IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 171 OF 2016
&
APPEAL NO. 373 OF 2017

Dated: **16.06.2025**

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

IN THE MATTER OF:

APPEAL NO. 171 OF 2016

Neyveli Lignite Corporation Limited
First Floor, No.8, Mayor Sathyamurthy Road, FSD,
Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600 031, Tamil Nadu. **….Appellant**

Versus

1. Central Electricity Regulatory Commission
   3rd & 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi- 110001

2. Jodhpur Vidyut Vitran Nigam Ltd,
   New Power House, Heavy Industrial Area,
   Jodhpur, Rajasthan-342003.

3. Jaipur Vidyut Vitran Nigam Ltd.
   Vidyut Bhawan, Janpath,
   Jaipur, Rajasthan – 302 005.

4. Ajmer Vidyut Vitran Nigam Ltd.
   Old Power House Hathi Bhata,

Jaipur Road, Ajmer,
Rajasthan-305 001.

5. Rajasthan Urja Vikas Nigam Ltd.
Vidyuth Bhawan, Janpath,
Jaipur, Rajasthan – 302005.

….Respondents

Counsel for the Appellant(s)	:	Ms. Ranjitha Ramachandran Mr. Shubham Arya Mr. Arvind Kumar Dubey Ms. Anushree Bardhan Ms. Poorva Saigal Ms. Surbhi Kapur
Counsel for the Respondent(s)	:	Mr. Alok Shankar Mr. S. K. Agarwal Mr. Dharmendra Kumar for R-2 to 5

APPEAL NO. 373 OF 2017

NLC India Limited
(Formerly Neyveli Lignite Corporation Limited)
First Floor, No.8, Mayor Sathyamurthy Road, FSD,
Egmore Complex of Food Corporation of India,
Chetpet, Chennai-600 031, Tamil Nadu. **…….Appellant**

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Jaipur, Rajasthan – 302005. **…….Respondents**

Counsel for the Appellant(s)	:	Ms. Ranjitha Ramachandran Mr. Shubham Arya Mr. Arvind Kumar Dubey Ms. Anushree Bardhan Ms. Poorva Saigal Ms. Surbhi Kapur
Counsel for the Respondent(s)	:	Mr. Alok Shankar for R-1 Mr. S. K. Agarwal Mr. Dharmendra Kumar for R-2 to 5

JUDGEMENT

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

1. M/s. Neyveli Lignite Corporation Limited (in short "NLC") filed the present Appeals, Appeal No. 171 of 2016 and Appeal No. 373 of 2017, challenging the orders dated 14.03.2016 and 25.04.2017 passed by the Central Electricity Regulatory Commission in Petition Nos. 18/RP/2015 and 130/GT/2016, respectively, in the matter of approval and revision of generation tariff for the

Circulating Fluidized Bed Combustion (CFBC) Technology-based Barsingsar Thermal Power Plant (2 x 125 MW) for the period from the commercial operation date (COD) of Units-I and II till 31.03.2014, including truing-up of annual fixed charges determined by the Central Commission's earlier Order dated 10.07.2015 in Petition No. 197/GT/2013.

<u>Description of the Parties</u>

2. The Appellant, Neyveli Lignite Corporation Limited ("Appellant"), is a Government of India Enterprise, and a company incorporated under the Companies Act,1956, and is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India. The Appellant, being a generating company owned and controlled by the Central Government, is covered by clause (a) of sub-section (1) of Section 79 of the Electricity Act, 2003. The generation and sale of power by the Appellant is regulated under the provisions of the Electricity Act, 2003, by the Central Commission, the Respondent No. 1 herein.

3. Respondent No. 1 is the Central Electricity Regulatory Commission ("CERC" or "Respondent No. 1" or "Central Commission"), which is a statutory body functioning vested with the functions and powers by the Electricity Act 2003.

4. Respondent Nos. 2 to 5 are the Rajasthan Distribution Licensees (in short "Discoms").

<u>Factual Matrix of the Case (Appeal No. 171/2016)</u>

5. Unit I of the Project was commissioned on 20.01.2012, and Unit II was commissioned earlier on 29.11.2011.

6. On 16.03.2012, the Appellant filed Petition No. 197/GT/2013 before the Central Commission seeking tariff fixation for the period up to 31.03.2014, under the 2009 Tariff Regulations. The Central Commission issued an order on 10.07.2015, determining the tariff for the Project from the date of commercial operation until 31.03.2014.

7. The Appellant subsequently filed Review Petition No. 18 of 2015 on 24.07.2015, challenging the order dated 10.07.2015.

8. On 14.03.2016, the Central Commission partly allowed the review petition, holding that the time overrun from synchronization to COD will be shared between the Appellant and the Respondents. The Order dated 14.03.2016 (in short "Impugned Order-RP") was communicated to the Appellant on 13.04.2016.

9. Aggrieved by the Impugned Order-RP dated 14.03.2016 passed by the CERC in the Petition No. 18/RP/2015, the Appellant has preferred the present Appeal No. 171 of 2016.

<u>Factual Matrix of the Case (Appeal No. 373/2017)</u>

10. On 19.01.2009, CERC issued the Terms and Conditions of Tariff Regulations, 2009, specifying the norms for tariff determination from 01.04.2009

to 31.03.2014. As already noted, Unit II of the Barsingsar Project was commissioned on 29.12.2011, and Unit I on 20.01.2012.

11. On 19.03.2012, NLC filed Petition No. 197/GT/2013 before CERC seeking tariff determination for Unit II from 29.12.2011 to 19.01.2012, and for both Units I and II from 20.01.2012 to March 31.03.2014, under the 2009 Tariff Regulations.

12. CERC determined the tariff through an order dated 10.07.2015. NLC filed Review Petition No. 18/RP/2015 on 25.07.2015, challenging the order, which was partly allowed by CERC on 14.03.2016.

13. In its review order dated 14.03.2016, concerning the tariff elements of Interest During Construction (IDC), the Central Commission held that under Clause (c) of Regulation 7(1) of the 2009 Tariff Regulations, the project cost as on the date of commercial operation (COD) includes IDC incurred or projected to be incurred up to COD. The Commission rejected the Appellant's contention that the entire IDC of Rs. 114.55 crore as per RCE-I should have been allowed until the Scheduled Commercial Operation Date (SCOD), regardless of actual fund deployment.

14. The Commission clarified that IDC up to SCOD is to be calculated based on the actual deployment of loan capital up to SCOD and not the IDC amount under RCE-I. While rejecting the review on this issue, the Commission allowed the Appellant to provide detailed justification regarding deferred debt deployment and its implications during the tariff revision based on the truing-up exercise under Regulation 6 of the 2009 Tariff Regulations.

15. Aggrieved by this decision on IDC and IEDC concerning the time overrun from the date of synchronization to the date of commissioning, the Appellant filed Appeal No. 171 of 2016.

16. Subsequently, on 27.07.2016, the Appellant filed Petition No. 130/GT/2016 before the Central Commission for tariff revision for the period 2009-14 under Regulation 6(1) of the 2009 Tariff Regulations.

17. On 25.04.2017, the Central Electricity Regulatory Commission (CERC) passed an order (in short "Impugned Order-GT") in Petition No. 130/GT/2016 revising the tariff for the Barsingsar Thermal Power Station (2×125 MW) for the period 2009-14. The order addressed the tariff elements of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC).

18. In its earlier order dated 10.07.2015, in Petition No. 197/GT/2013, CERC had adjusted the IEDC claimed by the Appellant on a pro-rata basis due to time and cost overruns of 37 months for Unit I and 31 months for Unit II, with the impact equally shared by the parties.

19. In the review order dated 14.03.2016, in Petition No. 18/RP/2015, CERC condoned a delay of 16 months for Unit I and 18 months for Unit II (from construction to synchronization) due to the introduction of new technology. CERC also held that the impact of an additional delay of 21 months for Unit I and 13 months for Unit II (from synchronization to COD) should be equally shared by the parties, with the tariff to be revised at the time of truing-up under Regulation 6 of

the 2009 Tariff Regulations. Based on this, the pro-rata reduction in IEDC was revised and adjusted in the capital cost as on the COD of both units. The scheduled COD of Unit I and Unit II was reset to 16 months and 18 months, respectively, for IDC and normative IDC calculation.

20. CERC revised the IDC allowed to ₹218.60 crore against the Appellant's claim of ₹303.30 crore, resulting in a disallowance of ₹84.70 crore. This included ₹58.16 crore for allowing only 50% of the IDC for the period from synchronization to COD and ₹26.54 crore due to pro-rata calculation based on the project period. The Commission did not base the IDC computation on the date of fund infusion and the applicable interest rate.

21. In the Impugned Order-GT dated 25.04.2017, the Central Electricity Regulatory Commission (CERC) allowed only ₹18.61 crore as against the Appellant's claim of ₹48.20 crore for normative Interest During Construction (IDC). The Appellant also identified a computational error in the table under paragraph 19 of the order concerning the apportionment of normative IDC between Units I and II. While the total Incidental Expenditure During Construction (IEDC) works out to ₹84.21 crore for Unit II and ₹202.30 crore for the station as a whole, CERC only considered ₹161.52 crore.

22. Regarding interest on working capital, CERC accounted for the lignite's base rate instead of the landed cost, which includes taxes and duties. The Appellant had claimed a revised lignite transfer price of ₹701/MT for the year 2011–12 in Petition No. 227/MP/2015.

23. However, CERC, in its order dated 14.03.2017, allowed only ₹673/MT (excluding clean energy cess and excise duty). CERC also maintained the cost of limestone for 1.5 months per the 2009 Tariff Regulations, rejecting the Appellant's claim for 45 days.

24. The Appellant, aggrieved by the IDC disallowance, IEDC calculation, and working capital computation, has filed the present Appeal.

<u>Written Submissions of the Appellant (Appeal No. 373/2017)</u>

Interest on Working Capital

25. The Appellant submitted that the interest on working capital is to be allowed in terms of Regulation 18 of the Tariff Regulations, 2009, on the cost of fuel. Regulation 18 reads as under:-

"18. Interest on Working Capital.

(1) The working capital shall cover:

(a) Coal-based/lignite-fired thermal generating stations

(i) Cost of coal or lignite and limestone, if applicable, for 1½ months for pit- head generating stations and two months for non-pit-head generating stations, for generation corresponding to the normative annual plant availability factor;

……………………………………

(2) ***The cost of fuel in cases covered under sub-clauses (a) and (b) of clause (1) shall be based on the landed cost incurred (taking into account normative transit and handling losses) by the generating company and gross calorific value of the fuel as per actual for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period."***

26. Further, Regulation 21 reads as under:-

"21. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations

………………

(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae :

(a) For coal based and lignite fired stations

ECR = { (GHR – SFC x CVSF) x LPPF / CVPF + LC x LPL}x 100 / (100 – AUX)

Where,

LPPF = Weighted average landed price of primary fuel, in Rupees per kg, per litre or per standard cubic metre, as applicable, during the month.

(7) ***The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable,*** *transportation cost by rail / road or any other means, and, for the*

purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below :

Pithead generating stations : 0.2%

Non-pithead generating stations : 0.8%

(8) The landed price of limestone shall be taken based on procurement price of limestone for the generating station, inclusive of royalty, taxes and duties as applicable and transportation cost for the month."

27. The fuel cost should reflect the landed cost of lignite, including taxes and duties, rather than just the base rate at which lignite is procured. The Central Electricity Regulatory Commission (CERC) only considered the base rate, which the Appellant claims contradicts the applicable regulations and the purpose of interest on working capital. Citing reference to ***PTC India Limited v. CERC (2010) and Haryana Power Generation Corporation Ltd v. HERC*** (Appeal No. 131 of 2011, order dated 01.03.2012), the Appellant contends that the objective of interest on working capital is to cover the cost incurred by the generating company in advance until it realizes payment from the sale of electricity. Therefore, the Appellant asserts that the full fuel cost, including taxes and duties, should be factored into the working capital calculation.

IDC and IEDC for the Time Overrun from the Date of Synchronisation to the COD

28. The Appellant submitted that the CERC had accepted in its orders dated 10.07.2015 and 14.03.2016 that the time overrun until the date of synchronization was beyond the Appellant's control due to the adoption of new technology requiring stabilization. The same reasoning should apply to the period from synchronization to commissioning, as post-synchronization activities like testing, pre-commissioning, and performance evaluation are also part of the stabilization process.

29. The Appellant cites ***Maharashtra State Power Generation Corporation Limited v. Maharashtra Electricity Regulatory Commission*** (Appeal No. 72 of 2010, decided on 27.04.2011), where the Tribunal held that if the delay is not attributable to the utility, the time and cost overrun should be fully allowed.

30. The Appellant contends that CERC's failure to recognize the full Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) for the post-synchronization period and directing the costs to be shared equally with procurers will cause financial loss, preventing full recovery of the project cost.

31. The Appellant also argues that CERC erred in concluding that the Appellant failed to provide sufficient evidence of pursuing the matter diligently during the post-synchronization period. The available material demonstrated issues related to new technology during data validation. The Appellant claims that CERC never requested further clarification, which it would have provided if asked.

Computational Error

32. The Appellant submitted that the Central Commission has made a computational error in deciding the IDC, normative IDC to be allowed to NLC in Para 19 of the impugned Order. Para 19 is as follows:

> *"19. Based on the above discussions, the capital cost, based on audited accounts works out is worked out as under:*

(₹ in lakh)

	COD of Unit-II (29.12.2011)	**COD of Unit-I/ station (20.1.2012)**
Capital cost including IDC	87134.00	175064.00
Less: IDC claimed	15117.00	30330.00
Capital cost excluding IDC	72017.00	144734.00
Less: Pro-rata reduction in IEDC (Overheads: Establishment, Audit & Accounts, Design and Contingencies	751.20	2499.30
Capital cost (excluding IDC) after pro rata reduction in IEDC	71265.80	142234.70
Adjustment due to infirm power	-	(-) **1582.00**
Adjustment of LD recovered (50%)	-	(-) 5594.50
Capital cost for purpose of tariff (excluding IDC, pro-rata reduction in IEDC & adjustment due to infirm power & LD)	**71265.80**	**135058.20**
Add: IDC allowed	**11456.90**	**21859.59**
Add: Normative IDC allowed	**927.40**	**1861.45**
Opening Capital Cost	**83650.10**	**158779.23**

33. The Appellant submitted that the IDC computation ought to be:

IDC	**As per NLC (Page no 121 of Appeal Copy) Lakhs**	**As per CERC order in 130/GT/2016 Lakhs**
Upto SCOD	11455.00	
From SCOD to Synchronisation	9507.41	
Total upto Synchronisation (A)	**20962.41**	16043.58

From synchronisation to ACOD (B)	9367.59	5816.00
Total IDC (A+B)	**30330.00**	**21859.58**

34. Similarly, normative IDC allowed by the Central Commission is Rs. 1861.45 Lakhs as against the claim of Rs. 3464.86 Lakhs.

35. The Appellant requests that the present appeal be allowed and that the Impugned Order dated 25.04.2017 be modified to the extent challenged in the Appeal, based on the grounds and arguments presented.

<u>Written Submissions of the Respondent Nos. 2-5 (Appeal No. 171/2016)</u>

36. Respondent Nos. 2 to 5 submitted that the Appellant has filed the present appeal against the order dated 14.03.2016, passed by the Central Electricity Regulatory Commission (CERC) in Petition No. 18/RP/2015, which reviewed the order dated 10.07.2015, in Petition No. 197/GT/2013.

37. In the review order, CERC partly allowed the Appellant's petition and directed that the impact of the time overrun of 21 months for Unit I and 13 months for Unit II should be equally shared by the parties, in line with the judgment of the Tribunal.

38. The Barsingsar Thermal Power Station, based on CFBC technology, was sanctioned by the Government of India on 15.12.2004, with the scheduled Commercial Operation Date (COD) for Unit I in December 2008 and Unit II in June

2009. The Appellant installed CFBC technology, considering its advantages over other technologies.

39. However, due to misjudgment regarding the installation and commissioning challenges, Unit I and Unit II were declared under commercial operation after 85 months and 84.5 months, respectively, from the date of the Letter of Award (LOA) on 15.12.2004.

40. The Appellant filed Petition No. 197/GT/2013 before CERC for tariff approval from the COD of the units until 31.03.2014. CERC, in its order dated 10.07.2015, condoned the delay of 16 months for Unit I and 18 months for Unit II during construction until synchronization but refused to condone the additional delay of 21 months for Unit I and 13 months for Unit II from synchronization to COD, attributing the delay to the Appellant.

41. The Appellant subsequently filed Review Petition No. 18/RP/2015, arguing that defects noticed after synchronization were not promptly rectified by the Original Equipment Manufacturer (OEM) and that the Appellant had not actively pursued the matter with the OEM. CERC, showing leniency and relying on the Tribunal's judgment cited by the Appellant, held that the time overrun of 21 months for Unit I and 13 months for Unit II should be equally shared between the parties.

42. The Appellant has filed the present appeal challenging the order dated 14.03.2016, issued by the Central Electricity Regulatory Commission (CERC). The limited issue in dispute is whether CERC correctly directed that the impact of

the delay from the date of synchronization to the actual commercial operation date (COD) should be equally shared between the parties.

43. Further, submitted that the present Appeal against the order dated 14.03.2016, in the review petition should be dismissed, as the Appellant has failed to establish any valid ground for challenging the order. The Appellant has not demonstrated any apparent error in the order to justify the Appeal.

44. The Respondent No. 1 had rightly observed in the order dated 10.07.2015 that the reasons for delay as mentioned by the Appellant were due to the reasons attributable to the Appellant itself, and the Appellant cannot escape their responsibility for the said delay. The relevant portion of the judgment is as follows:

> "*20. ……………Though this can be attributed to the use of new technology and the exposure of manpower available with petitioner and M/s BHEL with lesser expertise, a considerable extent of the delay could have been avoided if there was proper planning and project management with better co-ordination between the contractor and sub-contractors involved in the project. The delay due to lack of project management, co-ordination, planning, un-organised work structure during the execution of project is not beyond the control of the petitioner and the petitioner cannot escape responsibility for the said delay. In our view, the problems resulting in delay cannot be associated with the execution of new technology in the project……..*"

45. Further, vide its order dated 14.03.2016 in the said review Petition, the Respondent No. 1, while considering the issue of disallowance of the delay of 21 months for Unit-I and 13 months for Unit-II from the date of synchronization to the date of actual COD, rightly held that the impact of time overrun of 21 months for Unit-I and 13 months for Unit-II (from the date of synchronization to the delay of actual COD) should be equally shared by the parties, based on the following observation:

> *"10. ………… We are unable to accept the submissions of the petitioner. Problems were encountered in the CBFC boiler before the synchronization and the equipments were synchronized after rectification of the defects by EPC contractor. The petitioner and its contractor were expected to ensure that all defects were rectified before synchronization of the boiler. Keeping in view the fact that for the problems arising out of adoption of new technology, the Commission has fully condoned the delay upto the date of synchronization. However, after the synchronization when the defects were noticed, OEM took unusually long time to rectify the defects. There is nothing on record to show that the petitioner has diligently pursued with the OEM to rectify the defects in the shortest period of time. In the background of these facts, we hold that the impact of time overrun 21 months for Unit-I and 13 months for Unit-II (from the date of synchronization to the delay of actual COD) should be equally shared by the parties……"*

46. Respondents, further, submitted that the Appellant installed new technology after assessing its advantages, making it their responsibility to handle any defects or challenges during installation. The delay from synchronization to the actual commercial operation date (COD) was solely attributable to the Appellant, as correctly noted by the Central Electricity Regulatory Commission (CERC) in its orders dated 10.07.2015 and 14.03.2016.

47. The Appellant cannot shift liability to M/s BHEL, as they have already received liquidated damages of ₹129.88 crore from M/s BHEL for project execution delays. Further, the Appellant misrepresented the judgment in ***Maharashtra State Power Generation Corporation Limited v. Maharashtra Electricity Regulatory Commission*** (Appeal No. 72 of 2010, decided on 27.04.2011), where the Tribunal held that the delay was not entirely beyond the Appellant's control. The relevant portion of the said judgment is as follows:

> *"7.11. Considering all these facts and documents submitted before this Tribunal, though it is evident that there was delay on the part of BHEL in supply and commissioning of the main plant, it is not established beyond doubt that the entire delay was due to the reasons beyond the control of the Appellant.*
>
> *7.12. In view of above, we feel that this case falls under category (iii) described in para 7.4. Accordingly, following the principles of prudence check laid down by us, the cost of time over run has to be shared equally between the generating company and the consumers……"*

48. Respondents asserted that the judgment cited by the Appellant establishes that the delay was due to factors within the Appellant's control, making the Appellant responsible for the resulting costs and consequences. Therefore, the Central Electricity Regulatory Commission (CERC) did not err in reaching the same conclusion.

49. To sum up, argued that the present Appeal lacks any valid basis. The delay from synchronization to the actual commercial operation date (COD) resulted from the Appellant's inadequate planning, poor management, and lack of coordination with subcontractors. The judgment in ***Maharashtra State Power Generation Corporation Limited v. Maharashtra Electricity Regulatory Commission*** (Appeal No. 72 of 2010, decided on April 27, 2011) confirms that when delays are attributable to the generating company, the cost of time overrun should be equally shared between the company and the consumer.

50. The Central Electricity Regulatory Commission (CERC), in its order dated 14.03.2016, correctly held that the Appellant's failure to pursue timely defect rectification by the Original Equipment Manufacturer (OEM) made them responsible for the delay, and there is no error or irregularity in the order.

<u>Written Submissions of the Respondent Nos. 2-5 (Appeal No. 373/2017)</u>

Interest on Working Capital

51. Respondent Nos. 2 to 5 submitted that the CERC has correctly calculated the interest on working capital in accordance with Regulation 18 of the 2009 Tariff

Regulations, as amended on 21.06.2011. Clause 3 of the amended regulation specifies the applicable rate of interest on working capital. The relevant portion of the said regulation is as follows:

> *"(3) Rate of interest on working capital shall be on normative basis and shall be considered as follows:*
>
> *…*
>
> *(ii) SBI Base Rate plus 350 basis points as on 1.7.2010 or as on 1st April of the year in which the generating station or a unit thereof or the transmission system, as the case may be, is declared under commercial operation, whichever is later, for the units or station whose date of commercial operation lies between the period 1.7.2010 to 31.3.2014…."*

52. The CERC correctly applied an interest rate of 11.75% for calculating interest on working capital, consistent with the orders dated 10.07.2015 and 14.03.2016. CERC maintained the limestone cost for 1.5 months as per the tariff regulations. While the purpose of interest on working capital is to cover advance costs incurred by the generating company, the interest rate and tariff must be calculated strictly according to the applicable regulations to prevent any undue advantage to either party.

IDC and IEDC for the time overrun from the date of synchronization to the COD

53. In its orders dated 10.07.2015 and 14.03.2016, the CERC held that the delay was attributable to the Appellant, justifying the decision to equally share the impact of time overrun between the parties.

54. The Respondent also submitted that the Appellant selectively cited the judgment in ***Maharashtra State Power Generation Corporation Limited v. Maharashtra Electricity Regulatory Commission*** (Appeal No. 72 of 2010, decided on 27.04.2011), which held that the delay was not entirely beyond the Appellant's control, thereby warranting equal sharing of the resulting impact. Reference is given to para 7.11 and 7.12 of the judgment as already quoted.

55. The delay in the project's commercial operation resulted from the Appellant's lack of seriousness, preparedness, proper management, and coordination with its subcontractor. Despite having no involvement in the project's development, Respondents Nos. 2 to 5 have accepted the Central Electricity Regulatory Commission's (CERC) well-reasoned decision to share 50% of the time overrun impact. The Respondent further contends that CERC, after reviewing the Appellant's submissions and supporting material, correctly concluded that the delay was not caused by factors beyond the Appellant's control.

Computational Error

56. Further, stated that computational errors in the order dated 10.07.2015 were corrected in the order dated 14.03.2016. The Appellant did not disclose the

methodology used for calculating Interest During Construction (IDC) and normative IDC.

57. The IDC and normative IDC computed in the order dated 25.04.2017 were based on the Appellant's submissions during the review proceedings and the standard methodology followed by the Commission. The calculation also factored in the equal sharing of the time overrun impact between the parties. Therefore, the Respondent asserted that there is no error or irregularity in the order dated 25.04.2017.

Analysis and Conclusion

58. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

Issues

1. *Whether the Central Commission has properly addressed the methodology for allocating Interest During Construction (IDC) and the computation of normative IDC and Incidental Expenditure During Construction (IEDC) to be included in the capital cost.*

2. Whether the Central Commission was correct in computing the interest on working capital based on the base rate of lignite without considering the landed cost, including applicable taxes and duties.

3. Whether the Central Commission committed computational errors while addressing the issues related to IDC and IEDC.

59. The Appellant herein has prayed for the following (Appeal No. 171/2016):

> *"In view of the facts mentioned in para 7 above, points in dispute and question of law set out in para 8 and the grounds of appeal stated in para 9, the Appellants prays for the following reliefs:*
>
> *A. Allow the appeal and set aside the order dated 14.03.2016 passed by the Central Commission in Review Petition No. 18 of 2015 in Petition No. 197 of 2013 to the extent mentioned above.*
>
> *B. Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper"*

60. The Appellant has prayed for the following (Appeal No. 373/2017):

> *"In view of the facts mentioned in para 7 above, points in dispute and question of law set out in para 8 and the grounds of appeal stated in para 9, the Appellants prays for the following reliefs:*
>
> *A. Allow the appeal and set aside the order dated 25.04.2017 passed by the Central Commission in Review Petition No.*

130/GT/2016 to the extent mentioned above.

B. *Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper"*

61. These two appeals have been preferred by NLC against certain findings rendered by the Central Electricity Regulatory Commission in respect of tariff determination for the Appellant's Barsingsar Thermal Power Station (2 × 125 MW), based on Circulating Fluidized Bed Combustion (CFBC) technology.

62. **Appeal No. 171 of 2016** arises out of the Commission's order dated 14.03.2016 in Petition No. 18/RP/2015 (review of the Commission's earlier order dated 10.07.2015 in Petition No. 197/GT/2013). The primary dispute in Appeal No. 171 of 2016 relates to whether the time overrun from synchronization to Commercial Operation Date (COD) should be shared equally between the Appellant and the beneficiaries or whether the entire period should be fully condoned and allowed as part of the capital cost.

63. **Appeal No. 373 of 2017** challenges the Commission's subsequent order dated 25.04.2017 in Petition No. 130/GT/2016, wherein the Commission undertook truing-up for the period 2009–2014 in terms of Regulation 6 of the 2009 Tariff Regulations. The Appellant, inter alia, is aggrieved by the Commission's decision on:

- The methodology for allocating Interest During Construction (IDC) and the computation of normative IDC and Incidental Expenditure During Construction (IEDC) in the capital cost.

- The correctness of computing the interest on working capital based on only the base rate of lignite, without considering the landed cost (inclusive of taxes and duties).
- The alleged computational errors in the calculation of IDC and normative IDC.

64. Since both Appeals emanate from the same project, concern overlapping issues, and involve the same parties (albeit in different roles in each proceeding), we deem it appropriate to address them together through this common judgment.

Issue 1: Allocation of IDC and Computation of Normative IDC and IEDC

65. The Appellant contends that the time overrun from the date of synchronization to the date of actual COD was also beyond its control. It emphasizes that the CFBC technology was relatively new in India at that time, requiring stabilization and rectification efforts post-synchronization.

66. The Appellant also relies on the fact that CERC had already condoned 16 months (Unit I) and 18 months (Unit II) on account of the challenges in adopting new technology during the construction phase. It argues that the same principle should apply to the post-synchronization period as well, as the difficulties faced in stabilizing the plant were still linked to the new technology.

67. Further, submits that the Commission erred in attributing part of the delay (21 months for Unit I and 13 months for Unit II) to the Appellant's alleged lack of

due diligence, project management, and coordination with the Original Equipment Manufacturer (OEM).

68. The Respondents support the Commission's view, asserting that the post-synchronization delays were largely attributable to the Appellant's deficient project management, sub-contractor coordination, and oversight in pursuing timely rectification of defects.

69. They point out that the Appellant has already received liquidated damages from the contractor for delay, indicating that a substantial portion of the overrun was within the control of the Appellant or its vendors.

70. The Respondents further rely on the Commission's detailed reasoning in the orders dated 10.07.2015 and 14.03.2016, which underscore that the Appellant and its contractor had the responsibility to ensure defects were rectified prior to synchronization and, post-synchronization, that they pursued remedies diligently.

71. Section 79 of the Electricity Act, 2003, empowers the Commission to determine tariffs based on prudent costs. The 2009 Tariff Regulations set out norms for condonation of delays, capitalization of IDC and IEDC, and the conditions under which costs may be disallowed.

72. This Tribunal, in ***Maharashtra State Power Generation Co. Ltd. v. Maharashtra Electricity Regulatory Commission (Appeal No. 72 of 2010, decided on 27.04.2011)***, has laid down a principle that where delay is partially

attributable to the generating company and partially beyond its control, the resultant cost overrun should be apportioned equitably.

73. In the instant case, the Commission, through its order dated 10.07.2015 (later reviewed on 14.03.2016), distinguished between (a) the delay attributable to new technology constraints in the construction phase, which was fully condoned, and (b) the delay from synchronization to COD, which the Commission found to be at least partly attributable to the Appellant's deficiencies.

74. The Appellant's argument that the entire delay (including post-synchronization) was caused by the novelty of the CFBC technology was carefully considered by the Commission. However, the Commission noted that certain major problems, such as repeated boiler refractory failures, polymer liner issues, and subcontractor mobilization delays, could have been mitigated with more robust coordination and proactive follow-up with the OEM and subcontractors.

75. This Tribunal has consistently held that a "**prudence check**" should be applied to determine the extent to which delays were beyond the control of the generating company. Where it is clear that the developer or contractor could have mitigated the delay with more diligent efforts, it is appropriate to apportion part of the cost overrun to the generating company rather than fully passing it on to the beneficiaries.

76. In ***Maharashtra State Power Generation Co. Ltd. v. MERC (Appeal No. 72 of 2010)***, this Tribunal found that the delay in supply and commissioning by the contractor (BHEL) was not entirely beyond the control of the Appellant, and

hence, it directed sharing of the overrun cost between the generating company and the consumers, the relevant extract is quoted as under:

> *"7.11. Considering all these facts and documents submitted before this Tribunal, though it is evident that there was delay on the part of BHEL in supply and commissioning of the main plant, it is not established beyond doubt that the entire delay was due to the reasons beyond the control of the Appellant.*
>
> *7.12. In view of above, we feel that this case falls under category (iii) described in para 7.4. Accordingly, following the principles of prudence check laid down by us, the cost of time over run has to be shared equally between the generating company and the consumers……"*

77. The present case is similar to the above-cited case, i.e., ***Maharashtra State Power Generation Co. Ltd. v. MERC,*** and the failure on the part of contractors is not entirely established, and the cost on account of time overrun must be equally shared between the developer and the beneficiaries.

78. Thus, the facts in the present case similarly reflect that while new technology challenges contributed to the delay, a significant portion could have been addressed had the Appellant ensured the timely resolution of defects and better contractor management.

79. Also, it cannot be prudently established that the entire delay from the synchronisation to the CoD is beyond the control of the Appellant.

80. Therefore, we find no perversity or arbitrariness in the Commission's approach of directing a 50:50 sharing of the impact of the subsequent delay (21 months for Unit I and 13 months for Unit II) after a prudent check even to the fact of allowing full condonation of delay up to synchronization (i.e., 16 months for Unit I and 18 months for Unit II).

81. Consequently, the Commission's decision to allow only 50% of the IDC and IEDC for this uncondoned period is justified, especially in light of the established jurisprudence that generating companies must bear part of the cost for delays within their control or due to inadequate diligence.

82. Accordingly, Issue 1 is decided against the Appellant.

Issue 2: Interest on Working Capital

83. The Appellant urges that under Regulation 18(2) of the 2009 Tariff Regulations, the cost of fuel in working capital should be calculated based on the "landed cost" of fuel. The term "landed cost," as per Regulation 21(7), includes the price of fuel along with royalty, taxes, duties, transportation costs, etc.

84. The Appellant contends that CERC has erroneously considered only the base rate of lignite for the working capital calculation, excluding taxes and duties which the Appellant must pay upfront and recover later through energy charges.

85. It relies on decisions such as ***PTC India Limited v. CERC (2010) 4 SCC 603*** to argue that the tariff determination must ensure the generating company's legitimate costs are recoverable, and if the generator is to incur these additional taxes and duties upfront, the working capital requirement should factor in the same to avoid under-recovery and cash flow mismatches.

86. The Respondents submit that CERC has consistently applied the tariff regulations, using the base rate as determined by the Commission in other parallel proceedings.

87. They emphasize that the Commission is empowered to determine the transfer price of lignite based on prudent costs, and if the Commission finds that certain taxes and duties are already being addressed or are not to be included at the working capital stage, the approach should be upheld.

88. They further assert that the interest on working capital must be normative, rather than reflective of every component of the actual cost, to ensure regulatory certainty and avoid inflated claims.

89. Regulation 18(1)(a)(i) of the 2009 Tariff Regulations provides that working capital for a coal/lignite-based generating station includes the cost of coal/lignite (and limestone, if applicable) for 1½ or 2 months, depending on whether it is a pithead or non-pithead station.

90. Regulation 18(2) mandates that the cost of fuel be based on the "landed cost incurred," taking into account normative transit and handling losses.

Regulation 21(7) clarifies that the landed cost of fuel includes all statutory taxes, duties, and transportation costs.

91. From the Impugned Order dated 25.04.2017 (in Petition No. 130/GT/2016), it appears that the Commission has considered a lignite transfer price of 673/MT for the relevant year (2011–12), exclusive of certain taxes and duties, while allowing interest on working capital.

92. The Commission took into account its order in Petition No. 227/MP/2015 (dated 14.03.2017), which determined the lignite transfer price, and factored in only the base rate for computing the cost component in working capital.

93. The Tariff Regulations adopt a normative methodology for calculating various tariff components, including working capital. This approach, while aiming to reflect actual costs, also seeks to standardize certain assumptions so as to avoid an overly complicated tariff structure.

94. The Commission's decision to consider only the base rate of lignite might be influenced by the fact that additional levies, duties, or taxes could already be recoverable through the energy charge formula, which uses the landed price of fuel for billing the monthly energy charges (as per Regulation 21(6)– (7)).

95. While the Appellant's contention that taxes and duties are paid upfront is valid, we note that the normative framework generally provides for recovery of these costs through the monthly energy charges, which include the landed price of fuel.

96. If there is a mismatch or a time lag in recovering these amounts, the Commission's approach to interest on working capital is premised on a normative rate (SBI Base Rate + 350 basis points) and normative quantities (1½ months of stock for pithead, 2 months for non-pithead).

97. We find that the Commission's decision is contrary to the applicable Regulations, which provide that "landed cost" includes taxes and duties (reference Regulation 21(7)- "***The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, ----"***.

98. Additionally, CERC's methodology of adopting a transfer price arrived at in a separate proceeding, and applying the same consistently, if contrary to the applicable Regulations, has to be rejected, as it is a settled principle of law that Regulations are binding and the Commission cannot decide contrary to the provisions contained therein.

99. We, thus, find the decision of the Commission as arbitrary and unjust, inter alia, deserves to be set aside.

100. Hence, Issue 2 is decided in favour of the Appellant, the landed cost of fuel shall include the actual taxes and duties leviable.

Issue 3: Alleged Computational Errors in IDC and IEDC

101. The Appellant asserts that the Commission, in the impugned order, has not correctly captured the interest calculations for both the period up to synchronization and the period thereafter. It points to discrepancies in the tabulated figures in the order dated 25.04.2017 and the actual figures claimed by the Appellant.

102. The Appellant contends that these computational errors have led to an under-recovery of costs, thereby affecting the final tariff determination adversely.

103. The Respondents refute the Appellant's allegation, stating that the Commission's computations are based on the audited figures provided by the Appellant itself, and the Commission has applied the standard methodology uniformly.

104. They emphasize that certain arithmetic adjustments were indeed made between the orders dated 10.07.2015 and 14.03.2016, but those were clarifications or corrections of minor typographical errors rather than fundamental mistakes in methodology.

105. The Respondents further point out that the Appellant has not produced any conclusive proof or detailed working to establish the alleged computational discrepancies in the Commission's final tabulations.

106. The Appellant contends that the Commission's final figure for total IDC and normative IDC is lower than what the Appellant has computed. However, the Commission's order shows that it systematically excluded or reduced the cost

components corresponding to the uncondoned delay period (50% disallowance), which directly impacts the final figure.

107. It is argued that the difference in the figures is largely a function of the Commission's disallowance methodology rather than purely arithmetic or clerical errors.

108. While it is open to any party to highlight errors apparent on the face of the record, the Commission's approach to computing IDC and IEDC must be demonstrated to be incorrect through tangible evidence. If the Appellant believes there has been a numerical miscalculation, it must provide specific tabulations showing the correct approach and the precise areas where the Commission allegedly erred.

109. Based on the submissions made before us and also the specific submission of the Respondents that computational errors in the order dated 10.07.2015 were corrected in the order dated 14.03.2016, we find it appropriate to remand the matter to the Central Commission to reexamine the issue after giving opportunity to the Appellant and the Respondents herein and pass appropriate orders thereafter.

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 171 of 2016 is devoid of merit and thus dismissed.

The Appeal No. 373 of 2017 is allowed to the extent as concluded above.

The Central Electricity Regulatory Commission's Order dated 14.03.2016 in Petition No. 18/RP/2015 is upheld, and the Order dated 25.04.2017 in Petition No. 130/GT/2016 is set aside to the extent as observed in the foregoing paragraphs.

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

PRONOUNCED IN THE OPEN COURT ON THIS 16th DAY OF JUNE, 2025.

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

REPORTABLE / ~~NON-REPORTABLE~~
pr/mkj/kks