suitable provision of pass through of variable cost in the PPA. Looking at the shortage of power, the

generators based on imported coal were directed to operate and generate power and the rates at which power will be supplied to PPA holders shall be worked out by a Committee which shall meet all prudent cost of using imported coal including coal, shipping cost, O&M cost etc and some margin. As such, under Section 11 (2) of EA 2003, the Appropriate Commission may offset the adverse financial impact on the generators in terms of Section 11 directions issued to generators. The intent of Section 11(2) is to ensure that the generating company, which has been asked to generate mandatorily, is compensated for any adverse financial implications.

45. We note that as per Addendum#3 of the PPA, variable cost was capped at domestic coal price of Talcher mines and due to increase in imported coal price and with price cap on variable cost, the Respondent - SEPC had not supplied power as per PPA rates, a fact which has been acknowledged by the Appellant and even before the Section 11 direction came into force, the Appellant vide its letter dated 29.04.2022 has asked SEPC to supply power on pass through basis in deviation from PPA as one time measure, for an initial period of one month, extendable up to December 2022. Thus, from the facts of the case, it is clear that PPA provisions did not cover the prevalent cost of imported coal price and reasonable return, even at the time when Section 11 direction was not in force. In our view, as per Section 11 directions, though the option was available with Discom/PPA holder to not to requisition the power, but it cannot unilaterally insist on supply at PPA rates when the said Section 11 direction was in force.

46. We are not inclined to go into the contention of the Appellant that Respondent-SEPC has always acknowledged that the letter dated 28.11.2022 issued by the Appellant is for non-requisitioning of power

w.e.f 01.12.2022 and have never contended otherwise except for the first time, only before this Tribunal, as an Appeal before this Tribunal is an extension of the original proceedings and the Supreme Court in “**Malluru Mallappa v. Kuruvathappa**” (2020) 4 SCC 313 and “**Ramnath Exports (P) Ltd. v. Vinita Mehta**” (2022) 7 SCC 678, has held that an appeal is a continuation of original proceedings, and the dispute remains sub judice within the judicial hierarchy until finally adjudicated. More notably, as observed above, the Appellant through the letter dated 23.11.2022 conveyed non-requisitioning of power at pass through rates/ as per section 11 direction but also asked SEPC to supply power as per provisions of PPA w.e.f. 01.12.2022, such an insistence, in our view, is not permissible when Section 11 direction was in force.

47. The Judgement in “**Cauvery Coffee Traders v. Hornor**”, (2011) 10 SCC 420, on which reliance is placed by the Appellant stating that SEPC having repudiated the PPA tariff fixed as per Addendum III by asking for pass through rates, cannot be permitted to rely on other provisions of the PPA i.e, payment of Fixed Capacity Charge, is not applicable here as we note from Section 11 direction that it was only the variable charge i.e. charge for energy is to be determined by the Committee to be set up for this purpose, and in the MOP letter dated 28.06.2022, it has been clarified that in the event of non-requisitioning of power by PPA holder, generator can sell the power to other distribution licensee at the benchmark rate (variable charge) calculated by the Committee along with fixed charge and in case of sale of power under this arrangement, the PPA holder shall not be liable to pay fixed charges for the duration of sale of power to any other distribution licensee. Thus, the payment of fixed charge as per PPA is covered under Section 11 direction and the Appellant cannot be absolved of its liability of payment of Fixed Capacity Charge especially when non-requisitioning of power was conditional with insistence of supply of power

as per PPA rates when Section 11 was in force and power was not sold to other Discoms during this period. We therefore concur with the findings in the Impugned Order, affirming the Appellant's liability to pay the Fixed Capacity Charges for the period from 01.12.2022 to 31.12.2022.

Sub Period 2 : 01.01.2023 – 15.03.2023

48. During this period, the Section 11 direction has ceased to be in force and the Appellant vide its letter dated 28.11.2022 has already conveyed its intent of non-requisition of power at pass through/ Section 11 direction and further insisted for supplying the power as per provisions of the PPA. The learned Senior Counsel for the Respondent - SEPC has contended that they were unable to sell power to third parties as the Appellant did not give them NOC for obtaining membership of the IEX as sought by them vide letters dated 11.05.2022 and 28.12.2022. We do not find merit in such contentions of the Respondent SEPC, since request made through these letters was for becoming the members of IEX, and upon specific query, the Respondent – SEPC failed to produce any document, which would indicate the requirement to seek NOC for becoming member of IEX, from the PPA holder is based on any regulatory consideration. In the PPA signed between the Appellant and SEPC, it is mentioned that an event of default by SEPC shall constitute if “ *the company, excepts when it is permitted to do so under this Agreement sells or purports to sell electricity to a third party without TNEB's prior written consent*”; and there does not seem to be any bar in becoming the member of IEX as per the PPA, as enrolling for membership does not itself assure sale of power, for which NOC is required. As such, there is a defined procedure in the Regulations to apply for Open Access, for which NOC from concerned agencies as well as from the Appellant in terms of the PPA would be required; however, no such action seems to have been taken by the Respondent - SEPC,

which shall be considered to hold the Appellant liable for denial of Open Access leading to depriving the -SEPC to sell power to others. Thus, during this period when Section 11 directions were not in force, PPA including its Addendum #3 is the document which binds both the Appellant and the Respondent – SEPC, which provides Ceiling on VFC as per coal price of Talcher Coal Mines. It is not in dispute that through various correspondences, the Respondent - SEPC was ready to supply power but at pass through rates, while on the other hand, the Appellant has asked Respondent - SEPC to supply power and to confirm, except for some period upto 30.11.2022, that power should be supplied as per provisions of the PPA i.e. applicability of ceiling price on the price of imported coal under VFC, however, no such confirmation was provided by Respondent SEPC that it shall supply power as per the provisions of PPA terms.

49. As per Addendum#3 of the PPA, the definition of “Declared Capacity” and “Deemed Generation” are as under:

*“**Declared Capacity**’ or ‘DC’ means the capability of the generating station to deliver ex-bus electricity in MW declared by such Generating Station In relation to any period of the day or whole of the day, duly taking into account the availability of fuel.*

*“**Deemed Generation**’ means the energy which a generating station was capable of generating but, could not generate due to the conditions of grid or power system, etc. beyond the control of generating station or on receipt of backing down Instructions from the State Load Despatch Centre based on merit order principle laid down by TINERC from time to time.”*

50. In the present case, though the Respondent-SEPC had claimed to have declared the availability of its generating station, however, we note that the variable charge (energy charge) was sought to be on pass-

through basis, which constitutes a deviation from the terms of PPA, and in such circumstances, upon scheduling of power by the Appellant, Respondent- SEPC would have claimed payment of variable charge on pass-through basis, in addition to fixed charge, as, apparently the stand of Respondent – SEPC that despatch of power from its generating station shall be contingent upon payment of variable charges on a pass through basis . In the Impugned Order, at para 2.32, and Para 6.25 (c), the State Commission has relied upon its order dated 31.08.2023 passed in M.P. No 03 of 2022, as reproduced below:

“2.32. The Commission in its order dated 31.08.2023 passed in M.P.No 3 of 2022, ordered as follows

10.26 *In the result the petition is ordered in the following terms:*

a. The SEPC is permitted to procure imported coal, as an interim arrangement, for the supply of power to the Respondent TANGEDCO.

b. The SEPC shall make all earnest endeavour to procure imported coal at the cheapest price prevailing in the market. Further the cost of the procured imported coal shall not exceed the Argus index price during that period.

C. The above referred interim arrangement for supply of power by the SEPC to the Respondent TANGEDCO shall be valid only until SEPC procures domestic coal linkage and commences supply of power using domestic coal supplied through the linkage.

d. For obtaining domestic coal linkage the SEPC shall take all the necessary steps in an expeditious manner. In this regard the SEPC and the Respondent are at liberty to approach this Commission within 3 months from the date of this Order and appraise the Commission about the status of domestic coal linkage.

e. The SEPC and the Respondent TANGEDCO are directed to amend the relevant Power Purchase Agreement on the basis of interim orders passed by Commission on 09.03.2023, 13.06.2023 and 20.06.2023 and also the present order. The copy of the amended PPA shall be submitted before this Commission for approval within 15 days from the date of this order.”

"10.8 On a conspectus evaluation of the evidence placed on record through documents this Commission decides that the unprecedented rise in the price of imported coal has rendered the supply of power by the petitioner to the respondent under the Power Purchase Agreement as amended on 25-02-2021 vide Addendum '3 with the existing price mechanism an unviable one as contended by the petitioner."

51. Further, the State Commission at Para 6.38 of the Impugned Order, reiterated its decision taken in its order dated 31.08.2023, holding that Respondent - SEPC cannot be faulted for non-supply of power at ceiling VFC in case of multi-fold rise in imported coal prices and non-scheduling and cumulatively, non-scheduling of power by TANGEDCO only for the reason of uncertainty of VFC cannot deprive SEPC from the payment of fixed charge which is the cost met by the generator for keeping the plant available. Learned senior counsel for Respondent – SEPC placed reliance on the Supreme Court judgment dated 09.11.2023 titled as **“MSEDCL v. Ratnagiri Gas and Power Pvt. Ltd. &Ors.” (2024) 1 SCC 333**”) and submitted that the present case is similar to the issue dealt therein, where Supreme court interpreted the provisions of respective PPA and held that Ratnagiri is entitled to fixed charges even when using Regasified Liquefied Natural Gas (RLNG) instead of domestic natural gas which was approved by Maharashtra Distribution licensee. However, the referred judgement is of no avail to Respondent – SEPC as the facts in the present case, is materially different. In MSEDCL V Ratnagiri Gas and Power Pvt Ltd judgement, the Discom was refusing to schedule power and refusing to pay fixed capacity charge, as the declared capacity was based on the use of RLNG and the Supreme Court held that RLNG was primary fuel under the PPA and specific approval of Discom not required for supply based on RLNG. In the present case, issue is not with respect to type of fuel used but it is with respect to ceiling limit of VFC at the domestic coal price from Talcher mines as specified under Addendum #3

of the PPA, at which rate Respondent-SEPC was not ready to supply power, rather than any issue related to the fuel used, is central to the matter. Accordingly, the judgment in *Ratnagiri* does not advance the case of the Respondent.

52. The State Commission in the Impugned order has held that SEPC is entitled to fixed cost for non-supply of power as non-supply of power situation arose due to factors which are beyond the control of SEPC and analogous to *Force majeure* event. The supreme court in its judgement “***Energy Watchdog v CERC***”, (2017) 4 SCC 80, reliance on which has been placed by Appellant, has held that increase in price of imported coal does not constitute a *Force majeure* event. In the present case also, the *Force majeure* clause under the PPA does not include change in coal prices as a *Force majeure*. We, also do not find merit in the contention of Appellants that the *Energy Watchdog* Judgement is not applicable to the present case as *Energy Watchdog* Judgement is for generator under Section 63 of EA 2003, and the SEPC generator falls under Section 62 of EA 2003. In our considered view, whether the tariff is determined under section 62 or adopted under Section 63 of EA 2003, once a PPA is executed, both the parties are bound by its terms unless and until the tariff or any provision of the PPA is modified by the appropriate authority in accordance with law.

53. The State commission, in the impugned order has also held that procedure of declaration of capacity is distinct and separate from VFC, which is dependent upon cost of coal etc., and as such, PPA does not provide for declaration of capacity only when generator is agreeable to receive the VFC as stipulated.

54. Let's us deliberate on two part Tariff system; in our view, the two-part tariff system i.e Fixed Capacity Charge and Variable Charge /Energy

Charge; in which fixed Charge covers capital costs, such as those related to infrastructure and equipment, ensuring that the generation company recovers its investment regardless of the electricity generated, and variable charge is based on the actual electricity generated and covers operational costs like fuel. The two part tariff system has various advantages like Encouraging Efficiency, i.e., by separating fixed and variable costs, the system incentivizes power producers to optimize their operations and reduce variable costs; Risk Mitigation: It provides financial stability to generation companies by ensuring a steady income through fixed charges, even during periods of low electricity demand; Consumer Fairness: Consumers pay for what they use through variable charges. Recovery of fixed charge is linked to achieving certain percentage of Plant load factor, which includes both actual generation and deemed generation.

55. There is no dispute with regard to PLF achieved based on actual generation, however PLF for deemed generation is linked to when generating station was capable of operating, but could not do so because of conditions of the Grid or power system etc., beyond the control of generating station. In the present case, the non-scheduling of power from Respondent - SEPC generation project was not on account of system conditions, so as to qualify it under deemed generation category, but it was due to insistence of Respondent - SEPC to supply power at pass through variable cost due to commercial consideration.

56. Agreeing with the observation of the State Commission that Fixed Capacity Charge is independent and payable even if generator is not able to fulfil its commitment with regard to VFC provisions would mean that fixed capacity charge is so distinct from variable charge that even if generator does not supply power as per VFC stipulated in the PPA, still the PPA holder would be liable to pay for the fixed capacity charges. In

our view, the PPA serves as a binding contract between the generator and the purchaser, till it is amended by parties or by Judicial interference as permitted, both the parties are expected to adhere to the terms specified, including variable charges. In the instant case, Respondent-SEPC was not willing to supply power from its generating project at variable charge as stipulated in Addendum # 3 of PPA, which was the operating document for the sub –period 2.

57. Accepting the submissions made by Respondent-SEPC and observation made in the Impugned Order, it is evident that in a two part tariff structure, generator would be entitled to claim fixed capacity charge even if it does not fulfil its obligation with regard to other part i.e variable charge, and in our view, it shall have larger ramification as there would be no obligation on the part of the generators to optimise or produce electricity as the cost of setting up of generation project and its O&M gets recovered through fixed capacity charge, and variable charge mainly covers the fuel cost. Thus, in our considered view, the generator is not entitled to claim fixed capacity charges, while simultaneously disregarding the variable charge provisions enshrined in the PPA and requesting higher variable charges than agreed upon.

58. Learned Counsel of Respondent - SEPC referring to the Judgement of Supreme court in **“CPDCL V CERC”, (2007) 8 SCC 197** submitted that only prior to Availability Based Tariff regime, the fixed capacity charge was based on withdrawal of power. This judgement has no application in the present case, as the matter of eligibility of fixed capacity charge even when provisions of PPA with regard to variable charge are not adhered to, like in present case, has not been dealt with and decided; the referred judgement mainly deals with the jurisdiction of CERC for application of availability based tariff for Unscheduled

Interchange (UI) for Simhadri Thermal Power Project of NTPC supplying power to State.

59. We do not find merit in the submissions of Respondent - SEPC that as its generation project was kept under Reserve Shut Down, it is entitled for Fixed capacity Charge, placing reliance on the Judgement in “**JPVL v M.P.Power Management Co Ltd**”, 2021 SCC on Line APTEL 51. In the referred judgement, the issue pertained to supply of entire contracted capacity from one generation unit, while keeping other unit on RSD and State Load Despatch Centre certifying the availability of both the units; and the PPA permitted supply of entire contracted capacity from any single unit, both units or combination thereof and accordingly Fixed capacity charge was permitted when unit was on RSD as supply of entire contracted capacity has been made as per provisions of PPA. This Judgement is not applicable in the present case as for the sub period 2, when Section 11 direction was not in force, both Appellant and Respondent –SEPC are bound by the VFC charges (including its ceiling) as per provisions of PPA unless agreed otherwise, whereas Respondent - SEPC has insisted for supply of power with VFC on pass through basis in violation of terms of PPA which was not agreed by the Appellant.

60. Furthermore, the State Commission's order dated 31.08.2023 referred in the Impugned Order, observing the unviability of Variable charge in the PPA, is on the subsequent date, i.e. posterior to the sub-period 2, and as per the settled legal principle, the same should not have been applied retrospectively by the State Commission unless it was clearly specified in the order. Therefore, in the absence of any explicit direction to that effect, the said order ought not to be applied retrospectively.

61. However, our attention was drawn towards the daily order dated 23.02.2023 passed in M.P. No 03 of 2022, within the period under Dispute, that both the Respondent and the Appellant have agreed for supply of power from 01.03.2023 at rates fixed by Ministry of Power, which is reproduced below:

“ This Hon'ble Commission subsequently uploaded the Daily Order dated 23.02.2023 with the following direction:

"Ms. Gayatri Aryan, Advocate from M/s.J.Sagar Associates appeared for the petitioner. Thiru. Richardson Wilson, Advocate appeared for the respondent. Affidavit filed by TANGEDCO. Brief arguments heard from both parties. Commission directed both parties to negotiate on the ceiling price for the coal to be used in the generation and further directed that joint Inspection shall be conducted by the TANGEDCO and the petitioner for verifying the quantity of imported coal available at present in the petitioner's plant on or before 28-02-2023. In view of the consensus of opinion reached by both counsel, the petitioner has agreed to supply power to TANGEDCO from 01.03.2023 at the rates fixed by Ministry of Power (MoP). At the request of the both parties, the case is adjourned to 09-03-2023 for further arguments."

62. Thus, considering consent of the Appellant to receive power at the benchmark rate fixed by MOP, the Appellant becomes liable for payment of Fixed Capacity Charge from 01.03.2023, even in case power is not scheduled by the Appellant during that period.

63. In view of above deliberation, for sub-period 2, the Appellant is not liable for payment of Fixed Capacity Charge to Respondent- SEPC from 01.01.2023 to 28.02.2023, when power was not scheduled by the Appellant and the directions under section 11 of the EA, 2003 were not in force during the said period and there was no agreement to supply power at rates beyond the PPA provisions.

Sub Period 3: 16.03.2023 – 31.03.2023

64. There is no dispute that during this period, Section 11 directions were in force and in view of our observation made with regard to applicability of Fixed Capacity Charge under sub-period 1; considering the Appellant's consent to accept supply of power from SEPC generation project w.e.f 01.03.2023 as per bench mark rates specified by Ministry of Power, as recorded in daily order dated 23.02.2023, reproduced above and daily order dated 09.03.2023 in M.P.No 03 of 2022, as reproduced below, it is held that SEPC shall supply power to TANGEDCO on a pass through basis as per rates fixed by MoP.

“47. Ld. TNERC vide Daily Order dated 09.03.2023 passed the following directions:

"1) Termination of CSTA by JERA is hereby approved by the Commission. The Petitioner SEPC is directed to get FSA / Coal Linkage from 'Coal India Lid (ECC/SCCL) expeditiously.

2) The respondent TANGEDCO shall give NOC to facilitate the petitioner SEPC to procure the Fuel Supply Agreement for arranging suitable Domestic Coal for running their machine from the Indian Coal field. There will not be any ceiling price on the Indian Coal.

3) The Petitioner SEPC shall commence supply of power to the Respondent TANGEDCO on pass through basis as per the rates fixed by the Ministry of Power and as revised from time to time by MoP. The Petitioner is given the liberty to approach the Commission for offsetting the financial impact or to claim compensation under Section 11 of the Electricity Act 2003, with necessary documents in support of its claim...”

65. The Respondent-SEPC is entitled for recovery of fixed capacity charge when generation plant of SEPC was declared available and power was not scheduled by the Appellant during this sub-period 3. We, therefore, do not find any need to interfere with the findings of the State Commission

for eligibility of Fixed capacity charge for SEPC for sub-period 3 i.e 16.03.2023 to 31.03.2023.

Conclusion

66. In view of the above discussion and deliberation, the Impugned order dated 13.08.2024 is modified to limited extent that the Appellant is not liable to make payment of Fixed Capacity Charges for the period from 01.01.2023 to 28.02.2023, out of the total period under dispute in the present Appeal i.e. 01.12.2022 to 31.03.2023, during which the generating station of the Respondent–SEPC was declared available but the Appellant–TANGEDCO did not schedule power. The Appeal is, accordingly, disposed of in the above stated terms. All the pending IAs, if any, shall stand disposed of. There shall be no order as to costs.

Pronounced in open court on this 21st day of April, 2025

(Seema Gupta)
Technical Member (Electricity)

(Ramesh Ranganathan)
Chairperson

REPORTABLE/NON-REPORTABLE

ts/dk/ag