IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL No. 141 OF 2023 & IA NO. 1786 OF 2024 & 1629 OF 2022

Dated: 30.04.2025

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

Hon'ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

Haldia Energy Limited,
(Through its Company Secretary)
2A, Lord Sinha Road,
First Floor, Kolkatta -7000 71,
West Bengal … Appellant

VERSUS

West Bengal Electricity Regulatory Commission
(Through its Secretary)
Plot No. AH/5,
Premises No. MAR 16-1111,
Action Area – IA, New Town, Rajarhat,
Kolkata – 700163, West Bengal …Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Sanjeev K. Kapoor
Ms. Divya Chaturvedi
Mr. Saransh Shaw
Ms. Srishti Rai

Counsel for the Respondent(s) : Ms. Mandakini Ghosh for R-1

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The instant Appeal has been filed by the Appellant i.e., Haldia Energy Limited (in short "Appellant" or "HEL") against the order dated 20.07.2022 (in short "Impugned Order") passed by the West Bengal Electricity Regulatory Commission (in short "Commission" or "WBERC") in Case No. OA-270/17-18 (in short "Final Project Cost Petition") as the Commission has wrongly disallowed costs and expenditures for the construction of 2 X 300 MW coal-based thermal power station of the Appellant under the following heads:

i. Rs. 5.90 Crore in relation to the Boiler Turbine Generator (in short "BTG");
ii. Rs. 37.0 Crore in relation to the Balance of Plant cost;
iii. Rs. 5.7 Crore on account of Intake Water System;
iv. Rs. 47.4 Crore on account of Other Enabling Work;
v. Rs. 44.1 crore on account of Overhead Expenses and Pre-operative Expenses; and
vi. Rs. 82.5 Crore under the head of Interest during Construction (in short "IDC").

Description of Parties

2. The Appellant is a company incorporated under the provisions of the Companies Act, 1956, *inter alia*, has set up a 2 X 300 MW coal-based thermal

power station at Banswar Chak near Jhikurkhali village, Haldia, Midnapore (East), West Bengal.

3. Respondent No.1, West Bengal Electricity Regulatory Commission, is a statutory regulatory Commission established under the Electricity Regulatory Commissions Act, 1998. The State Commission has continued in terms of Section 82 of the Electricity Act, 2003 (in short "Act") and discharges functions enjoined upon it under section 86 and other provisions of the Act.

Factual Matrix of the Case

4. On 18.05.2010, Haldia Energy Limited (Appellant) filed a petition (Case No WBERC/OA-81/10-11) before the West Bengal Electricity Regulatory Commission seeking investment approval for constructing a 2x300 MW coal-based thermal power station in Haldia, West Bengal.

5. The Commission granted in principle approval on 16.08.2010. The Appellant subsequently entered into a Long-Term Power Purchase Agreement (in short "PPA") with CESC Ltd. on 04.01.2011, followed by a supplementary agreement on 05.12.2012, for selling the entire power generated to CESC Ltd. for 25 years, with the potential extension based on mutual agreement.

6. On 11.03.2011, WBERC approved the Appellant's power evacuation proposal (Case No. WBERC/OA-100/10-11).

7. Later, on 28.04.2011, the Appellant sought second-stage approval (Case No. WBERC/OA-121/11-12), which was granted by the Commission on 13.06.2011, approving the project at an estimated cost of ₹3,097.50 crore.

8. On 14.09.2011, Appellant entered into a Boiler Turbine Generator (BTG) Equipment Supply and Service Contract with Shanghai Electric Group Co. Ltd.

9. On 23.09.2011, the Appellant contracted with M/s Punj Lloyd Ltd. for the Balance of Plant (BOP) Supply and Service Contracts, including the design, procurement, transportation, and commissioning of the BOP package, as well as the erection, testing, and commissioning of the BTG equipment. These contracts were submitted to the WBERC on 14.10.2011.

10. On 30.04.2013, WBERC approved the delivery of power at the 400 kV bus-bar at the Power Grid Corporation of India Ltd.'s Subhasgram sub-station.

11. Subsequently, on 28.09.2013, the Appellant submitted an Auditor's Certificate detailing capital expenditure up to 31.03.2013 and a project progress report. Due to adverse foreign exchange rate movements and other uncontrollable factors, the Appellant filed a petition on 22.07.2014 (Case No. WBERC/OA-121/11-12) under Regulation 2.8.1.4.1 of the WBERC Tariff Regulations, 2011, seeking approval for a revised project cost of ₹3,948.70 crore.

12. On 25.08.2014, Appellant granted a 5-month extension to M/s Punj Lloyd Ltd. under the BTG Service Contract. Subsequently, on 29.09.2014, the Appellant submitted an Auditor's Certificate and Project Progress Summary Report to the

WBERC detailing capital expenditure up to 31.03.2014, as per the Tariff Regulations.

13. Unit-I and Unit-II of the project achieved commercial operation on 28.01.2015 and 21.02.2015, respectively. On 30.01.2015, the Appellant granted another 6-month extension to M/s Punj Lloyd Ltd. under the BTG Service Contract.

14. On 26.02.2015, an amendment to the BTG Supply Contract was executed between the Appellant and the BTG Contractor, Shanghai Electric Group Co. Ltd., whereby it was agreed that the Appellant would procure lube oil for turbine and auxiliary systems locally in India instead of sourcing it from the BTG Contractor.

15. Final completion certificates for Unit I and Unit II of the project were issued to the BTG Contractor on 02.06.2015 and 13.11.2015, respectively.

16. On 29.01.2016, while adjudicating Case No. OA-121/11-12 regarding the revised project cost, the WBERC directed the Appellant to submit the final project cost petition per Regulation 2.8.1.4.13 of the Tariff Regulations.

17. In Case No. TP-64/14-15, WBERC determined the tariff for FY 2014-15, 2015-16, and 2016-17, based on 95% of the project cost of ₹3,948.7 crore after a preliminary prudence check.

18. On 13.02.2017, the BTG Contractor issued a No Dues Certificate, confirming full and final payment by the Appellant with no pending claims. On 27.11.2017, WBERC maintained the same tariff principles for FY 2017-18, continuing to base the tariff on 95% of the project cost in Case No. TP-68/16-17.

19. On 19.02.2018, an independent benchmarking study was conducted, comparing the project's capital cost with similar-sized projects, aligned with Central Electricity Regulatory Commission benchmarks.

20. On 20.02.2018, Appellant filed the Final Project Cost Petition (Case No. OA-270/17-18) for final determination of project cost, providing all required details as per the Tariff Regulations. On 17.08.2018, the WBERC requested supporting documents on asset-wise costs, currency fluctuation hedging, and IDC calculations.

21. The Appellant provided detailed responses on 24.09.2018 and 05.10.2018. On 08.01.2020, WBERC determined the final project cost for the transmission line in Case No. 267/17-18.

22. The Appellant subsequently challenged this order on 20.02.2020 through Appeal No. 95 of 2020, which is currently pending before this Tribunal. Following discussions with WBERC, the Appellant filed additional submissions on 22.11.2021 regarding specific claims such as Entry Tax and the Intake Water System.

23. On 10.06.2022, WBERC requested further information to finalize the project's capital cost, and on 17.06.2022, Appellant submitted detailed responses and supporting documents to address the queries raised by WBERC on 10.06.2022.

24. However, on 20.07.2022, WBERC issued an order disallowing certain construction costs and expenses, approving a final project cost of only ₹3,832.6 crore.

25. Aggrieved by the order dated 20.07.2022 passed by WBERC in Case No. OA-270/17-18, the Appellant has preferred the present Appeal.

Submissions of the Appellant

26. The Appellant submitted that the Appellant's Project, comprising Unit 1 and Unit 2, achieved Commercial Operation Date (COD) on 28.01.2015 and 21.02.2015, respectively. The Project was completed in 38 months for Unit 1, including a dedicated transmission line, and slightly over 39 months for Unit 2, outperforming the 42-month and 48-month timelines stipulated by the WBERC Tariff Regulations, 2011.

27. The early commissioning was instrumental in providing uninterrupted power supply to Kolkata during the peak summer season, significantly benefiting consumers. The Project's completion timeframe, just over 39 months, is substantially shorter than the average 70-month duration for Greenfield thermal power projects.

28. Furthermore, the Project's cost metrics favorably align with industry benchmarks. It has maintained a high Plant Availability Factor (PAF) and Plant Load Factor (PLF) since commissioning. Execution involved renowned third-party agencies like Tata Consulting Engineers Limited, PricewaterhouseCoopers

Private Limited, and RITES Limited. Regular progress reports and audited project costs were submitted to the WBERC during the construction phase.

29. WBERC initially granted In Principle investment approval for the Project on 16.08.2010 (Case No. WBERC/OA-81/10-1). Subsequently, on 13.06.2011, the Commission approved a second-stage investment at an estimated cost of Rs. 3097.50 Crores (Case No. WBERC/OA-121/11-12).

30. Due to unforeseen factors, including adverse foreign exchange rate movements, the Appellant filed a petition (Case No. OA-121/11-12) on 22.07.2014, seeking approval for a revised project cost under Regulation 2.8.1.4.1 of the Tariff Regulations. On 29.01.2016, the Commission, after conducting a prima facie prudence check, approved the tariff based on 95% of the revised project cost (Petition No. TP-64/14-15).

31. For setting-up the Project, the Appellant entered into the following contracts:

Supply Contracts:

(i) Boiler Turbine Generator ("BTG") Supply Contract dated 14.09.2011 with Shanghai Electric Group Co. Ltd. ("Shanghai Electric") and amendment thereto dated 26.02.2015 (in short "Shanghai BTG Supply Contracts"); and

(ii) Balance of Plant ("BOP") Supply Contract dated 23.09.2011 with Punj Lloyd Ltd. (in short "PLL BOP Supply Contract")

Service Contracts:

(i) BTG Service Contract dated 14.09.2011 with Shanghai Electric Group Co. Ltd. (in short "Shanghai BTG Service Contract"),

(ii) BTG Service Contract dated 23.09.2011 with Punj Lloyd Ltd. (in short "PLL BTG Service Contract"); and

(iii) BOP Service Contract dated 23.09.2011 with Punj Lloyd Ltd. (in short "PLL BOP Service Contract").

32. The Appellant also entered into contracts for other packages, including intake water system, enabling works, etc. The BTG and BOP contracts were also placed on record before the Commission in terms of the Tariff Regulations.

33. The Appellant submitted a petition (Case No. OA-270/17-18) on 20.02.2018 for the final determination of the project cost under the applicable Tariff Regulations, providing all requisite data and details in the prescribed formats. The Appellant claimed a project cost of Rs. 4067.2 Crores; however, WBERC approved only Rs. 3832.6 Crores. The Commission disallowed expenditures under certain specific heads in the approved project cost:

Details	**Amount Claimed by Appellant**	**Amount allowed by Commission**	**Reasoning given by Commission for disallowance**
Boiler Turbine Generator	Rs. 1349.9 Crores	Rs. 1342.4 Crores	Appellant has failed to substantiate its claim.
Interest During Construction	Rs. 541.5 Crores	Rs. 457.7 Crores	Excess loan drawal. Also, as the Commission has not approved the Hard Cost as claimed by

Details	Amount Claimed by Appellant	Amount allowed by Commission	Reasoning given by Commission for disallowance
			Appellant as on COD, the IDC was reduced on proportionate basis for the Hard Cost not allowed.
Balance of Plant Cost	Rs. 1302.9 Crores	Rs. 1262.3 Crores	Activities were covered under the scope of BoP Contractor in terms of BoP Contract.
Intake Water System	Rs. 71 Crores	Rs. 65.3 Crores	Documents not submitted for substantiating the claim.
Other Enabling Work	Rs. 104.9 Crores	Rs. 53.5 Crores	The contract for residential infrastructure was awarded to CESC Properties Limited, later (renamed as Quest Properties Limited) without any competitive bidding

Details	Amount Claimed by Appellant	Amount allowed by Commission	Reasoning given by Commission for disallowance
			and the residential infrastructure and hostels are not located within the generating station boundary. For other enabling works, non-submission of proper reasons and supporting documents such as copies of work orders / contracts.
Overhead Expenses and Pre-Operative Expenses	Rs. 112 Crores	Rs. 67.9 Crores	Absence of proper justification of substantial increase in costs.

34. In this regard, the approvals granted by WBERC vis-à-vis project cost are summarized herein below:

S. No.	Details	Approval Sought by Appellant	Approval granted by Commission
1.	2nd (Second) Stage investment approval vide Case No. OA-121/11-12 Order dated 13.06.2011.	Rs. 3097.50	Rs. 3097.50
2.	Revised project cost Petition in terms of Regulation 2.8.1.4.1 of the Tariff Regulations vide Case No. OA-121/11-12 vide Order dated 22.07.2014.	Rs. 3948.70	Commission granted tariff @ 95% of the revised project cost of Rs. 3948.70 and directed Appellant to submit final project cost Petition.
3.	Final Project Cost Petition i.e., Case No. OA-270/17-18 was filed by Appellant vide Order dated 20.07.2022.	Rs. 4067.2	Rs. 3832.6
Total Disallowance by the Commission in the Impugned Order = **Rs. 234.6 Crores** (Rs. 4067.2 Crore – Rs. 3832.6 Crore)			

35. Further, contented that WBERC erroneously disallowed several cost components despite the submission of relevant documents. The Commission is alleged to have overlooked principles of prudence, made errors in IDC calculation, misinterpreted data regarding enabling works, and ignored final audited data for certain expenditures, including Right of Way/Use and BTG contract procurement.

36. **The Appellant vehemently argued the submissions made by WBERC inter-alia criticized WBERC for failing to submit an affidavit-supported reply before this Tribunal and introducing new arguments during the final hearing on 22.08.2024 that were absent from the original order.**

37. The Appellant argued that this approach is contrary to established legal principles, which require pleadings to clearly outline the case to be met by the opposing party and to prevent post-facto justifications, as highlighted in ***Bachhaj Nahar vs. Nilima Mandal & Ors. AIR 2009 SC 1103 (Para 9)*** and ***Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi, (1978) 1 SCC 405 (Para 8).***

38. The Appellant asserted that WBERC in the Impugned Order and subsequent submissions before this Tribunal raised objections regarding non-submission of documents for the first time. The Appellant contended that all requested documents, including extensive data and Auditor's Certificates supporting the Final Project Cost Petition, were duly submitted, totaling approximately 3768 pages across 14 volumes.

39. Additionally, detailed charts explaining the submitted documents vis-à-vis incurred expenditures were provided during the hearing on 12.09.2024. The

Appellant criticized WBERC for its ad hoc approach, contrasting it with practices of other State Electricity Regulatory Commissions, such as conducting Technical Validation Sessions (TVS). Instead, WBERC requested information piecemeal without providing the Appellant an opportunity to address alleged deficiencies before issuing the Impugned Order.

40. The Appellant argued that WBERC's failure to consider the submitted documents and subsequent attempts to justify the Impugned Order based on an alleged lack of documentation are incorrect and contrary to regulatory practices, referencing OP No. 01 of 2011 on Tariff Revision. The Appellant reiterated that all requisite details were consistently provided in their consolidated written submissions.

41. The Appellant challenged the Impugned Order passed by WBERC on the following grounds:

I. DISALLOWANCE OF EXPENDITURE FOR COSTS INCURRED WITH REGARD TO BOILER TURBINE GENERATOR (BTG)

42. The Appellant entered into a BTG Equipment Supply Contract with Shanghai Electric on 14.09.2011, for the design, engineering, manufacturing, procurement, and shop testing of Boilers, Turbines, and Generators (BTG Package).

43. The original contract stipulated a payment of USD 222,217,000. Subsequently, the Appellant amended the agreement to procure certain items locally to reduce the overall project cost.

44. This amendment resulted in a net cost reduction of Rs. 51,76,955, and a specific reduction of USD 1,096,852 was noted in the amended contract. The reduction applied to identified items, with the costs for alternative domestic procurement for lube oil and thermal insulation detailed in the amendment contract.

45. WBERC ignored the above contract and disallowed valid expenses towards domestic procurement by citing non-submission of work. In this regard, a summary of savings on account of various prudent activities undertaken by the Appellant, including the procurement of Lube Oil and Thermal Insulation locally, is provided below:

Sl. No.	**Item**	**Unit**	**Amount**
1	Reduction in BTG Supply Contract	USD	1,096,852
2	Average USD-INR Exchange Rate	Rs./USD	58.99
3	Reduction in BTG Supply Contract 3 = 1x2	Rs.	6,47,02,262
4	Cost of Lube Oil	Rs.	1,25,95,179
5	Cost of thermal insulation	Rs.	4,69,30,128
6	Cost of domestic procurement (6 = 4 + 5)	Rs.	5,95,25,307
7	Net Reduction in Project Cost (7 = 3 – 6)	Rs.	51,76,955

46. The Appellant argued that WBERC wrongly disallowed Rs. 5.9 Crores incurred for the domestic procurement of Lube Oil and Thermal Insulation. Although the Commission never requested work orders to support this claim, it

later raised objections during the Tribunal hearing, asserting that these work orders were not submitted.

47. The Appellant clarified that all requisite documents were provided in response to WBERC's queries, but work orders were not furnished earlier as they were not requested. Following fresh objections, the Appellant submitted work orders from Indian Oil Corporation Limited and Lloyds Insulation (India) Limited as Annexure VI in additional submissions filed on 31.08.2024.

48. The Appellant refutes the Commission's claim during the 22.08.2024 hearing that only Rs. 12.1 Crores was claimed for FERV without mentioning domestic procurement. The Appellant emphasizes that the FERV would have been Rs. 18.6 Crores without the reduction due to domestic procurement and countered against the Commission's approach as an improper attempt to enhance the Impugned Order. The Appellant also points out that the Tariff Regulations do not require submission of work orders, but provide them as a prudent measure.

49. WBERC has accepted the reduced project cost on account of going for domestic procurement, but it has followed a mechanical approach in disallowing Appellant's claim relating to amounts paid for procuring Lube Oil and Thermal Insulation.

50. WBERC has erroneously held that the claim of the Appellant has not been substantiated while disallowing the expenditure on account of Lube Oil and Thermal Insulation for the BTG Package. Relevant extracts from the Impugned Order are as follows:

"10.12 ...As against the cost of Rs 1342.4 Crore HEL has claimed the amount of Rs. 1349.9 Crore viz., the difference of Rs. 7.5 Crore has not been substantiated…."

51. The Appellant asserted that all relevant documents related to the expenditure on Lube Oil and Thermal Insulation in the BTG contracts were submitted to WBERC, including a revised cost and detailed justification. However, WBERC failed to consider key supporting documents, which include:

(i) The original Shanghai BTG Supply Contract dated 14.09.2011;
(ii) An amendment to the contract dated 26.02.2015;
(iii) Final Completion Certificates for Unit 1 (dated 02.06.2015) and Unit 2 (dated 13.11.2015) issued by Shanghai Electric;
(iv) A No Dues Certificate from Shanghai Electric dated 13.02.2017.

52. These documents substantiate the Appellant's claims and justify the revised costs.

53. WBERC has ignored all the documents and submissions placed on record by the Appellant and has acted in a manner that is contrary to principles mandated under Section 86 (3) of the Act. WBERC has allowed Rs. 1333.62 Crores on account of the BTG package and Rs. 8.8 Crores on account of inland transportation. The Appellant prayed for allowing Rs. 5.9 Crores on account of domestic procurement and total cost of Rs. 1348.32 Crores on account of BTG, as summarized below:

Amended BTG Supply and Service Contract – allowed vide the Impugned Order	1333.62
Inland Transportation Cost – allowed vide the Impugned Order	8.8
Cost towards domestic procurement of Lube Oil and Thermal Insulation – wrongfully disallowed	5.9
Total allowable costs	**1348.32**

54. The Appellant reiterated that WBERC failed to approve the Rs. 5.9 Crores expenditure incurred due to domestic procurement. Instead, the Commission only acknowledged a Rs. 6.5 Crores reduction in the overall Project Cost resulting from this procurement.

II. *DISALLOWANCE OF IDC*

55. The Appellant submitted that in the Impugned Order, WBERC has wrongly disallowed the claim of the Appellant towards IDC amounting to Rs. 82.5 Crore. In this regard, a tabular summary reflecting wrongful IDC disallowance by the Commission is reproduced below:

Component	**Disallowed Amount under Appeal (Rs. Crores)**	**Reasoning given by the Commission**	**Appellant's Submissions**
Alleged excess loan drawal	46.8	Impugned Order:	The Commission has made a mistake while passing the Impugned

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
		Excess drawal of debt During Hearing: Excess drawal of debt and equity	Order by considering project cost as debt. The project cost consists of debt as well as equity, however, Commission came to a faulty conclusion of the Project having excess debt. Notably, during the course of hearing before this Hon'ble Tribunal, Ld. Commission has attempted to rectify the error committed by it while adjudicating the claim of Appellant towards IDC. Further, the Commission for justifying its error submitted that it considered the implied

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
			excess fund availability, considering debt as well as equity, ignoring the fact that equity do not cause IDC.
Alleged excess IDC for first two months	16.7	Impugned Order: IDC capitalized in first two months is higher Submission of Commission during the hearing before this Hon'ble Tribunal:	The Appellant has claimed Rs. 20.95 Crores towards Interest and Finance charges capitalized during the first two months. Rs. 20.95 Crores consisted of only Rs. 3.79 Crores of interest and Rs. 17.16 Crores towards financing charges. In this regard, the detailed reasoning provided herein below in Paras 40 to 45.

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
		Commission was unaware that Finance Charges were included in IDC.	
Proportionate IDC for wrongful Hard Cost disallowance	19.0	Proportionate impact of disallowance of Hard Cost	Proportionate impact of wrongful disallowance of Hard Cost. Details provided in Para 46 of the written submission of the Appellant
Total	**82.5**		

56. WBERC, in its written submissions dated 22.08.2024 and during the hearing on 12.09.2024, has made additional arguments to justify the disallowance of Rs. 82.5 Crore pertaining to IDC, which the Appellant considers erroneous. The Commission's position, presented both in the written submission and the Impugned Order, overlooks critical supporting documents submitted by the Appellant. Key documents include:

a) A letter dated 05.10.2018 from the Appellant to the Commission
b) A letter from the Commission dated 10.06.2022, raising queries regarding the Final Project Cost Petition
c) A detailed response from the Appellant dated 17.06.2022, addressing these queries point-by-point

57. These submissions, crucial to the determination of the IDC issue, were not adequately considered by the Commission.

Faulty consideration of Loan drawal contrary to documents on record

58. The Appellant submitted that WBERC has incorrectly overstated the loan amount by Rs. 201.19 Crores for the months of January, February, March, and June 2012. This error arose because the Commission mistakenly used the Project Cost as of 31.12.2011, amounting to Rs. 398 Crores, as the loan drawal for that date.

59. However, the actual loan drawal as of 31.12.2011 was only Rs. 197 Crores. This miscalculation led to an overstatement of the loan position by Rs. 201 Crores (Rs. 398 Crores - Rs. 197 Crores) from January to June 2012, resulting in an erroneous disallowance of Rs. 46.77 Crore. The excess loan drawal alleged by the Commission is therefore unfounded due to this computational error. A summarized Table is placed below:

	Drawdown from various banks (Rs. Crore) A	**Actual Cumulative Drawdown (Rs. Crore) B**	**Cumulative Drawdown as Per Impugned Order (Rs. Crore) C**	**Difference (Rs. Crore) D = C - B**	**Explanation**
Up to December 2011	197	**197**	**398.19**	**201.19**	Commission picked up the figure Rs. 398.19 Crore which is the cumulative project cost [expenditure including IDC] at the end of December 2011. Commission kept on adding month-wise loan drawal with Project Cost at the end of December 2011
Jan'12	100	297 (197+100)	498.19 (**398.19**+100)	201.19	
Feb'12	178	475 (297+178)	676.19 (498.19+178)	201.19	
Mar'12	42	517 (475+42)	718.19 (676.19+42)	201.19	
Apr'12	-	517 (517+0)	718.19 (718.19+0)	201.19	
May'12	50	567 (517+50)	768.19 (718.19+50)	201.19	
June'12	250	817 (567+250)	1,018.19 (768.19+250)	201.19	

	Drawdown from various banks (Rs. Crore) A	**Actual Cumulative Drawdown (Rs. Crore) B**	**Cumulative Drawdown as Per Impugned Order (Rs. Crore) C**	**Difference (Rs. Crore) D = C - B**	**Explanation**
					to arrive at inflated loan figures. Rs. 201.19 Crore (398.19-197 = 201.19) is therefore the difference between cumulative expenditure requirement at the end of December 2011 and cumulative drawdown (debt) at the end of December 2011.

60. In any project, loan drawal occurs in tranches per contractual agreements, while expenditure is continuous, resulting in temporary shortfalls or surpluses. The Appellant invested surplus funds of Rs. 30.6 Crores in short-term instruments, using the generated income to offset interest expenses under IDC. This income was netted off from the Project Cost by Rs. 30.6 Crores. An auditor's certificate confirming this has been submitted with the Appellant's Additional Submissions dated 29.07.2024, along with a detailed financial breakdown.

Particulars	**Derivation**	**Amount (Rs. Crores)**
Interest on Rupee Term Loan (ICICI, PNB, BOB, CBI, UBI, IDBI, SBI)	A	465.3
Interest on External Commercial Borrowing (ICICI)	B	33.5
Interest on Buyer's Credit	C	92.5
IDC	D = A + B + C	591.4
Front End Fee / Bank Charges including taxes	E	41.6
LC Charges	F	25.2
Gross Finance Charges / Bank Charges	G = E + F	66.8
Gross Total	H = D + G	658.2
Less: Income Generated During Project Period from Incidental Excess Funds (net of income tax)	I	30.6

Total IDC	J = H - I	627.6

61. WBERC has not provided any detailed calculations regarding the alleged excess loan drawal. It consistently considered an additional Rs. 201 Crores of loan for the period from January to June 2012, resulting in an inflated IDC figure. If this overstatement were accurate, the total loan drawal would have been Rs. 3418 Crores, whereas the actual loan disbursed by the Project COD was Rs. 3217 Crores.

62. This erroneous computation has affected the Appellant for the past nine years. In its Written Submissions dated 22.08.2024 and during the hearing on 12.09.2024, the Commission argued that it compared cumulative expenditure with the cumulative drawdown of debt and equity, implying equity should be treated as debt for IDC calculation.

63. This contention is incorrect, as IDC is computed solely on debt, not equity, and contradicts the Tariff Regulations. Further, submitted that its claimed IDC is lower than what would be determined on a pari passu basis, aligning with the actual capital cost incurred. Therefore, the Commission's allegations of excess loan drawal and inflated interest costs are baseless and erroneous.
In this regard, a tabular summary is provided below:

Cumulative IDC: Generation and Evacuation

Item	**Derivation**	**Page Ref**	**Unit**	**Figure**
Opening Loan	A	-	Rs Crore	-

Cumulative Loan disbursed as on Project COD - 21.02.2015	B	315 and 5568	Rs Crore	3217
Average Loan	C = (A + B) / 2	-	Rs Crore	1608
Actual weighted average interest rate 11.38% (SBI PLR varied from 14.45% to 14.75%)	D	315, 5559 and 5554	%	11.38%
Project Completion period	E	186	Months	39
Repayment during November 2014 to January 2015	F		Rs Crore	105
IDC Normative (pari passu)	G = (CxDxE)/12 - (DxFx4)/12		Rs Crore	**591**
IDC Prayed for	H	-	Rs Crore	**591**

64. It is an established principle of law that a litigant has a legitimate expectation of knowing the reasons for rejection of his claim/prayer. In this regard, reliance is placed on the Judgment of the Hon'ble Supreme Court in ***CCT vs. Shukla & Bros., 2010 4 SCC 785.***

Erroneous consideration of IDC including finance charges for the first 2 (two) months ignoring source wise loan drawal on record

65. WBERC in Paragraph 21.2.7 of the Impugned Order, incorrectly noted that the Appellant booked IDC of Rs. 20.95 Crore against a cumulative loan drawal of Rs. 197 Crore for the first two months, deeming the interest high and disallowing Rs. 16.7 Crore as excess.

66. While WBERC correctly identified the loan drawal as Rs. 197 Crore, it mistakenly considered Rs. 398 Crore as debt drawn as of 31.12.2011 in disallowing Rs. 46.77 Crore. Additionally, it failed to account for front-end fees, erroneously adjusting Rs. 16.7 Crore from IDC. The Appellant's IDC included Rs. 3.79 Crore in interest and Rs. 18.61 Crore in front-end fees, net of a Rs. 1.46 Crore short-term capital gain.

67. The total front-end fees/bank charges of Rs. 41.6 Crore, including taxes, comprised LC charges of Rs. 25.22 Crore and were offset by Rs. 30.6 Crore from incidental income. For the first two months, front-end fees were Rs. 18.61 Crore, paid during the loan tie-up phase. WBERC’s finding overlooks these financial details and misattributes IDC components, leading to incorrect disallowance.

68. In this regard, a tabular summary of the foregoing calculation is provided below:

Sl. No.	Item	Amount (Rs. Crores)
1	Total debt drawal upto December 2011 PNB: Rs. 47 Crore @ 12.85% interest rate, ICICI: Rs. 150 Crore @ 12% interest rate	197.00
2	Interest for 2 months on above	3.79
3	Front End Fees	18.61
4	Less: Short-term capital gain	1.46
5	Total Interest including Front End Fees 5 = 2 + 3 - 4	20.95

69. WBERC in an attempt to justify its findings in the Impugned Order, erroneously claimed in its Written Submission dated 22.08.2024 and during the hearing on 12.09.2024 that the Appellant never indicated that the actual IDC included Front-End Fees.

70. However, the Appellant had provided these details in responses to the Commission's queries, including submissions dated 05.10.2018 and 17.06.2022.

71. By disregarding the submitted details about the payment of front-end fees, WBERC erroneously deducted Rs. 16.7 Crore from the IDC, thereby reducing the project cost and causing significant prejudice to the Appellant.

Consequential effect of disallowed Hard Costs under Appeal

72. The Appellant submitted that the Hard Cost claimed by the Appellant vide Final Project Cost Petition dated 20.02.2018 was Rs. 3525.7 Crore. Therefore, due to wrongful disallowance of Hard Cost summarized in the present Appeal to the extent of Rs. 140.1 Crore [INR (5.9 + 37.0 + 5.7 + 47.4 + 44.1 = 140.1) Crore] under various heads, the allowed IDC has also got adversely impacted to the extent of Rs. 19.0 Crore as shown below:

Sl. No.	**Item**	**Amount (Rs. Crores)**
1.	Hard Cost as per Appellant	3525.7
2.	IDC claim as per Appellant (net of aforesaid wrongful disallowance in IDC of Rs. 46.8 Crores and Rs. 16.7 Crores)	478.1
3.	Wrongful disallowance in Hard Cost	140.1
4.	Aforesaid wrongful disallowance in IDC as below	
	4.a. Excess Loan drawal	46.8
	4.b. Excess interest capitalized during first two months	16.7
5.	IDC adversely impacted due to aforesaid Hard Cost disallowance 5 = 2 x 3 / 1	19.0
6.	Total Impact on IDC (46.8 + 16.7 + 19.0) 6 = 4a + 4b + 5	82.5

73. Accordingly, a total IDC of **Rs. 82.5 Crore** ought to be allowed to the Appellant.

III. DISALLOWANCE OF EXPENDITURE RELATED TO BALANCE OF PLANT (BOP) CONTRACTS

74. WBERC while dealing with the expenditure related to BoP Contracts, has disallowed expenses amounting upto Rs. 37 Crore, which were claimed by the Appellant on account of certain Force Majeure events as well as execution impediments faced by its contractors. The details of these issues faced by the Appellant are provided hereinbelow.

Additional Expenses on account of unprecedented rainfall

75. The Appellant entered into contracts with M/s. Punj Lloyd Ltd. on 23.09.2011 for both supply (PLL BOP Supply Contract) and services (PLL BOP Service Contract) related to the Project. The General Conditions of Contract (GCC) for both agreements are identical and recognize flooding as a force majeure event, entitling the contractor to compensation for additional costs incurred to continue performance under such conditions (Clause 43.1.2 and Clause 43.4 of the GCC).

76. Clause 12.6.1 of the GCC allows for lump-sum payments to the contractor for accelerating works in lieu of an extension of time, ensuring project completion by the Guaranteed Completion Date. Significant increases in rainfall in 2012 (28% over the prior three-year average), 2013 (64% over 2009-2011), and 2014 (24% over 2009-2011) disrupted project timelines, especially during critical months (July-September 2012 and May-August 2013). This required corrective measures beyond the rainfall periods to mitigate the impact and ensure timely project completion.

77. The Appellant further submitted that the excessive rainfall during the monsoon seasons of 2012-2014 led to flooding, resulting in unavoidable cost increases. Communications and photographs documenting the flood-affected project areas were provided to WBERC. This Tribunal in POWERGRID Southern Interconnector Transmission System Limited vs. Central Electricity Regulatory Commission & Ors. (Appeal No. 194 of 2022, dated 12.08.2024), emphasized that Force Majeure events are not limited to impossibility but also include impracticality of performance.

78. Under Regulation 5.6.4.2(vi) of the Tariff Regulations, additional capitalization due to Force Majeure events or extenuating circumstances is permissible. While WBERC acknowledged the excessive rainfall as a natural calamity and a Force Majeure event, it disallowed the cost increase, stating it was within the contractor's contractual obligations.

79. The relevant extracts from the Impugned Order are placed below:

> "*11.5.3 ….. As regards the reasons related to heavy rainfall, it is observed that the heavy rainfall occurred only during three months i.e., July 2012, August 2013 and October 2013 during the entire project construction period and all these costs could have been avoided by taking appropriate measures and proper planning by the Contractor. Hence, the Commission does not find it appropriate to approve the increase in costs due to this reason.*
>
> *…….*
>
> *21.0 Project Completion Period*

21.1.1 The project completion period as per the BTG contract is 36 months whereas the actual completion period is 40 months thereby the delay is 4 months. As per the provisions of Schedule 9C of Tariff Regulations normative construction period is 42 months and 48 months for Units 1&2 respectively"

……

21.1.4 Therefore, in accordance with Regulation 5.6.4.2(vi) reproduced above, IDC beyond the scheduled construction period of 36 months as per the BTG contract allowable if the same is on account of force majeure event including natural calamities. The main reason for the time overrun in this case was excessive rainfall (natural calamities-flood) which is a uncontrollable factor.

……"

80. The Appellant submitted that while the heavy rains lasted three months, the resulting damage required more time and significant expenditure to rectify. Despite recognizing the excessive rainfall as an uncontrollable expense WBERC failed to approve the costs incurred to restore operations and prevent project delays. The disallowed costs included:

a) Rs. 11.5 Crores for additional works such as constructing temporary access roads, land filling, continuous de-watering, and frequent repairs due to flooding
b) Rs. 2 Crores for deploying additional heavy cranes to manage the heavy rainfall
c) Rs. 5.9 Crores for substituting plinth filling material with more suitable options

81. The Appellant contended that WBERC overlooked critical supporting documents while addressing the issue of additional costs due to unprecedented rainfall. These include:

1. Documentation of a 24% increase in rainfall
2. Photographs of the monsoon-affected areas
3. Relevant sections of the PLL BOP Supply and Service Contracts dated 23.09.2011
4. The project execution summary report from July 2014
5. Communications between the BOP Contractor and the Appellant
6. A third-party report on extended timelines for the BOP contracts
7. Communications regarding cost-sharing for timely project execution
8. Attachment of the Project Progress Report by TCE

82. The Appellant also argued that WBERC attempted to retroactively reinterpret the findings in its Impugned Order through post facto interpretations in its written submissions dated 22.08.2024 and subsequent arguments, which is impermissible and should be rejected.

Additional works on account of flooding:

83. The Appellant asserted that significant damage to construction roads and surrounding areas due to flooding necessitated additional works, including constructing temporary access roads, land filling, continuous de-watering, and frequent repairs, incurring costs of Rs. 11.5 Crore.

84. WBERC during the hearing, erroneously claimed that the Appellant had informed its contractor of insufficient preparation for monsoon conditions, as stipulated under the PLL BoP Supply and Service Contracts, where the contractor was deemed to have assessed site conditions.

85. However, the Appellant refers to the Minutes of the meeting dated 10.05.2012, demonstrating proactive monsoon impact assessment. Furthermore, a letter dated 14.09.2012 and meeting minutes from 24.05.2013 confirm that PLL undertook mitigation measures for heavy rainfall from July to September 2012, enabling the Project's timely commissioning under the Tariff Regulations. Thus, the Appellant argued that the incurred costs should be allowed.

86. The Appellant provided a list of dates and events linked to the incurred costs, all documented in the records of WBERC. These costs arose due to Force Majeure events. According to Clause 43.4 of the GCC of BoP Contracts, the Contractor is entitled to compensation for significant additional costs incurred while continuing contract performance. Additionally, Clause 12.6.1 of the GCC allows for a lump sum payment to the contractor for accelerating work to meet the Guaranteed Completion Date. Despite these provisions, the Appellant prudently mitigated costs through negotiations with the contractor, reducing the financial burden.

Deployment of additional cranes:

87. WBERC incorrectly claimed that the costs for deploying an additional crane were due to issues like claying sand and poor drainage, not the monsoon. However, the excessive rainfall in 2012 caused ground conditions to become too slushy for crane movement, necessitating the mobilization of extra heavy-duty

cranes to expedite project completion. This need was communicated in PLL's letter dated 29.01.2013. The Appellant prudently negotiated with PLL, reducing the cost sharing for crane deployment from Rs. 4 Crores to Rs. 2 Crores, absorbing part of the expense.

Additional cost towards substitution of plinth filling material white sand with yellow sand

88. The Appellant submitted that WBERC erroneously argued that the Appellant's communications referenced difficulties with collecting borrowed earth and white sand due to monsoon, not flooding, thus not qualifying as a Force Majeure event.

89. However, the exceptional rainfall in August 2013, nearly double the usual, caused flooding that made white sand extraction inaccessible. Letters dated 21.06.2012, 30.07.2012, and 19.08.2013 from PLL to the Appellant show PLL's prudent proposal to use yellow sand for plinth filling due to heavy rains, which proved necessary. To maintain project timelines and prevent cost overruns, the Appellant agreed to the substitution, incurring an additional cost of Rs. 5.9 Crore.

90. WBERC’s disallowance of Rs. 19.4 Crore, which was justifiably incurred by the Appellant, demonstrates a failure to properly consider the facts. It is a well-established principle that orders from quasi-judicial bodies must reflect careful analysis and provide detailed reasoning. The Appellant relied on the judgment in ***Northern Railway vs. Punjab State Electricity Regulatory Commission [2010] APTEL 40*** to support this argument.

Expenditure incurred due to execution impediments

91. The Appellant submitted that the Appellant's BOP contractor, Punj Lloyd Limited (PLL), initially awarded a Rs. 99.50 Crore contract for the coal handling plant to Tecpro Systems Limited, a reputable contractor.

92. However, due to Tecpro's financial issues and insolvency proceedings (Company Petition No. (IB)-197 (PB)/2017, admitted on 07.08.2017, and subsequent liquidation on 16.01.2020), the contract was terminated.

93. Out of the Rs. 99.50 Crore, Rs. 36.32 Crore was already paid before termination. PLL subsequently claimed an additional Rs. 50.7 Crore to complete the work previously under Tecpro’s scope. Given the critical nature of the coal handling plant for project completion, the Appellant agreed to share Rs. 17.6 Crore, as per Clause 12.6.1(ii) of the BOP contracts, after accounting for Rs. 9.98 Crore recovered by PLL through Tecpro's bank guarantee.

94. The Appellant’s agreement to bear additional costs related to the coal handling plant was crucial in preventing higher power supply costs for consumers. Delays would have resulted in increased interest during construction (IDC) costs, which would have burdened consumers more than the additional Rs. 17.6 Crore spent.

95. The penalty for delays (LD) was only about Rs. 14 Crore per month, whereas the savings from timely project completion amounted to Rs. 30 Crore per month. WBERC erroneously stated that if a sub-contractor failed, it was the BOP Contractor's responsibility to ensure work completion. However, the timeline was

extended through mutual agreement and communication between the parties, and the Appellant had valid grounds to share the additional cost burden with the contractor.

96. The Appellant provided sufficient documentation showing that despite Tecpro being certified as a reputable contractor, issues arose, which could have delayed the project if the Appellant had not intervened by incurring additional costs. WBERC's disallowance of these costs disregarded the prudence check principles outlined in the Tariff Regulations. Additionally, the issue of contractors failing on coal handling plants, impacting project timelines, was noted in a Parliamentary Standing Committee Report.

IV. DISALLOWANCE OF EXPENDITURE RELATED TO INTAKE WATER SYSTEM

97. The Appellant incurred additional costs of Rs. 2.4 Crore for obtaining Right of Use (RoU) for a cross-country pipeline and Rs. 3.3 Crore for Right of Way (RoW) for a 33kV overhead line supplying the pump house. Despite these expenditures being documented in the appeal records, WBERC erroneously rejected these claims, citing insufficient documentation. In this regard, the relevant extracts from the Impugned Order is reproduced below:

> *"…… 13.4.1 Additional expenditure for obtaining (RoU) for cross country pipeline: Regarding the additional expenditure for obtaining RoU for cross country pipe line, HEL has not submitted any supporting documents to substantiate the increase of Rs. 2.5 Crore. Therefore, the increase in cost on this account is not approved.*

13.4.2 Additional expenditure (RoW) for OH line due to line diversion: Regarding the addition expenditure for RoW for the 33 kV overhead line for supply to the pump house, HEL has not submitted any supporting document to substantiate the increase of Rs. 2.9 Crore. Therefore the increase in cost on this account is not approved…..……..”

98. In this regard, a summary of additional claims raised on account of RoU Pipeline issued to Electrosteel Castings Limited and RoW Overhead issue in the context of Venus are provided hereinbelow:

Claim	**Original**	**2014**	**2018**
RoU (Pipeline)	26.6	29.1 (+2.5)	29 **(+2.4)**
RoW (Overhead Line)	6.2	9.1 (+2.9)	**9.5 (+3.3)**

99. The Appellant presented multiple work orders and related communications for the intake water system to WBERC, with all expenditures duly certified by an Auditor. During project execution, the cost for obtaining RoU for a 13.5 km cross-country pipeline exceeded initial estimates, partly due to challenges posed by Panchayat elections, resulting in an additional Rs. 2.4 Crore expenditure. This increase was documented in the Final Project Cost Petition dated 20.02.2018.

100. Similarly, obtaining RoW for a 14 km 33 kV overhead line faced socio-political hurdles, necessitating route diversions and the use of AB cables instead of AAAC conductors. This adjustment, compliant with the Central Electricity

Authority (Safety and Electric Supply) Regulations, 2010, led to shorter spans, increased poles, and hardware, contributing to additional costs.

101. Regulation 12 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations 2010 mandates construction of electric supply lines and apparatus in a manner to ensure safety of human beings, animals and property. Relevant excerpt is as follows:

> *"12. General safety requirements pertaining to construction, installation, protection, operation and maintenance of electric supply lines and apparatus.- (1) All electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength, for the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property."*

102. In its Additional Submissions dated 29.07.2024, the Appellant included photographs showing a congested marketplace where AB cables were installed for the 33 kV line to ensure safety for shopkeepers and visitors. This choice was made for its superior safety and reduced long-term operational costs. The total cost increases due to these works amounted to Rs. 3.3 Crore.

103. WBERC incorrectly recorded an escalation of Rs. 2.9 Crore for the 33 kV line and Rs. 9.1 Crore for the substation in its Impugned Order, based on earlier submissions from a 2014 Petition. However, the Appellant clarified that the correct

figures, as per the Final Project Cost Petition, are Rs. 3.3 Crore for the line and Rs. 9.5 Crore for the substation.

104. A summarized table in this regard is placed below:

33 KV line & substation	Completion Cost	Escalation
2014 Petition	Rs. 9.1 Crores	Rs. 2.9 Crores
Final Project Cost Petition	Rs. 9.5 Crores	Rs. 0.4 Crores
Total Escalation		Rs. 3.3 Crores

105. WBERC previously allowed the conversion of an overhead line to underground cabling due to RoW issues, acknowledging significant cost increases (Order dated 24.08.2021, Case No. OA-323/19-20). Despite this precedent and the supporting documentation provided, WBERC disallowed similar expenses incurred by the Appellant. Key supporting documents include:

i. Project Completion Report dated 19.02.2018 by Tata Consulting Engineers Ltd., which highlighted RoU challenges due to panchayat elections, harvesting, monsoon, and village agitations, along with cost increases from Kolkata Port Trust stipulations.
ii. Letter dated 28.02.2013 from the Appellant to Electrosteel Castings Limited.
iii. Letter dated 06.02.2014 addressed to the Appellant.
iv. No Demand Certificate issued by Electrosteel Castings Limited.

v. Communications between the Appellant and contractors detailing RoW-related works.

106. These documents substantiate the Appellant's claim that RoW issues necessitated increased costs, which WBERC failed to consider adequately.

V. DISALLOWANCE OF EXPENDITURE RELATED TO MISCELLANEOUS ENABLING WORKS

107. The Appellant submitted that WBERC has erred in its treatment of expenditure related to enabling works by:

i. Disallowing Rs. 31.5 Crore incurred for the creation of residential infrastructure and hostels.

ii. Disallowing an increase of Rs. 15 Crore in the cost of miscellaneous enabling works, which was erroneously recorded as an increase of Rs. 11.2 Crore in the Impugned Order.

iii. Incorrectly recording the total expenditure for rehabilitation and resettlement (R&R) as Rs. 16 Crore, instead of the actual Rs. 16.9 Crore, thereby wrongfully disallowing Rs. 0.9 Crore of additional expenditure.

108. These errors in the Impugned Order have resulted in the unjust disallowance of legitimate costs incurred by the Appellant, as detailed in the records.

109. A comparative table showing amount prayed for under various heads of Miscellaneous Enabling Work at different stages and amount allowed by WBERC are placed below:

Sl. No.	Item	Approved in second stage - 2011	2014 Petition	Allowed in 2016 on basis of prima facie prudence check	Final Project Cost Petition	Allowed in Impugned Order
1	Rehabilitation and Resettlement	10.0	16.0	15.2	16.9	16.0
2	Miscellaneous Enabling Work	25.0	36.2	34.4	44.0	25.0
3	High Concentrate Slurry Disposal	-	20.0	19.0	12.5	12.5
4	Residential Project	-	-	-	31.5	-
5	Total	35.0	72.2	68.6	104.9	53.5

Expenditure towards addition of residential infrastructure and hostel

110. The Appellant was compelled to establish residential infrastructure and hostels to accommodate operating staff and personnel due to the lack of adequate housing nearby. At the time of investment approval, it was impractical to estimate

the costs for this infrastructure. Despite this necessity, WBERC, in Para 14.4.4.5 of the Impugned Order, erroneously disallowed the claim of Rs. 31.5 Crore, citing that the infrastructure was located outside the generating station boundary.

111. In this regard, the relevant extract is reproduced below:

> *"……..*
> *14.4.4.5 It is also observed that the contract was awarded to CESC Properties Limited, later rename as Quest Properties Limited (Group Company) without any competitive bidding and the residential infrastructure and hostels are not located within the generating station boundary.*
> *……"*

112. The Appellant submitted crucial documents, including the Project Completion Report by Tata Consulting Engineers (dated 19.02.2018) and work orders evidencing expenditure on miscellaneous enabling works. Despite this, WBERC overlooked these while disallowing Rs. 31.5 Crore for residential infrastructure and hostels.

113. According to Section 2 (30) of the Act, the "generating station" includes buildings for housing operating staff. Additionally, the Appellant submitted capitalization details, including contract agreements and handover certificates, evidencing the legitimate expenditure for residential infrastructure, handed over post the project's cut-off date.

114. Regulation 5.2.2 (iv) of the Tariff Regulations allows inclusion of additional works essential for efficient operation, subject to prudence checks. Despite this, WBERC erroneously ruled the expenses as non-compliant with Tariff Regulations, neglecting to conduct a prudence check, thereby unjustly dismissing the Appellant's legitimate cost claims.

115. The Electricity (Removal of Difficulty) Fourth Order, 2005, explicitly states that housing colonies for operating staff are essential for the operation and maintenance of a generating station and are considered an integral part of it. There is no stipulation requiring these housing facilities to be located within the generating station's boundary. This reinforces the Appellant's position that the residential infrastructure costs should be recognized as part of the generating station's necessary expenditures. In this regard, relevant extracts from the Electricity Order are reproduced hereinbelow:

> *"….And whereas providing the housing to the operating staff of a generating station in the vicinity of the generating station is essential for operation and maintenance of the generating station and forms an integral part of the generating station;*
>
> *…..*
>
> *2. Supply of electricity by the generating companies to the housing colonies of its operating staff. – The supply of electricity by a generating company to the housing colonies of, or townships housing, the operating staff of its generating station will be deemed to be an integral part of its activity of generating electricity and the generating company shall not be required to obtain licence under this Act for such supply of electricity"*

116. The Appellant submitted that WBERC erred in disallowing the Rs. 31.5 Crore expenditure for residential infrastructure and hostels, despite its necessity for operational efficiency. This decision contrasts with a precedent set by this Tribunal in its judgment dated 01.05.2015 in ***Appeal No. 97 of 2013 (NTPC Ltd vs. CERC & Ors.)***, where the CERC was directed to reconsider the allowance of renovation and modernization expenses for a township, underscoring the importance of such expenditures for supporting the operational staff of a generating station. The relevant paragraph of the judgment is as follows:

> "*30. The fifth issue is regarding disallowance of capital expenditure of township and colony.*
>
> *….*
>
> *(d) According to Section 2(3) of the Electricity Act, the definition of generating station includes any building used for housing operating staff of a generating station. Therefore, if the Central Commission has allowed expenditure incurred towards renovation and modernization of main plant equipment and auxiliaries of the generating station, the expenditure on the renovation and modernization of the housing colony should also have been considered as it is an essential part of the power plant. Accordingly we direct the Central Commission to reconsider allowance of expenditure to the extent incurred on renovation and modernization of the township. The matter is remanded to the Central Commission for reconsideration of this issue."*

117. Further, even CERC vide its Order dated 22.05.2017 passed in Petition No. 45/GT/2016, held as under:

> *"45. As regards the cost incurred towards land and civil works, it is observed that there is substantial increase in civil cost as compared to the original investment approval. The cost as per original Investment Approval is ₹90663.70 lakh towards land and civil package (including Perm. Way incl E/W, Bridges, etc. for coal transportation system) for all the three units and the pro-rated cost works out to ₹ 30221.23 lakh for Unit I. However, the actual cost as on COD (1.4.2016) is ₹38066.44 lakh for Unit I, which is less than the pro-rata cost of Unit I of ₹45658.20 lakh (₹136974.60 lakh / 3) as per the RCE dated June 19, 2014. Accordingly, actual cost of Unit – I of ₹38066.44 lakh as on COD towards land, civil works etc. has been allowed. In RCE approved cost, there is almost 51.08% increase in the cost of land and civil works due to additions of certain additional work such as Ash Handling System, MGR & Marshalling Yard, Township & Colony, Temporary construction & enabling works, Chimney, etc. Accordingly, the petitioner shall submit the details of the actual expenditure after the COD of all the units of the Bongaigaon Power Project detailing the reasons for increase in cost in the land, civil work package as compared to the original investment approval."*

118. WBERC noted that the contract for residential infrastructure and hostels was awarded to a Group company without competitive bidding and failed to conduct a prudence check to determine the allowable cost.

119. The Appellant submitted that the valuation of the residential infrastructure, as per a government-registered Valuer and based on the Government of West Bengal's circle rate and CPWD rate schedule, aligns with the cost incurred. Supporting documents, including an independent valuation report and a government memo dated 13.05.2024, were provided.

120. Additionally, the Appellant acquired the residential property at a rate comparable to that of Tata Power Company Limited, which had earlier procured a similar property. The agreement between Tata Power and the developer, dated 23.11.2016, was submitted as evidence.

121. Furthermore, the cost of the Appellant's residential infrastructure, on a per MW basis, is lower than similar projects by NTPC Limited, as confirmed by CERC orders dated 11.01.2024 and 29.07.2010 in Case Nos. 391/GT/2020 and 308/GT/2009, respectively.

122. A summarized table in this regard is placed below:

Name	**Capacity - MW**	**Township Capital Cost - Rs Lakhs**	**Rs Lakhs/ MW**	**Capex Period**
NTPC Farakka Stage III (391/GT/2020)	500	3746.56	7.49	2014-2019
NTPC SAIL (308/GT/2009)	500	8187	16.37	2011-12

Appellant's Generating Station	600	3150	5.25	2015-2018

Expenditure towards Miscellaneous Enabling Works

123. The Appellant submitted that WBERC incorrectly held that the Appellant claimed an increase of Rs. 11.2 Crore for miscellaneous enabling works, disallowing this amount, while the actual claimed increase was Rs. 15 Crore.

124. WBERC mistakenly referred to the Rs. 11.2 Crore figure from the 2014 Petition and ignored the finally audited expense of Rs. 44 Crore, reflecting a Rs. 19 Crore escalation.

125. Previously, WBERC had allowed a tariff based on 95% of the interim project cost, amounting to Rs. 34.4 Crore for enabling works, in its Order dated 29.01.2016 (Petition No. TP-64/14-15).

126. However, only Rs. 25 Crore was allowed in the Impugned Order. Despite WBERC's observation that no work orders were provided for the increased costs, the Appellant submitted detailed breakups and the Project Completion Report dated 19.02.2018, with the costs certified by auditors.

127. WBERC also erroneously noted that the Appellant explained only a Rs. 11 Crore increase. This was based on a limited query regarding the 2014 Petition, but the Appellant had justified a total increase of Rs. 19 Crore, of which Rs. 15 Crore is under Appeal.

128. WBERC failed to take into account the following detailed break-up for the total incurred cost of Rs. 44 Crore provided to them in the Project Completion Report dated 19.02.2018.

Enabling Work

Items of Work	**Final Cost (Rs. Crore)**	**Allowed Earlier (Rs. Crore)**
Boundary Wall/ Temporary Fencing	11.3	
Building, Godown etc.	5.1	
Construction Power Switchyards	2.9	
Arrangements for start-up/ commissioning power	3.0	
Studies, Surveys, Investigations etc.	2.7	
Shifting of 132kV WBSETCL Towers as per Railway requirement.	1.2	
Miscellaneous enabling work including Cycle Stand, Shed for Fire Tender, Sewage Treatment Plant, Rain Water Harvesting, Gates etc.	17.8	
Sub-total (A)	**44.0**	**34.4**

129. The Appellant has submitted work orders, evidencing the Rs. 40 Crore expenditure on miscellaneous enabling works, as part of I.A. No. 1629/2022. These were not included in the original proceedings of the Final Project Cost

Petition due to the absence of specific queries or directions to provide them. The Appellant seeks an additional Rs. 15 Crore under enabling works, representing the difference between the Rs. 40 Crore incurred and the Rs. 25 Crore allowed.

130. Additionally, the Appellant is requesting the inclusion of Rs. 0.9 Crore for increased rehabilitation and resettlement (R&R) costs and Rs. 31.5 Crore for residential infrastructure, both of which were wrongfully disallowed.

Erroneous consideration of additional expenditure towards R&R

131. WBERC erred in determining that the additional expenditure for rehabilitation and resettlement (R&R) was Rs. 16 Crore, whereas the Appellant had submitted a final audited figure of Rs. 16.9 Crore at the conclusion of the project, reflecting an increase from the initial investment approval stage.

132. WBERC mistakenly relied on the Rs. 16 Crore figure provided during the 2014 Petition, instead of considering the updated, final audited expenditure presented in the Final Project Cost Petition.

VI. DISALLOWANCE OF EXPENDITURE ON ACCOUNT OF INCREASE IN OVERHEADS AND PRE-OPERATIVE COST

133. The Appellant submitted that WBERC incorrectly disallowed Rs. 44.1 Crores related to overheads and pre-operative costs, including salaries and petty capital assets, claiming insufficient justification.

134. However, the Appellant had provided comprehensive documentation, including a comparative table of expenses from the 2014 and Final Project Cost Petitions, detailed breakdowns, and auditor-certified expenses.

135. The Appellant responded to WBERC's queries through a letter dated 17.06.2022, addressing all concerns. Additionally, the Commission had previously approved 95% of the Interim Project Cost based on a "prima facie" prudence check, which was not duly considered in this instance.

136. The Appellant asserted that the entire cost of overheads and pre-operative expenses was fully certified by auditors. In a letter dated 17.06.2022, the Appellant explained that inflation during 2011-15 adversely impacted these expenses.

137. This response, limited to the specific queries from WBERC's letter dated 10.06.2022, provided all required data. The Appellant maintained overheads and pre-operative expenses at Rs. 112 Crores, consistent with the Revised Project Cost Petition (Case No. OA-121/11-12), with no further escalation.

138. WBERC had previously allowed Rs. 106.4 Crores (95% of Rs. 112 Crores) in the tariff, yet only Rs. 67.9 Crores was permitted in the Impugned Order.

139. The Break-up of the Overheads and Pre-operative expenses submitted before WBERC and as allowed vide the Impugned Order is summarized herein below:

Sl. No.	Item	Estimated amount as per petition dated 22.07.2014 (Case No. OA-121/11-12)	Final amount as per Final Project Cost Petition dated 20.02.2018	As allowed vide the Impugned Order
1	Construction power	15.0	26.7	26.7
2	Fuel expenses net of infirm power revenue	25.0	5.2	5.2
3	Salary and other overheads	72.0	80.1	36.0
4	Total	112.0	112.0	67.9

140. The Appellant argued that WBERC arbitrarily calculated 1.1% of the total Hard Cost on an ad-hoc basis under the guise of norms, lacking legal or judicial support, as per the second stage approval (Order dated 13.06.2011 in Case No. WBERC/OA-121/11-12).

141. According to Regulation 2.6.5(ii)(a) of the Tariff Regulations, WBERC should have conducted a prudence check on the claimed costs and allowed them based on the Appellant's sufficient justification.

142. Additionally, this Tribunal, in its judgment dated 02.12.2019 (Appeal Nos. 95 and 140 of 2018), held that Incidental Expenses During Construction (IEDC) should not be determined normatively as a percentage of Hard Cost, as IEDC and overheads are not directly correlated with Hard Cost. In this regard, Para 7.7 and 7.13 of the foregoing judgment dated 02.12.2019 are as follows:

> "7.7 Having regard to the submissions made by the learned counsel for the Appellant and learned counsel for the answering Respondent, we note that IEDC is admissible on the *actual* expenditure incurred by the Appellant after a prudence check as per the provisions of the Tariff Regulations and there is no such provision of restricting the same to the hard cost of the initial estimates prepared at the time of

investment approval. It is a general practice that at the time of preparation of detailed project report for the Project, provision for IEDC is kept as a percentage of specific cost for the purpose of estimation whereas in actual IEDC of the project depends upon multiple variables having no demonstrable correlation with hard cost of the project.

…..

7.13 In view of the above, we are of the opinion that while carrying out the restriction of the IEDC, CERC is considering hard cost as on COD and not on actual detailed hard cost. This is considered to be against CERC's own philosophy that the project cost is up to the cut of date and they are looking at investment approval / revised cost estimate wherein the IEDC percentage is on total hard cost. As rightly submitted by the learned counsel for the Appellant that actual IEDC of the project / element has no correlation with hard cost of the project and practice of taking a percentage of hard cost of IEDC is just a rough / approximate estimation for the purpose of providing cost input for approval purposes. As such, restricting the actual IEDC, based on this percentage is neither in terms of Tariff Regulations nor technically correct."

143. The Appellant contented that WBERC's disallowance of Rs. 44.1 Crores for increased Overheads and Pre-operative costs is arbitrary and erroneous, disregarding the evidence and submissions provided. This approach contradicts the principles under Section 86(3) of the Act.

144. Additionally, the Appellant identifies computational errors in the WBERC's determination of Overheads and Pre-operative costs, particularly in calculating the "Construction Power cost as a percentage of Hard Cost" at 0.5%.

145. WBERC allowed Rs. 45 Crores for Overheads and Rs. 25 Crores for contingencies in 2011, equating to 2.5% of Hard Cost. After deducting the 0.5% for Construction Power, the correct percentage for Overheads should be 2.0%, not the 1.1% determined by WBERC.

146. Further, asserted that applying a 2.0% rate on the total cost of Rs. 3374.9 Crores results in "Overheads other than construction power cost" amounting to Rs. 67.5 Crores. When combined with Rs. 26.7 Crores for construction power and Rs. 5.2 Crores for pre-synchronization fuel, the total Overhead Cost should be Rs. 99.4 Crores. WBERC acknowledged an error in its calculation during the hearing on 22.08.2024, as referenced in Paragraph 71 of the WBERC Written Submission dated 22.08.2024. A summarized table is placed below:

Particulars	**Derivation**	**Amount** (Rs. Crore)
Hard Cost as allowed in 2nd stage approval	A	2809.9
Overhead expense allowed	B	45.0
Contingency expense allowed	C	25.0
Overhead including contingency expenses	D = B + C	70.0
Overhead including contingency as a percentage of Hard Cost	E = D/A	2.5%

Construction power estimate	F	15.0
Construction power as a percentage of Hard Cost	G = F/A	0.5 %
Overheads other than construction power as a percentage of Hard Cost	**H = E - G**	**2.0%**
Allowable Overheads excluding construction power and pre-synchronization fuel 2.0% * 3374.9	**I = H x 3374.9**	**67.5**
Construction power – allowed vide the Impugned Order	J	26.7
Pre-synchronization fuel	K	5.2
Total allowable expenditure	**L = I + J + K**	**99.4**

147. Alternatively, the Appellant highlighted that even if normative percentages for pre-operative and overhead expenses are adopted, the approved percentages in other capital cost determination orders have been significantly higher.

148. The Appellant referenced the Maharashtra Electricity Regulatory Commission's (MERC) Order in Case No. 44 of 2013 dated 04.09.2013, concerning the capital cost determination of Khaperkheda Unit #5 by the Maharashtra State Power Generation Company Limited. In that order, the overhead expenses, excluding construction power, ranged between 3.0% to 6.8% of the hard cost across various benchmarked thermal power projects. In this respect, the observation of MERC in paragraph 4.4.39 has been reproduced below:

> "4.4.39 The Commission has gone through the submissions of MSPGCL. The Commission observes that the overheads as on COD are approximately 3% of hard cost, which seems reasonable as per the industry practices. Hence, the Commission has approved the overheads as on COD as submitted by MSPGCL."

149. The Appellant also referenced the Central Electricity Regulatory Commission (CERC) Order for Petition No. 45/GT/2016, which determined the tariff for NTPC Bongaigaon. In that case, the IEDC of Rs. 190.55 Crores was approved, equating to over 13% of the hard cost. The Counsel argued that if a percentage-based approach were to be used, WBERC should have considered standard industry percentages, but instead, it arbitrarily applied a much lower percentage for overhead expenses, ignoring industry norms.

VII. ERRONEOUS FINDING WITH REGARD TO DELAY IN PROJECT COMPLETION

150. The Appellant argued that WBERC incorrectly found a four-month delay in achieving the Project's Commercial Operation Date (COD), as noted in the Impugned Order. This observation was specific to the calculation of IDC under Regulation 5.6.4.2(vi) of the Tariff Regulations. However, in Paragraph 21.1.8, WBERC acknowledged that the Project met the COD within the timeline specified in the Tariff Regulations.

151. The Appellant asserted there was no delay in Project completion, emphasizing this point to prevent future tariff-related implications. The contracts with the contractors included milestones such as Initial Operation, Provisional

Taking Over, and Performance Tests, which were designed for risk-sharing and were separate from the COD milestone. COD was not a contractual milestone and thus was independent of contract completion stages.

152. Further, contended that the relevant BTG contracts were closed after the Project's COD, indicating that contract timelines were unrelated to the COD. Specifically, the Shanghai BTG Supply and Service Contracts for Unit 1 and Unit 2 were closed between June and November 2015, and the PLL BTG Service Contract was closed by September 2015, all post-COD.

153. Despite presenting these contracts and Final Completion Certificates, the Commission overlooked the PLL BTG Contract and its amendments in its assessment. WBERC erroneously considered the Scheduled Commercial Operation Date (SCOD) as 33 and 36 months from the BTG contract's Effective Date for Units 1 and 2, respectively.

154. However, the Project achieved COD well within the normative timelines of 42 and 48 months as per Schedule 9C of the Tariff Regulations, which the Commission itself acknowledged. The Appellant argued that the perceived delay and subsequent condonation are incorrect and conflict with the Tariff Regulations, which should prevail over contractual terms, as established by precedent from the Tribunal.

155. The Appellant asserted that the Appellant has endured significant hardship for the past nine years since the Project's commercial operation due to substantial delays in the approval of the final project cost and subsequent disallowances once the cost was approved.

Submissions of the Respondent, WBERC

I. The Respondent Commission has rightly disallowed Rs. 5.90 Crore in relation to the Boiler Turbine Generator ("BTG")

156. The Respondent Commission submitted that the Commission approved the BTG package cost as ₹1,342.4 crore plus ₹337.9 crore for taxes and duties, compared to the Appellant's claim of ₹1,349.9 crore plus ₹337.9 crore.

157. The difference of ₹7.5 crore was disallowed due to the absence of substantiating purchase orders, as required under Regulation 2.8.5.1(a) of the WBERC Tariff Regulations, 2011. The Commission based its approval on actual payments and inland transportation costs, but it excluded ₹5.9 crore claimed for Lube Oil and Thermal Insulation due to a lack of evidence.

158. The Appellant did not provide details regarding the ₹5.9 crore expenditure in its submissions, instead attributing BTG cost increases to Foreign Exchange Rate Variation (FERV) and higher taxes and duties. Key documents such as the BTG supply contract, its amendment, and certificates from Shanghai Electric did not include purchase orders or invoices for these items.

159. The purchase orders for Lube Oil and Thermal Insulation were only submitted during Tribunal proceedings on 29.07.2024, after the Impugned Orders were issued, and were not reviewed by the Commission, raising questions about their admissibility.

II. The Respondent Commission has rightly disallowed Rs. 37.0 Crore in relation to the Balance of Plant cost

160. The Commission submitted that it has correctly disallowed ₹19.4 crore in expenditures claimed by the Appellant, attributing the costs to poor planning by the BoP contractor rather than excessive rainfall. Key points include:

a) Flooding Expenses: ₹11.5 crore was disallowed for additional works due to flooding, which the Commission attributed to the BoP contractor's inadequate planning, despite normal rainfall in Haldia. The contractor failed to properly inspect the site and plan for environmental conditions, leading to unforeseen expenses. This financial impact should not be passed on to consumers.

b) Yellow Sand Procurement: ₹5.9 crore was disallowed for sand procurement, as the BoP contractor cited difficulties during a period of below-average rainfall. Historical rainfall data confirmed that the conditions were not abnormal, indicating a lack of proper planning.

c) Heavy Crane Costs: ₹2 crore was disallowed for the use of a heavy crane, which was used to expedite work. There was no evidence linking this expense to rainfall or force majeure events, and the costs should not burden consumers.

d) Lack of Force Majeure Notices: Despite claiming additional costs due to flooding as a force majeure event, the Appellant failed to provide the required force majeure notices, as mandated by the BoP contracts. Consequently, no additional costs for force majeure can be justified.

161. The Respondent Commission rightly disallowed ₹17.6 crore in expenses claimed by the Appellant due to the poor financial condition of the subcontractor, Tecpro Systems Ltd.

162. Under the BoP Contract, the main contractor is responsible for the actions, defaults, and negligence of its subcontractors. Consequently, the Commission deemed it inappropriate to allow additional costs arising from the subcontractor's default, as doing so would violate the contractual terms. The burden of such costs cannot be transferred to consumers.

III. The Respondent Commission has rightly disallowed Rs. 5.7 Crore on account of Intake Water System and Line diversion

163. The Respondent Commission rightly disallowed the additional expenditures of ₹2.5 crore for obtaining the Right of Use (RoU) for a cross-country pipeline and ₹2.9 crore for the Right of Way (RoW) for an overhead line due to line diversion.

164. The contract with M/s Electrosteel Castings Ltd. (ECL) for the intake water system, issued on 28.01.2011, included obtaining RoU within its scope, making any additional costs for this work unjustifiable.

165. Similarly, the contract with M/s Venus Controls & Switchgear Pvt. Ltd. (VCSPL) for the 33 kV overhead line, issued on 26.05.2011, also covered obtaining RoW.

166. Both contractors were responsible for these expenditures, and their failure to perform should not result in additional costs being passed to consumers.

Allowing these costs would lead to long-term financial burdens on consumers through power purchase costs, including servicing depreciation, interest, and returns on equity.

IV. The Respondent Commission has rightly disallowed Rs. 44.1 Crore on account of Overhead Expenses and Pre-operative Expenses

167. The Commission submitted that it has addressed the Appellant's claims regarding Overhead and Pre-operative Expenses, originally approved at ₹45 crore (1.6% of hard costs) in the 2nd Stage approval on 13.06.2011.

168. The Appellant later claimed an increased amount of ₹112 crore (3.2% of hard costs), citing a ₹67 crore rise. The Commission allowed ₹26.7 crore for uncontrollable construction power energy charges and approved a differential of ₹5.2 crore for pre-synchronization fuel costs.

169. However, due to insufficient supporting documentation for the substantial increase in other overhead costs, the Commission applied the same methodology as the 2nd Stage approval, allowing expenses at 1.1% of hard costs plus actual construction power and pre-synchronization fuel costs. Despite the Appellant's claims of providing documentary evidence for increased inflation and interest rates, no specific documents substantiating these claims were submitted.

170. The Appellant's letter dated 17.06.2022 merely presented general inflationary data without detailed year-wise overheads or documentation. Consequently, the Respondent Commission adhered to its established methodology for determining allowable expenses.

V. The Respondent Commission has rightly disallowed Rs. 47.4 Crore on account of Other Enabling Work

171. The Respondent Commission justifiably disallowed the Appellant's additional claims of ₹0.9 crore for rehabilitation and resettlement (R&R), ₹19 crore for miscellaneous enabling works, and ₹31.5 crore for residential infrastructure and hostels due to insufficient supporting documentation.

172. The Appellant claimed ₹16.9 crore for R&R but failed to provide a detailed cost breakdown. The Commission relied on the previously submitted expenditure of ₹16 crore from the 2014 Revision Petition.

173. The Commission disallowed ₹11.2 crore due to the Appellant's failure to provide substantive evidence. Despite a request on 10.06.2022 for clarity on these costs, the Appellant merely resubmitted earlier documents, such as Independent Technical Consultant Reports, offers/quotations, and audited figures from prior petitions. The Appellant did not supply final purchase orders, which are crucial for substantiating the expenses. Only offers/quotations used for estimation were provided, unlike for other works where detailed contracts and completion certificates were submitted.

174. The Appellant later submitted invoices supporting the miscellaneous enabling works as part of the Appeal which were not presented to the Commission earlier. The Appellant's claim that the lack of direction from the Commission justified the omission was deemed an afterthought.

175. The Commission emphasized the Appellant's responsibility to substantiate capital cost claims with appropriate documentation as per regulatory requirements, irrespective of any explicit directives from the Commission. The Commission's decision was based on the lack of detailed and timely documentation to support the claimed additional costs.

176. Further, argued that it is important to highlight that while the Respondent Commission must consider the Appellant's audited accounts, it is not obligated to accept them without question. The Commission is required to perform a prudence check, reviewing all relevant invoices in accordance with Regulation 2.8.5.1 of the WBERC Tariff Regulations, 2011. This ensures that all claims are thoroughly scrutinized for accuracy and compliance before approval. The following judgments may be referred:

i.W.B. Electricity Regulatory Commission v. CESC Ltd., (2002) 8 SCC 715:

> ***"94.*** *We notice that for the purpose of the 1948 Act, clause XVII of Schedule VI defines the various types of expenditures enumerated therein, as expenditure "properly incurred" therefore for the purpose of the 1948 Act it would have been sufficient for a licensee to bring his expenditure under that definition clause and the same was entitled to be counted for the purpose of determining the tariff under the said Act. But we have noticed hereinabove that though the principles of Schedule VI have been adopted by the Commission in its Regulations the same will have to be considered along with other principles enumerated in the Regulations which includes the principles*

encompassed in clauses (b) to (g) of Section 29(2) of the 1998 Act. We have also held that in the event of there being any conflict, it is the provisions of the 1998 Act which would prevail. The 1998 Act mandates the Commission to take into consideration the efficient management by the licensee of its Company, as also the interests of consumers while determining the tariff, therefore, if these two factors which go in favour of the consumers are in conflict with the definition of expenditure "properly incurred" in Schedule VI to the 1948 Act then it is for the Commission to reconcile this conflict and decide whether to accept the expenditure reflected in the accounts of the Company or not. ***In this process the Commission in our opinion is not bound by the auditors' report."***

ii. Jindal Steel and Power Limited v. Chhattisgarh State Electricity Regulatory *Commission*, 2015 SCC OnLine APTEL 137:

" 8.8 This Appellate Tribunal in Appeal No. 89 of 2012 (Raigarh Ispat Udyog Sangh v. Chhattisgarh State Electricity Regulatory Commission), took the view that in the absence of the segregated accounts of the distribution business, the State Commission could not undertake prudence check in determining the ARR and retail tariff of the Jindal Steel. ***The prudence check is an essential part of the process of tariff determination and any expenditure incurred by the Utility cannot be accepted by a Regulator on the face of it and passed on to the consumers and, hence, the Regulatory Commission is required to take into consideration the efficient working of a utility as also the interest of the consumers while determining the tariff and the State Commission, in doing so,***

being a Regulator plays a role of internal auditor and it is not bound by the expenditure reflected in the accounts of the said Distribution Company."

177. The Respondent Commission has correctly disallowed the Appellant's claim of Rs. 31.5 crores for residential infrastructure and hostels. This claim is barred under Regulations 5.2.1 and 5.2.2(iv) of the Tariff Regulations, 2011, which permit additional capitalization only up to the cut-off date of 31.03.2017, and in certain cases beyond it.

178. The expenditure of Rs. 31.5 crores does not qualify as permissible additional capitalization under these regulations. Furthermore, the Appellant failed to obtain the required prior approval from the Respondent Commission for the investment in residential hostels, violating Regulation 2.8.1.4, which mandates prior permission for such investments. Therefore, the Respondent Commission has rightly disallowed these costs.

VI. The Respondent Commission has rightly disallowed Rs. 82.5 Crore under the head of Interest during Construction

179. The Commission submitted that it has rightly disallowed the IDC on excess loans. The Commission reviewed the actual expenses and loan drawal reported by the Appellant.

180. By November 2011, the cumulative loan drawal was ₹197 crore, while cumulative expenditure was ₹398.19 crore. The equity funding as of December 2011 was computed as the difference, totaling ₹201.19 crore. From January 2012

onwards, the Commission considered the actual loan drawal plus the equity amount of ₹201.19 crore and compared it with the actual expenditure.

181. By the project's end, the Commission determined that the equity portion should not fall below 24%. However, it found that the Appellant had drawn excess loans, resulting in a debt-to-equity ratio of 59.61% in January 2012, increasing to 80.24% by June 2012.

182. This excess loan drawal led the Commission to disallow the excess IDC, adhering to the principle established by this Tribunal in Appeal No. 72/2010, which mandates that debt and equity should be introduced pari passu in a project. Any imbalance increases the interest burden on consumers.

183. The Appellant had initially claimed a high interest expense of ₹20.95 crore against a loan of ₹197 crore for the first two months. Consequently, the Respondent Commission disallowed an excess IDC of ₹16.7 crore. The Appellant later contended that this amount pertained to front-end fees.

184. However, no documentation was provided to substantiate this claim. Therefore, the Respondent Commission rightly disallowed the ₹16.7 crore and refrained from allowing it to be recovered through the tariff.

Analysis and Conclusion

185. Having heard all parties in detail, the core question for determination in this Appeal is as follows:

Whether WBERC has acted arbitrarily and without proper justification in disallowing various claims and expenses incurred by the Appellant on the construction of the Project under different heads, thereby failing to consider the submissions and evidence provided?

186. The Appellant herein has prayed for the following:

"a) Allow the present appeal;

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c) Allow the following costs and expenditures prudently incurred by the Appellant to be recovered along with the carrying cost till the date of final payment:

(i) Rs. 5.9 Crore in relation to the BTG;

(ii) Rs. 37.0 Crore in relation to the Balance of Plant cost;

(iii) Rs. 5.7 Crore on account of Intake Water System;

(iv) Rs. 47.4 Crore on account of Other Enabling Work;

(v) Rs. 44.1 Crore on account of Overhead Expenses and Pre-operative Expenses; and

(vi) Rs. 82.5 Crore under the head of IDC.

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187. The State Commission vide the Impugned Order, while determining the Final Project Cost for the Appellant's 2x300 MW coal-based thermal power project in Haldia, West Bengal (Project), disallowed costs amounting to Rs. 222.6 Crores under various heads, including BTG costs (Rs. 5.9 Crores), Balance of Plant (Rs. 37 Crores), Intake Water System (Rs. 5.7 Crores), Other Enabling Works (Rs. 47.4 Crores), Overheads/Pre-Operative Expenses (Rs. 44.1 Crores), and IDC (Rs. 82.5 Crores).

188. We took note of the fact that the Commission vide the Impugned Order dated 20.07.2022, after over 4 (four) years, has approved the final project cost to the extent of Rs. 3832.6 Crore and in doing so, disallowed costs and expenditures for construction of the Project under various heads, as shown above. The Commission had raised some queries related to the Final Project Cost Petition during the 4 (four) year period, but ended up passing the Impugned Order, apparently without giving due cognizance to the documents placed on record by the Appellant.

189. We are concerned with the conduct of the Commission that it has not filed any reply and/or submissions supported by affidavit before this Tribunal in response to the present Appeal. However, the Commission, during the final hearing, has filed comprehensive written submissions without any supporting affidavit. During the oral arguments, the Commission placed reliance upon reasons that were not reflected in the Impugned Order.

190. The Project achieved COD for Unit 1 on 28.01.2015 and for Unit 2 on 21.02.2015, and thus, was completed in a time duration of 38-39 months, compared to the regulatory norms of 42-48 months under the WBERC Tariff Regulations.

191. The Appellant's claims for cost revisions stemmed from foreign exchange fluctuations and other uncontrollable factors, leading to a revised project cost of Rs. 4067.2 Crores, out of which only Rs. 3832.6 Crores was approved. The WBERC's in-principle investment approvals were granted on 16.08.2010 (Rs. 3097.50 Crores).

192. The Appellant vehemently argued that all necessary data and documentation were provided to the WBERC per the Tariff Regulations, including progress reports and audited cost details. Despite the early completion, cost-effectiveness, and operational excellence of the Project, the WBERC's disallowance of costs has been challenged as erroneous and arbitrary.

193. The Commission in the Impugned Order and before this Tribunal for the first time has objected regarding the non-submission of various documents. However, in response, it is submitted by the Appellant that all required documents which had been requested by the Commission had been duly submitted by the Appellant before the Commission. The Commission relied upon Regulation 2.8.5.1 (a) of the Tariff Regulations to state that submission of work orders is a regulatory requirement. However, it has been noted that this particular regulation requires ***"(a) Package-wise equipment supply cost of relevant items under each package mentioning specific order/ LOA/ Contract Agreement against such package"*** Thus, the Tariff Regulations do not stipulate submission of work orders as such; the requirement is only for linking of cost with either specific orders or LOAs or contract agreements. In support of its submissions, the Appellant has stated that it has submitted more than 3700 pages of documents/data, including the Auditor's Certificate. In this regard, Appellant has also submitted a chart to demonstrate all the data and documents that were presented to the Commission over the course of 4 years of proceedings for project cost determination. We have further been apprised that the Commission does not carry out any Technical Validation Session (TVS).

194. We agree with the Appellant that no opportunity was granted to the Appellant by the Commission to explain its position before passing the Impugned Order. However, the so-called deficiencies being pointed out by the Commission at the final arguments stage before us were not intimated by the Commission either at the stage of proceedings when they were pending before the Commission for 4 years or even by filing any Counter Affidavit before us.

(i) Boiler Turbine Generator (BTG)

195. The primary contention revolves around the Appellant's claim of Rs. 5.9 Crores for the domestic procurement of Lube Oil and Thermal Insulation, which the Respondent has disallowed. The Appellant entered into a BTG Equipment Supply Contract with Shanghai Electric in 2011, which was subsequently amended in 2015 to allow local procurement of certain components, resulting in a cost reduction in the total project cost.

196. The Appellant asserts that the domestic procurement resulted in a net reduction of Rs. 51.76 lakhs and provided all necessary documentation, including work orders, during subsequent proceedings before the Tribunal. The Appellant argues that the Commission's disallowance of the claimed amount was due to the alleged non-submission of work orders. The Appellant highlights that these work orders were not initially requested but were submitted later during the Tribunal's proceedings.

197. The Respondent maintains that the Appellant failed to substantiate the claim of Rs. 5.9 Crores with appropriate documentation, such as purchase orders or invoices, at the time of the original submission. As per Regulation 2.8.5.1 (a) of

the WBERC Tariff Regulations, 2011, submission of specific orders, LOAs, and contract agreements is mandatory. The Appellant's failure to comply with these requirements led to the disallowance.

198. The Respondent objects to the consideration of documents submitted post the Commission's order, arguing that these were not available during the original proceedings and thus should not influence the current judgment.

199. Upon reviewing the submissions, the Tribunal finds that the Appellant has provided evidence of contractual amendments aimed at reducing project costs through local procurement. The resultant savings have been adequately documented, though the critical issue lies in the submission of supporting documents.

200. In this regard, a summary of savings on account of various prudent activities undertaken by the Appellant, including the procurement of Lube Oil and Thermal Insulation locally, is provided below:

S. N.	Item	Unit	Amount
1	Reduction in BTG Supply Contract	USD	1,096,852
2	Average USD-INR Exchange Rate	Rs./USD	58.99
3	Reduction in BTG Supply Contract 3 = 1x2	Rs.	6,47,02,262
4	Cost of Lube Oil	Rs.	1,25,95,179
5	Cost of thermal insulation	Rs.	4,69,30,128
6	Cost of domestic procurement (6 = 4 + 5)	Rs.	5,95,25,307
7	Net Reduction in Project Cost (7 = 3 – 6)	Rs.	51,76,955

201. The Appellant argued that the Commission never sought Work Orders in support of the claim of domestic procurement of Lube Oil and Thermal Insulation, and therefore, these were not furnished before the Commission. In view of the fresh objections raised by the Commission, the Appellant without prejudice to its submission that all requisite documents have already been submitted by it, duly audited, and in pursuance of the leave granted by this Tribunal on 29.07.2024, brought on record the Orders placed on domestic suppliers Indian Oil Corporation Limited and Lloyds Insulation (India) Limited.

202. The Tribunal acknowledges the Appellant's argument regarding the lack of an initial request for specific work orders and fresh submissions by the Commission, and we allowed and accepted the supporting documents in the interest of justice.

203. It is a settled principle of law that the proceedings before the first appellate court are in continuation of the original proceedings on the issue of facts and law, both, and thus, the facts and material placed before us cannot be ignored, in case the same has not been called at the original proceedings.

204. In fact, the complete auditor’s report was placed before the State Commission, which in turn preferred not to call for any such record as was required by it for a prudent check.

205. We have perused the records placed by the Appellant. It is observed that the Appellant, after entering a BTG Equipment Supply Contract with Shanghai Electric on 14.09.2011, subsequently decided to procure a few items locally by

suitably amending the contracts in 2015 to, inter alia, reduce the overall project cost. This measure was undertaken by supplanting foreign procurement with domestic procurement, reducing the overall project cost.

206. The net reduction in Project Cost due to such domestic procurement was Rs. 51,76,955/-.

207. Undoubtedly, the Appellant has succeeded in completing all works at a lower cost. In this respect, the amended contract specifies the reduction of USD 1,096,852 in para 3 of the amendment. Reduction in contract value was by way of reduction of value against identified specific items in Para 5. The corresponding cost of alternative domestic procurement for lube oil and thermal insulation was also mentioned in the recital of the amendment contract, Para 5 is reproduced as under:

> *"Consequent to the amendment of Contract Price Appendix-1 (Breakdown of Contract Price) of the Equipment Supply Contract shall stand amended to arrive at the Amended Contract Price of USD 221,120,148 in place of the original Contract Price of USD 222,217,000 by way of reduction of value against BBU No_ 10, 12, 21 and 25 of "A" thereof of "Others of Boiler Island", "Steam Turbine Generator", "Others of Turbine Island' and "Thermal Insulation with accessories" by USD 51,225, USD 428,436, USD 89,632 and USD 527,559 respectively. As such value against BBU No 10, 12, 21 and 25 of "A" of Appendix -1 (Breakdown of Contract Price) of the Equipment Supply Contract shall stand amended from USD 216,561 to USD 165,336, USD 29,598,731*

to USD 29,170,295, USD 1,982,570 to USD 1,892,938 and USD4,174,174 to USD 3,646,615 respectively."

208. It is clear that the Appellant has acted in compliance with the contractual agreement and also optimized the cost of procurement.

209. The Commission has failed to comprehend the above contract and disallowed expenses towards the domestic procurement of these two items by citing non-substantiation of the claim, that too when the Commission has accepted the reduced project cost on account of going for domestic procurement, but has followed a mechanical approach in disallowing Appellant's claim relating to amounts paid for procuring Lube Oil and Thermal Insulation.

210. We find that the Commission has ignored the documents and submissions placed on record by the Appellant and has acted in a manner that is contrary to principles mandated under Section 86(3) of the Act.

211. Undoubtedly, any cost incurred ought to be allowed by the Commission after a prudent check, however, the Commission is duty-bound to allow such cost of an item that is necessary for the successful commissioning of the project after carrying out a prudent check. In the instant case, the Appellant has incurred a lower cost compared to the original contractual cost for the same item. The Commission has failed to carry out the prudent evaluation of such cost.

212. We found the cost incurred by the Appellant is as per the amended contract, and therefore, the cost of Rs. 5.9 Crores towards the expenditure on BTG (Lube oil) is allowed.

(ii) Balance of Plant (BoP)

213. The Appellant assailed the disallowance of expenditure amounting to ₹37 crores by the Commission related to Balance of Plant (BoP) contracts. The Appellant argues that these expenditures arose due to force majeure events and execution impediments, while the Respondent contends that the disallowance is justified due to lapses by the BoP contractor and the non-fulfilment of contractual obligations.

214. The following key issues arise for determination:

1. Expenditure of ₹19.4 crores on account of floods and excessive rainfall.
2. Expenditure of ₹17.6 crores on account of the default of a subcontractor (Tecpro Systems Ltd.).

Issue 1: Expenditure of ₹19.4 crores due to floods and rainfall

215. The Appellant contends that unprecedented rainfall during the monsoon seasons of 2012–2014 caused severe disruptions, amounting to a force majeure event as defined under the BoP contracts. Specific claims include:

a) ₹11.5 crores for temporary road construction, site de-watering, and repairs caused by flooding.
b) ₹2 crores for deploying heavy cranes to manage slushy conditions.
c) ₹5.9 crores for substituting plinth filling material with costlier yellow sand when white sand was unavailable.

216. The Appellant argues that these measures were essential to ensure timely project completion and were prudently negotiated to minimize costs. Reliance is placed on contractual clauses recognizing floods as a force majeure event and on regulatory provisions permitting additional capitalization due to natural calamities.

217. The Respondent counters that the expenditures were avoidable with proper planning. The BoP contractor failed to account for Haldia's natural conditions, such as clayey soil and insufficient drainage. Letters dated May and September 2012 indicate HEL's acknowledgment of the contractor's inadequate preparation. Rainfall during key periods was below historical averages, negating claims of unprecedented weather. The use of cranes and alternate sand was unrelated to rainfall but arose from operational inefficiencies. No force majeure notices were issued as required under the contracts.

218. The Appellant's is based on certain Force Majeure events as well as execution impediments faced by it/its contractors.

219. It is, therefore, important to take note of the contractual agreements entered into by the Appellant.

Article 12.6.1

"12.6.1. require the Contractor to submit to the Owner (within such time as may be reasonably requested by the Owner having regard to the time required to implement such proposals) written proposals for an instruction to accelerate the progress of the Works or part thereof stating in good faith:"

(i) the extent to which the extension of time for which the Contractor has submitted a claim can be cancelled or reduced by implementing such acceleration and the adjustment. if any, which would then be required to still achieve the Guaranteed Completion Date; and

(ii) the lump sum amount which the Contractor will require to be added to the Contract Price if such an instruction were to be issued, which shall include any additional costs which the Contractor may be entitled to claim arising out of the relevant cause of delay, together with details showing the manner of calculation of the lump sum amount and the Contractor's proposals for the payment thereof;"

Article 43.1.2 & 43.4

"43.1.2 Other Force Majeure

any of the following which are not included in Political Force Majeure above:

(i) lighting, earthquake, tempest, flooding, fire, cyclone, hurricane, typhoon, tidal waves, whirlwind, drought or lack of water and other adverse weather or environmental conditions or action of the elements which are unusual or extreme (having regard, in the case of occurrences at the Site, to the meteorological records set out in the Technical Specification), meteorites, aircraft or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds; •

43.4 Performance to Continue

Upon the occurrence of an event of Force Majeure the Contractor shall use all reasonable endeavours to continue to perform its obligations under the Contract and to minimise the adverse effects of the circumstances leading to such event, provided that the Contractor reserves the right to ask the Owner for compensation in respect of any significant additional cost burden arising out of the Contractor's use of such reasonable endeavours. The Contractor shall notify thethe Owner of the steps it proposes to take including any reasonable alternative means for performance and the cost involvement, if any, for the approval of the Owner. The affected Party shall continue to perform its obligations, which were in no way affected by the event of Force Majeure.

The affected Party shall forthwith inform the other Party in writing the cessation of the event of Force Majeure and commence performing its obligations, which were otherwise prevented due to the event of Force Majeure."

220. The General Conditions of Contract (GCC) of the BOP Supply Contract and BOP Service Contract are identical and provide relief for the events that can be construed as force majeure events. BOP Contracts recognized flooding to be a Force Majeure event. In cases of Force Majeure in terms of Clause 43.4 of the GCC, the Contractor is entitled to compensation in respect of any significant additional cost burden arising out of reasonable endeavors employed by it for continuing performance of the contract. Further, as per Clause 12.6.1 of the GCC

of BOP contract, acceleration of works instead of extension of time granted allows for lumpsum payment to the contractor on account of the said time extension accordingly to ensure completion of work by the Guaranteed Completion Date.

221. Undisputedly, the time extension on account of Force Majeure Events results in additional cost in the form of IDC, and in case the work with additional cost can be completed in time, it will result in savings of cost and time overrun.

222. The Commission is bound to examine whether such a cost incurred in the completion of the work in time is beneficial to the procurer or not, as compared to the cost to be paid in terms of IDC.

223. The Appellant had submitted photographs of the unprecedented heavy rainfall damage and placed reliance on the judgment dated 12.08.2024 passed by this Tribunal in Appeal No. 194 of 2022: ***POWERGRID Southern Interconnector Transmission System Limited vs. Central Electricity Regulatory Commission & Ors.,*** whereby this Tribunal has inter-alia held that the determination of whether Force Majeure event has occurred does not centre around its impossibilities alone and impracticality of performance with regards to such matter of the contract will also suffice.

224. In this regard, arguments have been made by the Commission, supplementing the Impugned Order of the Commission. The Appellant has drawn our attention to the Minutes of the meeting dated 10.05.2012 held between PLL and the Appellant regarding monsoon planning, which indicates that the Appellant, as a prudent utility, assessed the impact on the project due to heavy rainfall. Therefore, the cost incurred by the Appellant/its contractor towards mitigation

measures adopted needs to be allowed. Further, Letter dated 14.09.2012 issued by PLL to Appellant and Minutes of the meeting dated 24.05.2013 held between PLL and Appellant establishes that PLL had undertaken the requisite measures keeping in view the heavy rainfall between July to September 2012 as per discussion with Appellant earlier and that was the reason why the Project was commissioned within the timeline stipulated under the Tariff Regulations.

225. The list of dates of the events has been placed before us as part of the present Appeal, which was also on record before the Commission. It is clear from the records that the increase in costs incurred by the Appellant was on account of the aforesaid uncontrollable events. As has also been noted hereinabove, in terms of Clause 43.4 of the GCC of BOP Contracts, the Contractor is entitled to compensation in respect of any significant additional cost burden arising out of reasonable endeavors employed by it for continuing performance of the contract. Further, as per Clause 12.6.1 of the GCC of the BOP contract, acceleration of works instead of extension of time granted allows for a lump sum payment to the contractor to ensure completion of work by the Guaranteed Completion Date. However, due to the prudent actions of the Appellant, such costs were reduced through negotiations with the relevant contractor(s) from PLL's demand of Rs. 13.2 Crores to Rs. 11.5 Crores.

226. As the Appellant has provided all the documentary evidence regarding the adverse impact of excessive rain and consequential expenditures, the disallowance of expenditure by the Commission on item (a) is erroneous and hence set aside, the cost of Rs. 11.5 crores is allowed.

227. Further, the Commission has contended that the expenses incurred for the deployment of additional cranes were not on account of the monsoon, but other reasons involved, such as the laying of sand and insufficient drainage.

228. The Appellant, through its submission, has not been able to correlate the deployment of additional cranes with excessive Monsoon. Here, we agree with the Commission that this was due to clay sand and insufficient drainage. As the responsibility of examining site conditions, preparing the site for smooth execution of work, and arranging requisite machinery is the responsibility of the contractor, this additional expenditure cannot be passed to the beneficiary. Hence, the claim of the appellant on this ground is rejected.

229. The Commission has submitted that the communications referred to by the Appellant in this regard refer to the difficulty in collecting borrowed earth and white sand during monsoon and do not mention anything about the difficulty being caused by flooding, which would constitute a Force Majeure event.

230. The unprecedented rainfall made the acquisition of white sand (as originally contemplated under the BOP contracts) impossible, as the rainfall in August 2013 was almost double the usual rainfall compared to the last 4 years, which resulted in the flooding of the area, making its extraction inaccessible for all subcontractors.

231. Further, letters dated 21.06.2012, 30.07.2012, and 19.08.2013 issued by PLL to Appellant establish that PLL, based on its prudent apprehension in June 2012, had proposed to carry out plinth filling with yellow sand instead of white sand due to heavy rains, which turned out to be a correct measure.

232. As per the Appellant safeguard the progress of the Project as per the agreed timeline and to avoid a suspension in activities to avoid rippling cost overruns, the Appellant agreed to the BOP Contractor's request for substituting the borrowed earth and white sand with the costlier yellow sand, which resulted in an additional expense of Rs. 5.9 Crore.

233. The list of dates of the events in the context of this issue has been placed along with the present Appeal, which was also on the records of the Commission.

234. The Commission, in its Written Submission and during the hearing, also argued strenuously with rainfall data and communication exchanged between the Appellant and its contractors, which were not there in the Impugned Order. Though the Commission has stated that excessive rainfall persisted for only three months in the Impugned Order, the Commission has also held in the same Impugned Order that the project was affected due to "excessive rainfall (natural calamities – flood), which is an uncontrollable factor".

235. As additional cost on this item i.e. substitution of Plinth Filling Material White Sand with Yellow Sand is due to the same reason of excessive rain as in item (a), and expenditure incurred as alternative performance to execute the work in the overall interest of the project and after detailed discussion and consultation with the Appellant, we find no merit in the reasoning of the Commission in disallowing the cumulative sum of Rs 5.9 Crore which was legitimately incurred by the Appellate. Hence, appeal on this item (c) is allowed.

236. Therefore, items (a) and (c) are allowed, and item (b) is rejected.

Issue 2: Expenditure of ₹17.6 crores due to Tecpro Systems Ltd.'s default

237. The Appellant states that Tecpro, a subcontractor of Punj Lloyd (BoP contractor), became financially insolvent, leaving key works incomplete. Punj Lloyd claimed additional costs to complete Tecpro's scope, of which ₹17.6 crores was borne by the Appellant.

238. The Appellant contends that the timely completion of the project was critical to avoid higher Interest During Construction (IDC) costs, which would ultimately burden consumers.

239. Per Contra, the Respondent emphasizes that the BoP contractor is contractually liable for the acts and defaults of its subcontractors. Allowing this expenditure would violate the contract and set a precedent for cost overruns due to poor subcontractor management being passed to consumers.

240. The Appellant's BOP contractor, i.e., Punj Lloyd Limited, had originally placed the order of Rs. 99.50 Crores for the coal handling plant on a sub-vendor named Tecpro Systems Limited ("Tecpro"). Tecpro, as per the Appellant, was a reputed contractor in the area of coal handling plant-related work execution, which, however, subsequently became financially sick.

241. The Commission in the Impugned Order, as well as during argument, has submitted that if the sub-contractor of the BOP Contract was unable to fulfil its

obligation, it was the BOP Contractor who had to ensure that the remaining works under the contract were performed as per its terms.

242. We have gone through the material on record, and we agree with the finding of the Commission on this issue. Considering many past decisions of this Tribunal and the Hon'ble Supreme Court, that any dispute between the contractor and its sub-contractor is a bilateral issue and its risk and implications are to be borne by them.

243. The BoP contractor's accountability for its subcontractors is explicit in the contract. Allowing the expenditure would amount to condoning contractual breaches. While the Appellant's decision to bear a portion of the costs appears pragmatic, the absence of a demonstrated regulatory or legal obligation for such cost-sharing precludes its approval. The Tribunal upholds the Respondent's decision to disallow ₹17.6 crores.

244. In light of the foregoing analysis, the disallowance of ₹37 crores by the Respondent Commission is rejected on item no. Issue 1. (a) & (c) and upheld on Issue 1. (b) and Issue 2.

(iii) Intake Water System

245. The Respondent Commission disallowed the additional expenditures of ₹2.4 crore for obtaining Right of Use (RoU) for a cross-country pipeline and ₹3.3 crore for Right of Way (RoW) for a 33 kV overhead line required for the Intake Water System. The Appellant seeks the inclusion of these costs in the approved capital expenditure for tariff determination.

246. The Appellant claimed the costs citing the following:

a) Socio-political challenges, including Panchayat elections, monsoon, and local agitation, necessitate delays and diversions in the pipeline and overhead line routes.
b) Safety compliance under the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, requiring insulated AB cables instead of conventional AAAC conductors.
c) Evidence provided, including project completion reports by Tata Consulting Engineers Ltd., auditor certifications, communications with contractors, and photographs of congested localities.
d) Past precedent of the Respondent Commission, allowing cost escalations for similar RoW issues in other projects.

247. The Appellant contends that despite the extensive documentation submitted, the Respondent erroneously rejected the claims.

248. The Respondent argues that the original work orders issued to M/s Electrosteel Castings Ltd. and M/s Venus Controls & Switchgear Pvt. Ltd. included the scope for obtaining RoU and RoW. The contractors were responsible for bearing the costs of any additional expenditure arising from delays or route modifications.

249. The disallowance of expenditure related to the intake water system, and the Appellant has contended that it was constrained to bear the following additional charges:

(i) Rs. 2.4 Crore towards obtaining RoU for cross-country pipeline; and

(ii) Rs. 3.3 Crore towards obtaining RoW for the 33kV overhead line for supply to the pump house.

250. However, the Commission rejected the aforesaid expenditure claims for RoU and RoW because the Appellant had not submitted sufficient documents.

251. The submission of the Appellant and the Commission response has been examined, and the Appellant claimed that the cost of obtaining RoU for the 13.5 kilometers cross-country pipeline had increased during the project execution phase and exceeded the earlier estimation. Further, Appellant has pointed out that the Panchayat election made the process of obtaining RoU for the pipeline even more difficult and an additional expenditure of Rs. 2.4 Crore had to be incurred for the completion of the project.

252. The Appellant mentioned that such an increase is due to Panchayat Election, however, Appellant also mentioned that the external expert (Tata Consulting Engineers Ltd.) has acknowledged the RoU issues due to panchayat election, harvesting season, monsoon, agitation by villagers etc. and various stipulations were issued by Kolkata Port Trust during execution of project which led to increase in costs.

253. However, it is not clear whether these factors resulted in a delay of execution and/or some additional payment made, as the auditor certificate certifies the expenditure only, this issue need to be examined in detail by the Commission to determine whether due to order of any government authority, an additional

payment was made. Accordingly, based on documents placed before us, we are not inclined to grant this.

254. Regarding the RoW issue, we have examined the Appellant's claim and observed that the cost has increased due to use of AB cables instead of bare AAAC overhead conductors to avoid proximity to certain congested localities in terms of Regulation 12 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, necessitating shorter spans involving increased numbers of poles and hardware.

255. Therefore, the Appellant's use of AB cables in congested areas aligns with safety standards prescribed by the Central Electricity Authority. The evidence, including photographs and contractor communications, substantiates the Appellant's claims regarding the necessity of route modifications and associated cost escalations.

256. Also, the Appellant informed that the Commission has allowed substitution of overhead lines by underground cables at a significant increase in cost because of RoW issues in the case of another licensee.

257. The Tribunal acknowledges the Respondent's duty to ensure that only prudent costs are passed on to consumers. However, the Commission's approach appears overly rigid, particularly when faced with documented evidence of extraordinary circumstances and prior instances of allowing similar claims.

258. As this additional expenditure of Rs 3.3 Crs is for the adherence to safety requirements as per CEA Regulations, we disagree with the Commission in disallowing it and agree with the claim of the appellant

259. In light of the foregoing, we conclude as follows:

a) The additional expenditure of ₹2.4 crore for RoU is rejected.
b) The claim of ₹3.3 crore for RoW for the 33 kV overhead line is justified, considering compliance with safety standards, and is allowed.

(iv) <u>Other Enabling Work</u>

260. Appellant has raised the issue that the Commission, by following erroneous treatment of expenditure related to enabling works, has erred in:

(1) Disallowing the expense of Rs. 31.5 Crore incurred towards the creation of residential infrastructure and hostels;
(2) Disallowing an increase of Rs. 15 Crore (wrongly recorded as an increase of Rs. 11.2 Crores in the Impugned Order), towards an increase in the cost of miscellaneous enabling works; and
(3) Erroneously recording the amount of Rs. 16 Crore as total expenditure towards rehabilitation and resettlement (R&R) as against Rs. 16.9 Crore incurred by the Appellant, thereby, wrongfully disallowing @ Rs. 0.9 Crore towards additional expenditure.

(1) Residential Infrastructure

261. The Appellant argued that residential infrastructure is integral to the generating station's operation under Section 2(30) of the Electricity Act, 2003, and cites regulatory precedents supporting such inclusions.

262. The Appellant asserted that the claims are supported by audited accounts, project reports, and valuation certificates.

263. On the contrary, the Respondent contends that residential infrastructure does not qualify as additional capitalization under the Tariff Regulations and was executed without prior approval, violating Regulation 2.8.1.4. The Appellant failed to provide sufficient documentation for miscellaneous enabling works, relying instead on estimates and quotations.

264. The Commission, in this context, has disallowed the amount of Rs. 31.5 Crore incurred by the Appellant in its entirety, towards the addition of residential infrastructure and hostel for the staff/ employees of the generating station, and argued before this Tribunal that the aforesaid costs cannot be covered under any of the Tariff Regulations.

265. However, it is noted that sub-section (30) of Section 2 of the Act defines the "***generating station***" inter alia as including any building used for housing the operating staff of a generating station. Also, details of capitalization of the cost of residential infrastructure were submitted by the Appellant to the Commission vide communication dated 17.06.2022, along with the contract agreements and handover certificates.

266. The Appellant submitted before us that in terms of Regulation 5.2.2(iv) of the Tariff Regulations of the Commission, any additional works/services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost can also be included in the original project cost, subject to prudence check.

267. We also note that the Electricity (Removal of Difficulty) Fourth Order, 2005 (Electricity Order) also provides that housing colonies of the operating staff are an essential requirement for the operation and maintenance of a generating station and form an integral part of the generating station.

268. It is also noted that there is no requirement for the housing colony to be located within the generating station boundary. In this regard, relevant extracts from the Electricity Order are reproduced below:

> "*…. And whereas providing the housing to the operating staff of a generating station in the vicinity of the generating station is essential for operation and maintenance of the generating station and forms an integral part of the generating station;*
>
> *…..*
>
> *2. Supply of electricity by the generating companies to the housing colonies of its operating staff. – The supply of electricity by a generating company to the housing colonies of, or townships housing, the operating staff of its generating station will be deemed to be an integral part of its activity of generating electricity and the generating company shall not be required to obtain licence under this Act for such supply of electricity."*

269. Further, this Tribunal in judgment dated 01.05.2015 in Appeal No. 97 of 2013: ***NTPC Ltd vs. Central Electricity Regulatory Commission & Ors.,*** had directed Central Electricity Regulatory Commission to reconsider the allowance of renovation and modernisation expenditure of the township. In this regard, the relevant extracts from the aforesaid judgment are reproduced below:

> *"30. The fifth issue is regarding disallowance of capital expenditure of township and colony.*
>
> *….*
>
> *(d) According to Section 2(3) of the Electricity Act, the definition of generating station includes any building used for housing operating staff of a generating station. Therefore, if the Central Commission has allowed expenditure incurred towards renovation and modernization of main plant equipment and auxiliaries of the generating station, the expenditure on the renovation and modernization of the housing colony should also have been considered as it is an essential part of the power plant. Accordingly we direct the Central Commission to reconsider allowance of expenditure to the extent incurred on renovation and modernization of the township. The matter is remanded to the Central Commission for reconsideration of this issue."*

270. The Commission in the Impugned Order has observed that the contract for residential infrastructure and hostel was awarded to a Group company, without any competitive bidding. In this regard, we are of the view that the Commission

could have carried out a prudence check to determine allowable costs for the residential building, considering the necessity of such infrastructure, which it has failed to do.

271. In this context, it was submitted by the Appellant that the valuation of the residential infrastructure as per a government-registered Valuer, in terms of the Government of West Bengal circle rate for land and rate schedule of the Central Public Works Department, is comparable with the cost at which the Appellant had procured the residential infrastructure. The aforesaid independent valuation report, as well as the Memo dated 13.05.2024 bearing reference no. 1548/DRSR-13015/67/2024 issued by the Department of the Directorate of Registration and Stamp Revenue, Government of West Bengal, were also brought on record.

272. The Appellant has submitted that it had procured the residential property from the property developer at the same rate at which, another generating company, namely the Tata Power Company Limited had procured a similar residential property for its operating personnel from the same property developer, even though the aforesaid agreement of Tata Power Company Limited was executed at an earlier date.

273. We have gone through the Submissions of the Appellant and are of the view that the Commission ought to have allowed the cost towards the residential infrastructure incurred by the Appellant after carrying out a prudence check. We have noted that the cost towards residential infrastructure qualifies as additional capitalization in terms of the Tariff Regulations. The Commission has further stated that prior approval under Regulation 2.8.1.4 was necessary. In this context, we have noted that additional capitalization for residential infrastructure is covered

under Regulation 2.8.4.1 of the Tariff Regulations, for which no prior approval of the Commission is necessary. Accordingly, we don't concur with the findings of the Commission and thus allow the claim of the Appellant on this issue.

(2) MISCELLANEOUS ENABLING WORKS:

274. The Commission disallowed the Appellant's claim for an increase of Rs. 11.2 Crore towards miscellaneous enabling works, whereas, as per the Appellant, it had submitted an actual increase of Rs. 19 Crore, of which Rs. 15 Crores is under appeal before this Tribunal. The Commission has considered the cost escalation of Rs. 11.2 Crores furnished vide an earlier 2014 Petition, ignoring the finally audited expense of Rs. 44 Crores.

275. The Commission has observed that the Appellant has failed to provide any work orders evidencing an increase in the execution of miscellaneous enabling work.

276. Per contra, the Appellant submitted that the detailed breakup for the total incurred cost had been provided to the Commission as per the Project Completion Report dated 19.02.2018. The entire cost towards Enabling works was also certified by the Auditors. It has already been observed that submission of work orders is not mandatory as per the Tariff Regulations.

277. As per the Appellant, the Commission failed to take into account the following detailed break-up for the total incurred cost of Rs. 44 Crore provided to the Commission in the Project Completion Report dated 19.02.2018, as per the table as under:

Enabling Work

Items of Work	**Final Cost (Rs. Crore)**
Boundary Wall/ Temporary Fencing	11.3
Building, Godown etc.	5.1
Construction Power Switchyards	2.9
Arrangements for start-up/ commissioning power	3.0
Studies, Surveys, Investigations etc.	2.7
Shifting of 132kV WBSETCL Towers as per Railway requirement.	1.2
Miscellaneous enabling work including Cycle Stand, Shed for Fire Tender, Sewage Treatment Plant, Rain Water Harvesting, Gates etc.	17.8
Sub-total (A)	**44.0**

278. The Appellant has now also brought on record the Work Orders evidencing the expenditure of Rs. 40 Crore incurred towards miscellaneous enabling work (along with I.A. No.1629/2022). Since, during the proceedings before the Commission, there was no specific query/ direction to provide Work Orders, these were not part of the original proceedings.

279. We note that the Appellant has submitted all requisite formats as per regulations and the Auditors' certificate for miscellaneous enabling works. Also, Commissions have not explicitly rejected any work or its addition with justification. As the Appellant has adhered to all the regulatory requirements, we find it prudent

to allow Rs. 40 Crores as against the Rs. 44 Crores of enabling works expenses, which is an increase of Rs. 15 Crores from the expenses approved earlier by the Commission of Rs. 25 Crores.

(3) Rehabilitation and Resettlement (R&R)

280. The Commission has erred in holding that the additional expenditure towards rehabilitation and resettlement was Rs. 16 Crore, whereas the Appellant had submitted that there was an additional expenditure of Rs. 16.9 Crore in this regard at the final stage from the investment approval stage. The Commission has relied on the expenditure amount of Rs. 16 Crores furnished during the 2014 Petition, instead of relying on the final audited figure submitted with the Final Project Cost Petition. The Commission has not given any reason for disallowing 0.9 Crs. The Appellant has submitted the necessary details justifying the cost increase.

281. We noted discrepancies in the Appellant's submissions but found no substantive reason to disallow the additional ₹0.9 crore claimed, as the actual final claim is Rs. 16.9 Crs. As also certified by the Auditor, the Commission has not rendered any finding on disallowance.

282. Accordingly, an increase of Rs. 31.5 Crores for residential building, Rs. 15 Crores under enabling works, along with additional Rs. 0.9 Crores of R&R are hereby allowed.

(4) Overhead Expenses and Pre-operative Expenses

283. The Appellant claims that an amount of ₹44.1 crore, representing additional overheads and pre-operative expenses, was erroneously disallowed. The Respondent defends the disallowances on the grounds of insufficient evidence and deviations from established norms.

284. The Appellant argues that the increase in overhead expenses and pre-operative costs was due to inflation, rising energy costs, and project-specific challenges during the period 2011–2015. All costs were duly certified by auditors, and detailed breakups were submitted to the Respondent Commission.

285. The Respondent Commission arbitrarily restricted the allowance to 1.1% of hard costs, contrary to applicable regulatory norms and judicial precedents. The Appellant also highlights computational errors in the Respondent's calculations and cites industry benchmarks where similar projects allowed higher overhead percentages, ranging from 3% to 6.8%.

286. The Respondent counters that the Appellant failed to provide adequate documentation or detailed year-wise breakdowns to substantiate the claimed increase. The Respondent followed the same methodology used in the second-stage investment approval in 2011, allowing 1.1% of hard costs plus actual construction power and pre-synchronization fuel costs.

287. Therefore, this Tribunal acknowledges discrepancies in the Respondent's calculations, as highlighted by the Appellant.

288. The Commission, while dealing with the Appellant's claim relating to an increase in Overheads and Pre-Operative Cost, has disallowed expenses towards

salary, other overheads, and petty capital assets amounting to approximately Rs. 44.1 Crores on the purported basis that the Appellant had failed to provide proper justification for the said increase.

289. The Appellant submitted that the Commission has failed to take into account the following:

(i) A comparative table of overheads and pre-operative expenses as submitted during the 2014 Petition and Final Project Cost Petition was also furnished vide its letter dated 17.06.2022. The Appellant had responded to the specific queries raised by the State Commission vide this letter.
(ii) Detailed breakup of other overhead and petty capital assets was also submitted vide letter dated 17.06.2022.
(iii) The overhead and preoperative expenses were certified by the Auditor.
(iv) The Commission has earlier allowed a tariff to the Appellant based on 95% of the Interim Project Cost based on a "*prima facie*" prudence check.

290. It is noted that the entire cost towards Overheads and Pre-operative Expenses was certified by the Auditors.

291. Further, the Appellant vide its letter dated 17.06.2022 had submitted that due to inflation during the period of 2011-15, the overheads and pre-operative expenses have been affected adversely. The response dated 17.06.2022 was limited to the specific query where limited details were sought by the Commission,

and all data submitted was as per the queries of the Commission itself in its letter dated 10.06.2022.

292. The Break-up of the Overheads and Pre-operative expenses submitted before the Commission by the Appellant, and as allowed vide the Impugned Order, is summarized as under:

Sl. No.	Item	Final amount as per Final Project Cost Petition dated 20.02.2018	As allowed vide the Impugned Order
1	Construction power	26.7	26.7
2	Fuel expenses net of infirm power revenue	5.2	5.2
3	Salary and other overheads	80.1	36.0
4	Total	112.0	67.9

293. As per the Appellant, the Commission based on the costs claimed under the second Stage approval (order dated 13.06.2011 in Case No. WBERC/OA-121/11-12 has calculated 1.1% of the total Hard Cost on an ad-hoc basis under so-called norms, which are not evident from the Tariff Regulations.

294. In terms of Regulation 2.6.5(ii)(a) of the Tariff Regulations, the Commission could have done a prudence check of the costs claimed by the Appellant and ought to have allowed such costs since the Appellant had provided sufficient justification as to the legitimacy of the costs. As per the proceeding before the Commission, sufficient time was available to the Commission for a prudence check and

disallowance of this based on % of Hard cost is not in accordance with the Regulation.

295. Pertinently, this Tribunal vide its judgment dated 02.12.2019 passed in Appeal No. 95 of 2018 and 140 of 2018, had inter alia held that Incidental Expenses During Construction (IEDC) should not be determined on a normative basis, as a percentage of "Hard Cost", as IEDC / Overheads and pre-operative expenses are not corelated with "Hard Cost". In this regard, the relevant portion of the said judgment dated 02.12.2019 is as under:

> "*7.7 Having regard to the submissions made by the learned counsel for the Appellant and learned counsel for the answering Respondent, we note that IEDC is admissible on the actual expenditure incurred by the Appellant after a prudence check as per the provisions of the Tariff Regulations and there is no such provision of restricting the same to the hard cost of the initial estimates prepared at the time of investment approval. It is a general practice that at the time of preparation of detailed project report for the Project, provision for IEDC is kept as a percentage of specific cost for the purpose of estimation whereas in actual IEDC of the project depends upon multiple variables having no demonstrable correlation with hard cost of the project.*
>
> *…..*
>
> *7.13 In view of the above, we are of the opinion that while carrying out the restriction of the IEDC, CERC is considering hard cost as on COD and not on actual detailed hard cost. This is considered to be against CERC's own philosophy that the project cost is up to the cut*

> *of date and they are looking at investment approval / revised cost estimate wherein the IEDC percentage is on total hard cost. As rightly submitted by the learned counsel for the Appellant that* ***actual IEDC of the project / element has no correlation with hard cost of the project and practice of taking a percentage of hard cost of IEDC is just a rough / approximate estimation for the purpose of providing cost input for approval purposes. As such, restricting the actual IEDC, based on this percentage is neither in terms of Tariff Regulations nor technically correct.*****"**

296. The Respondent Commission arbitrarily restricted the allowance to 1.1% of hard costs, contrary to applicable regulatory norms and judicial precedents. The Appellant also highlights computational errors in the Respondent's calculations and cites industry benchmarks where similar projects allowed higher overhead percentages, ranging from 3% to 6.8%.

297. We noted that the Respondent's methodology of capping overheads and pre-operative costs at 1.1% of hard costs is not explicitly supported by the WBERC Tariff Regulations. Judicial precedents, including this Tribunal's rulings as noted above, have emphasized that such expenses should be assessed on actuals after prudence checks, rather than relying solely on norms or percentages.

298. Given the foregoing and as per the previous decision of this Tribunal on this issue, the findings of the Commission on the issue of an increase in overheads and pre-operative costs are also set aside.

299. The appeal is allowed in favour of the Appellant, inter alia, the cost of Rs. Rs. 44.1 Crs is allowed for the Overhead Expenses and Pre-operative Expenses.

(5) Interest During Construction (IDC)

300. The Appellant has contended that the Commission has wrongly disallowed the claim of the Appellant towards IDC amounting to Rs. 82.5 Crore. In this regard, the following table reflects the wrongful IDC disallowance by the Commission as was submitted by the Appellant:

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
Alleged excess loan drawal	46.8	Impugned Order: Excess drawal of debt	The Commission has made a mistake while passing the Impugned Order by considering the project cost as debt. The project cost consists of debt as well as equity, however, the Commission came to a faulty conclusion that the Project has excess debt.
		During Hearing:	Notably, during the hearing before this Tribunal, the

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
			Commission has attempted to explain the error committed by it while adjudicating the claim of the Appellant towards IDC. Further, the Commission for justifying its error submitted that it considered the implied excess fund availability, considering debt as well as equity, ignoring the fact that equity does not cause IDC.
Alleged excess IDC for the first two months	16.7	Impugned Order: IDC capitalized in the first two months is higher	The Appellant has claimed Rs. 20.95 Crores towards Interest and Finance charges capitalized during the first two months. Rs. 20.95 Crores consisted of only Rs. 3.79 Crores of interest and Rs. 17.16

Component	Disallowed Amount under Appeal (Rs. Crores)	Reasoning given by the Commission	Appellant's Submissions
		Submission of Commission during the hearing before this Tribunal: The Commission was unaware that Finance Charges were included in IDC.	Crores towards financing charges.
Proportionate IDC for wrongful Hard Cost disallowance	19.0	Proportionate impact of the disallowance of Hard Cost	Proportionate impact of wrongful disallowance of Hard Cost.
Total	**82.5**		

301. Appellant has contended that the Commission, while determining the aforesaid issue, has failed to take into consideration the following supporting documents submitted by the Appellant:

(i) Letter dated 05.10.2018 issued by the Appellant to the Commission;
(ii) Letter dated 10.06.2022 issued by the Commission to the Appellant raising certain queries vis-à-vis the Final Project Cost Petition filed by the Appellant; and
(iii) Letter dated 17.06.2022 issued by the Appellant to the Commission in response to the aforesaid letter dated 10.06.2022, wherein the Appellant provided a detailed point-wise response.

302. In this regard, the Commission vide its written submissions dated 22.08.2024 and during the hearing held on 12.09.2024, has made certain additional submissions, thereby improving upon its findings in the Impugned Order pertaining to the issue of IDC, the same has been objected by the Appellant also stating that the Commission is trying to justifying the wrongful disallowance of Rs. 82.5 Crore, as against the settled principle of law.

303. The Appellant submitted that the Commission erroneously overstated the loan by Rs. 201.19 Crores for January 2012, February 2012, March 2012, and June 2012. The Commission erroneously considered the Project Cost as on 31.12.2011, for determining the loan position from January 2012 to June 2012.

304. The Project Cost as on 31.12.2011 was Rs. 398 Crores, whereas loan drawal as on 31.12.2011 was only Rs. 197 Crores, also recorded in the Impugned Order. Hence, due to the foregoing erroneous action on the part of the

Commission, the loan position from January 2012 to June 2012 got overstated by Rs. 201 Crores (Rs. 398 Crores – Rs. 197 Crores = Rs. 201 Crores). Therefore, the allegation of excess loan drawal is erroneous, and the disallowance of Rs. 46.77 Crore arose due to this faulty computation by the Commission. In this regard, Appellant has presented the computation vide its Written Submissions, which explain the computation errors of the Commission.

305. It has been submitted by the Appellant that in any project, the loan drawal was made in tranches based on the contract with the various sources, while expenditure incurred was continuous, leading to some shortfall or excess of funds. Excess funds were invested by the Appellant in short-term instruments, and the surplus of Rs. 30.6 Crores was utilised to reduce the interest expenses reported under IDC. The Appellant had netted off income generated from incidental available funds to the extent of Rs. 30.6 Crores from the Project Cost. Details have been placed by the Appellant, as well as an auditor's certificate certifying the aforesaid position was placed on record.

306. We note that no working or computations on the calculation of IDC on purported excess drawal of loan are available from the Impugned Order. It is clear from records that the Commission has considered Rs. 201 Crores of additional loan consistently for the January 2012 to June 2012 period, which resulted in an alleged higher figure for IDC. If such a loan over drawal was considered throughout the Project construction period, the loan taken by the Appellant would have been at a mistaken figure of Rs. 3418 Crores. However, loan disbursed for the Project, till the date of Project COD, is only Rs. 3217 Crores, as borne out by records.

307. The Commission vide its Written Submissions dated 22.08.2024 and during the hearing held on 12.09.2024 has now contended that in Table 21.2.1 of the Impugned Order, the Commission had compared the cumulative expenditure versus the cumulative drawdown of debt and equity and not the debt drawdown alone. Therefore, the Commission has in effect sought to argue that the equity infused by the Appellant in the Project ought to also be treated as debt, on which interest accrued. Such submission, in addition to being an improvement upon the Impugned Order, is also erroneous, since interest during construction is computed on debt only and not equity. The contention of the Commission in this regard is also contrary to the Tariff Regulations and therefore, liable to be set aside.

308. We note that the IDC claimed by the Appellant is lower than the IDC determined on a pari passu basis. IDC prayed for by the Appellant is congruent and consistent with the capital cost incurred by the Appellant. The allegations of excess loan drawal and excess interest booked are therefore erroneous

309. It is an established principle of law that a litigant has a legitimate expectation of knowing the reasons for rejection of his claim/prayer as held by the Hon'ble Supreme Court in CCT vs. Shukla & Bros., 2010 4 SCC 785. This is not available from the Impugned Order of the Commission as noted above.

310. The Appellant also argued that the Commission in the Impugned Order erroneously noted that the interest for the first 2 (two) months is substantially high and has accordingly disallowed Rs. 16.7 Crore, holding it to be excess interest.

311. By ignoring the requirement of payment of front-end fees associated with loans, the Commission has deducted Rs. 16.7 Crore (completely ignoring the

interest of Rs. 3.79 Crores on total debt drawal up to December 2011 plus Front-End fees of Rs. 18.61 Crores up to December 2011 minus Short terms capital gain of Rs. 1.46 Crores i.e., total amount of Rs. 20.95 Crores booked as IDC by the Appellant) from the actual IDC. Therefore, the Commission erroneously proceeded to adjust the Front-end fees from IDC, which was supposedly part of the Finance charges under the Tariff Regulations.

312. In this context Appellant has further submitted that the Front-End Fee / Bank Charges (Net) including taxes of Rs.36.22 Crore as submitted by the Appellant on 05.10.2018 comprises of (a) Front End Fee / Bank Charges (Gross) including taxes of Rs. 41.6 Crore; (b) Letter of Credit (LC) charges of Rs. 25.22 Crore and (c) Less: Income Generated During Project Period from Incidental Excess Funds of Rs. 30.6 Crore.

313. Against Gross Front End Fees / Bank Charges for the entire project period of Rs. 41.6 Crore, out of which expenditure incurred for the first 2 (two) months is Rs. 18.61 Crore. The entire proceeds generated from such short-term instruments were credited to the Project Cost. The Project Cost is net of such income of Rs. 30.6 Crore, out of which Rs. 1.46 Crore was generated during the first 2 (two) months. Thus, the finding of the Commission is factually incorrect and not based on records. Out of Rs. 20.95 Crore of IDC for the first 2 (two) months, the interest component is only Rs. 3.79 Crores. Finance Charges (Front-end fees) are required to be paid to financial institutions for obtaining a loan. Such amount was Rs. 18.61 Crores and net of short-term capital gain was Rs. 17.16 Crores for 2 (two) months.

314. The Commission has vide its Written Submission dated 22.08.2024 and during the hearing on 12.09.2024 erroneously submitted that the Appellant had at no point stated that the actual IDC was inclusive of Front-End Fees. In this regard, Appellant has submitted that the aforesaid details were part of the details submitted by the Appellant in its various responses to queries of the Commission, including the response dated 05.10.2018 and 17.06.2022.

315. In view of the foregoing, the Commission, by ignoring the foregoing details submitted by the Appellant regarding the requirement of payment of front-end fees associated with loans, has erroneously deducted Rs. 16.7 Crore from the actual IDC, thereby resulting in the reduced project cost. Considering this, the finding of the commission is set aside on this, and the claim of the Appellant is allowed.

316. In light of the foregoing analysis, the issue is allowed, and the disallowance of IDC by the Respondent Commission is hereby set aside.

Final Conclusion

317. The following is allowed, alongwith carrying cost, by setting aside the Impugned Order to such extent:

Issue	*Claim*	*Allowed*
(i) BTG	*Rs. 5.9 Crs.*	*Rs. 5.9 Crs.*
(ii) Balance of Plant cost;	*Rs. 37.0 Crs.*	*Rs. 17.4 Crs.*
(iii) Intake Water System	*Rs. 5.7 Crs.*	*Rs. 3.3 Crs.*
(iv) Other Enabling Work	*Rs. 47.4 Crs.*	*Rs. 47.4 Crs.*

(v) Overhead Expenses and Pre-operative Expenses	*Rs. 44.1 Crs.*	*Rs. 44.1 Crs.*
(vi) IDC	*Rs. 82.5 Crs.*	*To be decided based on the costs allowed.*

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No.141 of 2023 has merit and is partly allowed as per the observations made in the foregoing paragraphs. The Impugned Order is set aside to the extent as concluded in the foregoing paragraphs.

The Commission is directed to pass consequential Orders within 3 months from the date of this judgment.

The Captioned Appeals and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 30th DAY OF APRIL, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

pr/mkj/kks

Reportable/~~Non-reportable~~