IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 259 of 2017 & IA No. 718 of 2024

Dated: **30.05.2025**

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

IN THE MATTER OF:
Gama Infraprop (P) Ltd.
M-3, 1st Floor, Aurobindo Marg,
Hauz Khas, New Delhi – 110016. **…Appellant(s)**

Vs.

(1) Uttarakhand Electricity Regulatory Commission
Through Secretary,
ISBT Chowk, Majra,
Dehradun, Uttarakhand – 248171.

(2) Uttarakhand Power Corporation Limited,
Through Director
Victoria Cross Vijeyta Gabar Singh Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun – 248001, Uttarakhand. **…Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Divya Chaturvedi

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan, Sr. Adv.
Mr. C. K. Rai
Ms. Anuradha Roy
Mr. Vinay Kumar Gupta for R-1

Mr. Pradeep Misra
Mr. Manoj Kumar Sharma for R-2

JUDGEMENT

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

1. M/s. Gama Infraprop Pvt. Ltd. filed the captioned appeal challenging the Impugned Tariff Order dated 16.05.2017 (in short "Impugned") passed by Uttarakhand Electricity Regulatory Commission in Petition Nos. 03 of 2016 and 40 of 2016.

Description of the Parties

2. The Appellant is a Company incorporated under the Companies Act, 1956, inter-alia, a Generating Company in terms of Section 2(28) of the Electricity Act, 2003 and has developed a 214 MW (at site conditions) gas based combined cycle power plant on build, own and operate basis at Mahuakheraganj, Kashipur in the Udham Singh Nagar district of Uttarakhand ("Power Plant"), consisting of two gas turbine generators of capacity of 71 MW each and one steam turbine generator of capacity of 72 MW.

3. Respondent No. 1, Uttarakhand Electricity Regulatory Commission (in short "UERC" or "State Commission") is the State Commission vested with the powers to adjudicate the issue herein under the Electricity Act, 2003

4. Respondent No. 2, Uttarakhand Power Corporation Ltd. (in short "UPCL"), is the distribution licensee in the State of Uttarakhand.

Factual Matrix of the Case

5. The Appellant, M/s. Gama Infraprop Pvt. Ltd. has challenged the common Tariff Order dated 16.05.2017 (in short "Impugned Order") passed by the Uttarakhand Electricity Regulatory Commission in Petition No.03 of 2016 for determination of tariff for FY 2015-16 and for the control period from FY 2016-17 till FY 2018-19 for supply of power to Uttarakhand Power Corporation Ltd. from the gas-based power plant of the Appellant and Petition No.40 of 2016 for approval of Business Plan of the Appellant for the Control Period starting from FY 2016-17 to FY 2018-19.

6. At this stage, the Appellant is only challenging the findings of the State Commission with respect to the Tariff Petition of the Appellant, and since the findings with respect to the Petition for Approval of Business Plan are subject to truing-up, the Appellant reserves its rights to challenge the same later, if required.

7. Being aggrieved by the abovementioned Impugned Order of the State Commission, the Appellant has approached this Tribunal since the said State Commission, while passing the Impugned Order, has inter alia:

(a) erred in disallowing the Interest During Construction ("IDC") to the tune of Rs.200.63 crore for April, 2012 till March, 2015 for the entire Power Plant and Rs.150.06 crore for the first unit of the Power Plant consisting of one gas turbine generator and the steam turbine generator ("First Unit") which achieved COD on 16.03.2016;

(b) erred in allocating the capital costs, including hard costs, IDC, and pre-operative expenses in terms of only tied capacity instead of actual utilization of the plant assets;

(c) erred in not allowing actual pre-operative expenses and preliminary expenses to the tune of Rs 29.96 crore for the entire Power Plant and Rs 22.04 crore for the First Unit against the claim of the Appellant; and

(d) erred in allowing the hard costs only up to Rs 658.95 crore as against the claim of Rs 689.92 crore, thereby disallowing the Appellant's claim to the tune of Rs 30.96 crore.

8. Around 2010, the Appellant commenced installation of its Power Plant. On 30.09.2010, the Power Plant's zero date was achieved with the award of the EPC contract to M/s Luna Infraprop Pvt. Ltd., a related party. In the same year, the Appellant initiated correspondence with Respondent No.2, Uttarakhand Power Corporation Ltd. (UPCL), for executing a Power Purchase Agreement (PPA) for 50% of the plant’s capacity.

9. On 18.11.2010, the Appellant entered into a Spot Gas Sales Agreement with GAIL for the procurement of natural gas, and also executed a Gas Transmission Agreement for the requisite infrastructure. The Scheduled Commercial Operation Date (in short “SCOD”) of the Power Plant was 31.03.2012.

10. On 13.09.2013, the Central Electricity Authority conducted a site visit and observed through its report that the gas turbines were fully erected and could be commissioned in open cycle within four weeks of gas supply; the entire plant was found ready for commissioning within twelve weeks, with all Balance of Plant components completed.

11. From April 2014 to January 2015, due to domestic gas shortages, only 9,845 MW out of 27,123 MW of gas-based capacity in India received limited gas and operated at 32% PLF, while 14,305 MW had no gas supply and remained stranded.

12. On 27.03.2015, the Ministry of Power launched the PSDF Support Scheme to mitigate high imported gas prices, under which the Appellant submitted a bid.

13. On 28.04.2015, the Uttarakhand Government issued a directive to UPCL to procure power from operational gas-based plants in the State.

14. On 17.09.2015, the Appellant was selected as a successful bidder under the PSDF Support Scheme. Subsequently, on 18.09.2015, the Appellant entered into a PSDF Agreement with the Government of India for subsidy disbursement.

15. On 11.12.2015, Respondent No.2 filed Petition No.2 of 2016 before the State Commission seeking approval of a draft Power Purchase Agreement (PPA) for procuring 107 MW from the Appellant's plant. Though the original State Government directive dated 28.04.2015 contemplated only a 2-year supply, UPCL sought approval for a 25-year PPA, citing persistent power shortages.

16. On 21.12.2015, the Appellant signed a Second Spot Gas Sales Agreement (Second SGSA) and an e-Bid RLNG Sales Agreement with GAIL for primary fuel supply. On 22.12.2015, the Appellant filed Petition No.03 of 2016 before the State Commission seeking tariff determination for power supply to UPCL. Gas supply commenced on 28.12.2015, and test-firing of the Power Plant began on 31.12.2015.

17. On 08.02.2016, the State Commission approved the draft PPA. A formal PPA for 107 MW was executed between the Appellant and UPCL on 11.02.2016. On 16.03.2016, the Appellant achieved first commercial operation (First COD) with the commissioning of a 71 MW gas turbine and a 72 MW steam turbine, totaling 143 MW.

18. On 10.06.2016, the State Government reiterated its direction to UPCL to enter into a 25-year long-term PPA. On 06.07.2016, under directions of the State Commission, the Appellant filed Petition No.40 of 2016 seeking approval of its Business Plan.

19. On 29.07.2016, the Appellant submitted a detailed break-up of the capital cost claimed for various components and equipment of the Power Plant, including the rationale and ratio of cost allocation between the capacity tied up under the PPA and the stranded capacity. On 31.08.2016, the second gas turbine generator with 71 MW capacity was commissioned, marking the Second COD.

20. On the same day, the State Commission issued a Query Letter directing the Appellant to provide a break-up of the capital cost for each equipment, its installation status, and allocation between tied and untied capacity, as per a specified tabular format.

21. On 24.04.2017, following further directions from the State Commission, the Appellant submitted details of pending Purchase Orders/Work Orders worth Rs 6.64 crore and supplementary invoices from vendors amounting to Rs 8.16 crore. On 16.05.2017, the State Commission issued a common order (the Impugned Order) in Petition Nos. 03 of 2016 (Tariff Petition) and 40 of 2016 (Business Plan Petition).

22. Thus, being aggrieved by the Impugned Order dated 16.05.2017 passed by the UERC in the Petition No. 03 of 2016, the Appellant has preferred the present Appeal.

Written Submissions of the Appellant, Gama Infraprop (P) Ltd.

(Based on Preliminary Written Submissions dated 25.04.2024)

A.THE DELAY IN COMMISSIONING THE POWER PLANT FROM SCOD

23. The Appellant's Power Plant was originally scheduled for commissioning on 31.03.2012. However, due to the non-availability of domestic gas and the high cost of imported gas, the First Unit was commissioned only on 16.03.2016, and the second gas turbine of 71 MW was commissioned on 31.08.2016. As a result of this delay, the project cost escalated to Rs. 1077.19 crore (including hard costs, pre-operative expenses, and IDC/finance charges) by the Second COD, exceeding the DPR estimate of Rs. 834.64 crore. In its Tariff Petition, the Appellant sought capitalization of Rs. 1052.49 crore, excluding certain expenditures incurred between the two CODs, which were to be addressed during the true-up.

24. Therefore, the difference in project cost(s) claimed in the Tariff Petition is as under:

Description	**Project Cost as per DPR (Rs. crore)**	**Actual project cost (Rs. crore)**	**Deviation (Rs. crore)**
Capital cost (excluding IDC)	765.93	735.76	-21.17
IDC	77.71	316.73	239.02
Total project cost	834.64	1052.49	217.85

25. The Appellant submits that, unlike other gas-based power plants, its project did not become a non-performing asset despite significant commissioning delays,

owing to prudent management and reduction of capital and pre-operative expenses. However, the State Commission disallowed Interest During Construction (IDC) amounting to Rs. 200.63 crore for the entire plant for the period April 2012 to March 2015, and Rs. 150.06 crore for the first unit.

26. In this regard, the summary of disallowance by the State Commission is provided as follows:

S.No.	**Particulars**	**(Rs. crore)**
(A)	IDC claimed by Appellant for the entire Power Plant till First COD	301.91
(B)	IDC claimed by Appellant for the First Unit till 16.03.2016 i.e., First COD Note: (B)= 67% * (A)	202.84
(C)	IDC allowed by the Ld. State Commission for the entire Power Plant till First COD	96.82
(D)	IDC allowed by the Ld. State Commission for the First Unit till 16.03.2016 i.e. First COD	49.79
(E)	Penal Interest Charged by the Banks for the entire Power Plant	4.46
(F)	Penal Interest allotted to First Unit	2.99
(G)	Amount of IDC disallowed by the Ld. State Commission for the entire Power Plant till 16.03.2016 i.e. First COD Note: (G) = (A] - [(C)+ (E)]	200.63

(H)	Amount of IDC disallowed by the Ld. State Commission for the First Unit till 16.03.2016, i.e., First COD Note: (H)=(B)-[(D)+(F)]	150.06

27. The State Commission disallowed IDC on the ground that the delay in commissioning was partly the Appellant's fault since the Steam Turbine and Generator were not ready by mid-November 2013. The Commission and UPCL relied on the CEA report dated 13.09.2013, the absence of authentic data proving readiness by that date, increases in capital work and advances, and the view that equipment should have been erected by March 2012, regardless of gas availability or cost. They also argued that the Appellant's delay, including lack of a Power Purchase Agreement, contributed to IDC cost overruns.

28. However, the Commission later allowed full IDC recovery due to gas supply delay for a similarly situated plant (Sravanthi Energy Pvt. Ltd. in its Order dated 23.10.2017). This inconsistency supports the Appellant's claim for IDC recovery, as legal principle favors adopting the interpretation beneficial to the party when multiple interpretations exist, especially since the delay was beyond the Appellant's control.

29. The Appellant contended that the State Commission wrongly interpreted the CEA Report dated 13.09.2013, which led to an incorrect finding that the delay in commissioning was due to the Appellant. To clarify, the Appellant wrote to the CEA on 02.07.2018, and the CEA responded on 06.07.2018, confirming that only commissioning activities were pending due to the non-availability of domestic gas and could only be completed after gas flow.

30. The Appellant submitted that the State Commission erred by ignoring this clarification and relevant material, relying instead on a flawed assumption that the plant was incomplete by the scheduled date. This violates the "***Wednesbury principles"*** of reasonableness, which require a quasi-judicial authority to consider all relevant factors and avoid irrelevant ones in its decision-making.

31. In this context, reliance is placed on the following judgments:

(i) **Indian Express Newspapers (Bombay) (P) Ltd. vs. Union of India, (1985) 1 SCC 641 (Para 82)**;

(ii) **Indian Railway Construction Co. Ltd. vs. Ajay Kumar, (2003) 4 SCC 579 (Para 18)**;

(iii) **Om Kumar vs. Union of India, (2001) 2 SCC 386 (Paras 66-68)**; and

(iv) **Reliance Airport Developers (P) Ltd. vs. Airports Authority of India, (2006) 10 SCC 1 (Para 56)**

32. The Appellant submitted the following in response to the Respondents' claims:

(i) The CEA Report dated 13.09.2013 anticipated combined cycle commissioning within 12 weeks of gas flow and scheduled completion of Steam Turbine and Generator erection by November 2013, about 10-12 weeks after the report.

(ii) The CEA, in its clarification dated 06.07.2018, confirmed that only commissioning activities were pending due to domestic gas unavailability, which could only proceed after gas supply commenced; thus, no other interpretation of the CEA report is valid.

(iii) The Appellant achieved First Commercial Operation Date (COD) on 16.03.2016, within 12 weeks of gas supply starting on 28.12.2015, aligning with CEA's timeline.

(iv) Gas unavailability is an uncontrollable factor under Regulation 12(5)(h) of UERC Tariff Regulations and as per the Tribunal's judgment dated 17.02.2016 in Lanco Kondapalli Power Ltd. vs. CERC.

(v) The Appellant demonstrated bona fide efforts to commission the plant:

a) Major construction and installation were completed by Scheduled COD (SCOD), with only minor testing and trial activities pending due to lack of gas (verified by EPC contractor communication dated 20.07.2012).

b) Installation of delicate equipment was deferred to avoid damage before the gas supply, as noted in the CEA Report.

c) The Appellant executed the First Gas Supply Agreement (SGSA) on 18.11.2010 but was hindered by gas unavailability and high prices.

d) Under the PSDF Support Scheme, the Appellant was a successful bidder on 17.09.2015.

e) The PSDF Agreement for disbursement of PSDF by the Government was executed by the Appellant immediately thereafter, i.e., on 18.09.2015;

f) The Second SGSA with GAIL was executed on 21.12.2015; gas supply commenced on 28.12.2015, purchased without subsidy.

g) Testing began on 31.12.2015 after the gas supply started.

h) The Appellant had notified GAIL of plant readiness by January 2012, supported by correspondence from 2011.

i) The First COD was achieved on 16.03.2016, within 12 weeks from the gas supply start.

(vi) The State Commission's reliance on minor expenses during FYs 2013-14 and 2014-15 to argue incomplete installation is misplaced; such costs were pending payments for already delivered equipment, not new capital investment. Overall, the Appellant argued that the delay was due to uncontrollable gas unavailability, all major work was completed by SCOD, and commissioning was delayed solely due to gas supply issues.

(vii) A table depicting the expenses incurred in FY 2014-15 and their marginal impact compared to the total project cost of Rs. 1052.49 crore is provided below:

Details of expenditure (Incurred in FY 2014-15)	**Amount of Expenditure**	**Impact in Percentage (Approximately)**
Increase in CWIP	Rs. 1.77 crore	0.17 %
Increase in CWIP	Rs. 8.55 crore	0.81%
Increase in Hard Cost	Rs. 4.00 crore (approximately)	0.38%

(viii) Of the Rs. 1.77 crore classified as Capital Work in Progress (CWIP), Rs. 48 lakhs pertained to plant and machinery under installation, and Rs. 1.28 crore related to building construction. The increase of Rs. 8.55 crore in advances shown in the FY 2014-15 audited balance sheet was categorized as long-term loans and advances (capital advances unsecured, to related parties and others). Accounting principles dictate that payments pending final invoicing are recorded under this category.

(ix) The EPC contractor, in its letter dated 05.03.2014, stated that billing was delayed at the Appellant's request. The Rs. 8.55 crore advance was paid later by the Appellant but classified as an advance to defer tax liability.

(x) Under Regulations 21(3), 22, and 2(19) of the UERC Tariff Regulations, additional capitalization can be claimed up to 31st March of the year closing after two years from COD.

(xi) Regulation 21(9) of the UERC Tariff Regulations emphasizes prudent phasing of funds until Scheduled COD (SCOD). Investing further in commissioning without a gas supply would have unnecessarily increased Interest During Construction (IDC).

(xii) The Impugned Order violates Tribunal's judgments dated 27.04.2011 (Maharashtra State Power Generation Co. Ltd. vs. Maharashtra State Electricity Regulatory Commission & Ors., Appeal No.72 of 2010), 05.05.2015 (Power Grid Corporation of India Ltd. vs. CERC & Ors., Appeal No.129 of 2014), and 30.01.2015 (Power Grid Corporation of India Ltd. vs. CERC & Ors., Appeal No.87 of 2014), which the Appellant relies upon.

(xiii) Section 61 of the Electricity Act requires balancing consumer interests with reasonable recovery of electricity costs.

(xiv) The Appellant informed the Ministry of Power through letters dated 07.01.2012, 12.03.2012, 10.05.2012, 28.05.2012, and 30.05.2012 that the plant was ready, but gas unavailability prevented operation.

(xv) The Appellant's bank increased the Funded Interest Term Loan (FITL) limit from Rs. 464.70 crore to Rs. 664.50 crore on 18.07.2013, indicating the bank's view that the plant was ready for operation pending gas supply.

33. Therefore, the State Commission's disallowance of IDC is unjustified since the commissioning delay was beyond the Appellant's control and not attributable to them. The Impugned Order should be set aside accordingly.

B.STATE COMMISSION HAS ERRED IN NOT APPROPRIATELY APPORTIONING CAPITAL COST BETWEEN THE TWO UNITS OF THE POWER PLANT

34. The State Commission has disallowed the Appellant's prayer to apportion the capital cost reasonably between the two units of its Power Plant as per the actual utilisation of the shared facilities. Summary of Capital Cost apportionment is provided below:

S.No.	Particulars	(Rs. crore)
(A)	Capital costs claimed by the Appellant for the entire Power Plant in the present Appeal	1052.49
(B)	Capital cost incurred by the Appellant towards the Entire Power Plant*	1077.25
(C)	Capital costs claimed by the Appellant for the First Unit Note: (C) = 66% (approximately) ** (A)	698.61
(D)	Capital costs allowed by the Ld. State Commission for the entire Power Plant	771.66
(E)	Capital costs allowed by the Ld. State Commission for the First Unit Note: (E) = 50% *** (D)	388.96
(F)	Amount of capital costs disallowed by the Ld. State Commission for the entire Power Plant Note: (F) = (A) – (D)-4.46**	276.37
(G)	Amount of capital costs disallowed by the Ld. State Commission for the First Unit Note: (G) = (C) – (E)-2.99***	306.66

** Appellant had not claimed the Additional expenditure of Rs. 24.7 Crore in the present Appeal, and right was reserved to claim the aforesaid amount at the stage of truing-up. The aforesaid amount has been recognised by the State Commission vide its Order dated 21.03.2018 in Petition No.63 of 2017. Accordingly, 50% of the aforesaid amount of Rs. 24.7 Crore has been allowed by the State Commission in the aforesaid order as per the same methodology adopted by the State Commission in the Impugned Order.*

*** Rs. 4.46 crore was claimed towards penal interest erroneously charged by the bank before the Ld. State Commission. The said claim is not being pursued as the transaction has subsequently been reversed by the bank.*

****Out of the penal interest of Rs. 4.46 crore for the entire Power Plant, Rs. 2.99 crore may be apportioned to the First Unit.*

35. The Respondents argue that certain common assets, such as BOP mechanical and electrical equipment used for commissioning the first unit, would also serve the second unit of the Power Plant. They contend that accepting the Appellant's full claim would lead to an unbalanced tariff for existing and future consumers under the respective PPAs.

36. Consequently, the State Commission allowed only 50% of the capital cost to maintain a tariff balance between current and future customers. The Appellant sought to apportion Rs. 698.61 crore (about 66% of the total Rs. 1052.49 crore capital cost) to power supplied to Respondent-2/UPCL under the PPA. The State Commission, however, approved only Rs. 49.79 crore toward IDC for the tied-up capacity (around 51% of the total IDC allowed), against the Appellant's claim of Rs. 202.84 crore out of Rs. 301.91 crore total IDC. The State Commission

overlooked the Appellant's detailed response dated 29.07.2016 to its query letter, which included a break-up of capital costs by equipment and allocation ratios between tied-up and stranded capacities, with justifications for such apportionment.

37. The State Commission wrongly interpreted the term "reasonable" in Regulation 42(3) of the UERC Tariff Regulations to mean it must be strictly proportional to tied-up capacity.

38. The Appellant cites the Central Electricity Regulatory Commission's order dated 31.08.2015 (Petition No.199/GT/2013: ONGC Tripura Power Company Ltd vs. Assam Power Distribution Company Ltd. & Ors.) to argue that apportionment need not be strictly commensurate with tied-up capacity.

39. The State Commission's own prescribed format shows that capital costs need not be allocated strictly in the ratio of tied-up capacity to stranded capacity (i.e., not necessarily 1:1). Even by the State Commission's 50% allocation to the tied-up capacity, interest during construction (IDC) amounting to Rs. 148.73 crore [50% of (Rs. 301.91 crore minus Rs. 4.46 crore)] should have been allowed. Therefore, apportioning capital costs, including IDC and pre-operative expenses, solely based on tied-up capacity is incorrect.

C.DISALLOWANCE OF IDC HAS ADVERSELY AFFECTED THE RETURN ON EQUITY

40. The State Commission disallowed interest during construction (IDC) for April 2012 to March 2015 but paradoxically included this disallowed IDC as debt when calculating the debt-equity ratio, resulting in an inflated ratio of 80.64:19.36

instead of the prescribed 70:30 ratio under Regulation 24 of the UERC Tariff Regulations. Since return on equity is allowed up to 30% equity at 15.5% under Regulation 26, the Appellant is entitled to the disallowed IDC. Therefore, the State Commission's inclusion of disallowed IDC in debt and the resulting debt-equity ratio calculation is incorrect.

D.THE STATE COMMISSION HAS ERRED IN PARTLY DISALLOWING THE PRE-OPERATIVE EXPENSES

41. The claim of the Appellant and the amount allowed by the State Commission is tabulated as follows:

S.No.	**Particulars**	**(Rs. crore)**
(A)	Pre-operative and Preliminary Expenses claimed by Appellant for the entire Power Plant till Second COD	45.84
(B)	Pre-operative and Preliminary Expenses claimed by Appellant for tied-up capacity till 16.03.2016 i.e. First COD	31.73
(C)	Pre-operative and preliminary Expenses allowed by the Ld. State Commission for the entire Power Plant	15.88
(D)	Pre-operative and Preliminary Expenses allowed by the Ld. State Commission for the tied-up capacity	9.69

S.No.	Particulars	(Rs. crore)
(E)	Amount of Pre-operative Expenses disallowed by the Ld. State Commission for the tied-up capacity Note: (E) = (B) – (D)	22.04

42. The State Commission applied the same method for segregating pre-operative and preliminary expenses as it did for hard costs, allowing full recovery of start-up fuel costs and infirm power for 107 MW and charging only 50% of the remaining pre-operative expenses to the first unit, after disallowing certain cost increases. However, this finding was based solely on submissions by the Respondent (UPCL), and the Commission did not consider the Appellant’s claims for other pre-operative expenses like administrative and staff costs. Therefore, the apportionment of capital cost, including IDC and pre-operative expenses, based on tied-up capacity by the State Commission is incorrect.

E. THE STATE COMMISSION HAS ERRED IN PARTIALLY DISALLOWING THE HARD COST

43. The Appellant claimed a hard cost of ₹689.92 crore, covering land, civil works, plant & machinery, and other assets. However, the State Commission, in the Impugned Order, approved only ₹658.95 crore, thereby disallowing ₹30.96 crore. The Commission based its disallowance on the following grounds:

(i) the Fixed Asset Register was not submitted initially and was only furnished on 24.04.2017;

(ii) as per the invoices, hard costs for civil works and Plant & Machinery totalled ₹646.58 crore for the full plant; and

(iii) the Appellant submitted a summary of supplementary invoices worth ₹8.16 crore without substantiating the reasons for their issuance.

44. The Appellant contends that the disallowance of ₹30.96 crore towards hard costs by the State Commission is erroneous. Initially, the Commission directed submission of invoices only for transactions exceeding ₹2.5 lakh, in response to which the Appellant provided invoices for major Civil Works and Plant & Machinery amounting to ₹646.58 crore. Overall, the Appellant submitted invoices accounting for over 95% of the capital expenditure on Civil Works and Plant & Machinery, totalling ₹677.54 crore. Hence, the disallowance lacks justification.

45. The break-up of the claims of the Appellant towards hard costs and the amount allowed by the State Commission is as follows:

S.No.	***Particulars***	***Amount Claimed by the Appellant (Rs. Crores)***	***Amount approved by UERC (Rs. Crores)***
1.	Plant & Machinery	626.25	597.4
2.	Civil Works	51.29	48.94
	Sub Total	**677.54**	**646.58**
Difference Amount		**Rs. 30.96 Crores** (677.54 – 646.58)	

46. The Appellant submits that, following further directions from the State Commission, it provided invoice details amounting to ₹14.8 crore out of the disallowed ₹30.96 crore. However, it could not furnish invoices for the remaining ₹16.16 crore as those expenses pertained to minor works below ₹2.5 lakh, for which individual records were not maintained.

47. Despite this, the Appellant asserts that sufficient documentary evidence had already been provided during proceedings. Therefore, the partial disallowance of hard costs by the State Commission is erroneous and lacks due consideration of the submitted documentation.

F. THE APPELLANT IS ENTITLED TO PAYMENT OF CARRYING COSTS ON ITS CLAIMS IN THE PRESENT APPEAL

48. The Appellant contends that, based on the preceding submissions, all disallowed claims by the State Commission should be granted by the Tribunal. Furthermore, the Appellant seeks carrying cost on the amounts to be allowed, covering the period from the date of the Impugned Order until actual recovery, to compensate for the time value of money.

49. In support, the Appellant relies on the following judicial precedents: Sovintorg (India) Ltd. v. SBI (1999) 6 SCC 406; Central Bank of India v. Ravindra (2002) 1 SCC 367; Hon’ble Supreme Court judgment dated 24.08.2022 in Uttar Haryana Bijli Vitran Nigam Ltd. & Anr. v. Adani Power (Mundra) Limited & Anr., Civil Appeal No. 7129 of 2021; APTEL judgment dated 14.08.2018 in Appeal Nos. 111 and 290 of 2017 (GMR Warora Energy Ltd. vs. CERC & Ors.); and APTEL judgment dated 20.12.2012 in Appeal No. 150 of 2011 (M/s. SLS Power Ltd. vs. Andhra Pradesh Electricity Regulatory Commission & Ors).

G. ADDITIONAL DOCUMENTS BROUGHT ON RECORD BY THE APPELLANT ESTABLISH THAT THE PRESENT APPEAL OUGHT TO BE ALLOWED BY THE TRIBUNAL

50. The Appellant had filed an application to bring certain additional documents on record vide I.A. No.1006 of 2018, which were filed in support of submissions made by it in its Rejoinders to the Replies of the State Commission and Respondent No.2/UPPCL. The aforesaid Application was allowed by this Tribunal and documents were brought on record on 10.03.2022, subject to just exceptions. A table providing the details of the documents being brought on record and the justification for the same is provided below:

S.No.	Document	Justification
1.	Copy of letters dated 06.05.2011, 09.06.2011, 23.06.2011, 20.07.2011, 05.10.2011, 20.12.2011 exchanged between Gail (India) Ltd. ("**GAIL**") and the Appellant	Appellant notified GAIL regarding the readiness of Power Plant latest by January, 2012. The said documents are necessary in light of the Ld. State Commission's misinterpretation of the CEA Report dated 13.09.2013.
2.	Copy of letters dated 02.07.2018 and 06.07.2018 exchanged between the Appellant and Central Electricity Authority regarding CEA Report dated	CEA has clarified that only commissioning related activities were pending due to non-availability of domestic gas which could be completed only after gas flow. The said document is necessary in light of the Ld. State Commission's

S.No.	Document	Justification
	13.09.2013	misinterpretation of the CEA Report dated 13.09.2013.
3.	Copy of the letter dated 05.03.2014 sent by EPC Contractor to the Appellant regarding payment of pending invoices	The letter clarifies that the increase in CWIP of Rs.8.55 Crore was not due to any commissioning activities being undertaken by the Appellant in FY 2014-15, but was due to payment made towards work already completed.
4.	Copy of letter dated 20.07.2012 sent by Greenesol Power Systems Pvt. Ltd. to the EPC Contractor regarding commissioning activity of the Power Plant	Document establishes that only commissioning related activities were pending due to non-availability of domestic gas which could be completed only after gas flow. The said document is necessary in light of the Ld. State Commission's misinterpretation of the CEA Report dated 13.09.2013.

51. The Appellant submits that it possesses a Lenders Engineer Report dated 05.05.2012, evidencing that all civil, mechanical, and erection works were fully completed, with only 10–15% of field instrumentation pending, which could only proceed post gas flow and commissioning of key equipment (GTG, HRSG, and STG). An application has been filed seeking the Tribunal's permission to place this report on record, and the Tribunal is requested to consider it, subject to such permission being granted. In conclusion, the Appellant respectfully prays that the present Appeal be allowed and that appropriate orders be passed by the Tribunal in the given facts and circumstances.

<u>Written Submissions of the Appellant, Gama Infraprop (P) Ltd.</u>
<u>(Based on Supplementary Written Submissions dated 04.04.2025)</u>

52. The Appellant in the present Written Submissions has only clarified specific objections raised by the Respondents during the hearing held on 20.03.2025. The submissions made by the Appellant in the aforesaid pleadings, including the Written Submissions dated 25.05.2024, are not repeated herein for the sake of brevity.

53. The Appellant has made the submissions on the following vide W.S dated 25.04.2024:

Re. Disallowance of IDC
Re. Erroneous apportionment of capital costs between the two units of the Power Plant
Re. Disallowance of Preliminary Expenses and Pre-operative Expenses
Re. Disallowance of Hard Cost
Re. Disallowance of Debt-Equity Ratio
Re. Carrying Cost

54. In addition to the aforesaid submissions already made by the Appellant, the Appellant is providing additional submissions on the issues referred to herein below.

Re. Contradictory findings in the CEA Report dated 13.09.2013 and Clarification dated 06.07.2018

55. The Appellant states that due to delays in commissioning, the total project cost, including hard costs, pre-operative expenses, and IDC, increased to Rs. 1077.19 crore by the time of the Second COD, exceeding the DPR estimate of Rs. 834.64 crore.

56. However, in its Tariff Petition, the Appellant only sought capitalization of Rs. 1052.49 crore, deferring some post-First COD costs for consideration during the true-up process. The State Commission disallowed IDC of Rs. 200.63 crore for the entire plant and Rs. 150.06 crore for the First Unit, relying on its interpretation of the CEA Report dated 13.09.2013. Finding this interpretation flawed, the Appellant approached CEA for clarification.

57. In response, CEA issued a letter on 06.07.2018 confirming that commissioning activities were pending solely due to a lack of domestic gas, thus supporting the Appellant's position. However, during the hearing on 20.03.2025, the State Commission and UPCL argued that the CEA's clarification of 06.07.2018 was inconsistent with its earlier report from 13.09.2013.

58. In this regard, it is pertinent to mention herein that CEA vide its subsequent clarification dated 06.07.2018 has not taken any different stand as compared to the original report dated 13.09.2013. CEA in its Report dated 13.09.2013 had *inter alia* noted the following:

> "*GT1 and GTG erection have completed for both the GT.*
> *…*
> *Both the Gas Turbines are expected to be commissioned in open cycle within a period of Maximum 4 Weeks from Gas flow.*
> *Erection of both the HRSG completed*

HT for both the HRSG also completed

STG & STG erection is in progress and completion is expected by mid November 2013

……….

Combined cycle commissioning is expected in 12 weeks (Max.) from Gas flow

………

Constraints: - Allocation and availability of gas.

Assessment: Based on the site visit, CEA team is of the view that Gama CCPP (1x225MW) is almost ready in all respect for first gas firing. The project (2GT +2HRSG+1ST) can be commissioned in open cycle within a period of maximum 4 Weeks from the gas flow. ***The commissioning in combined cycle is possible in a 'period of maximum 12Weeks from the flow of gas*****."**

59. The Appellant contends that while the CEA Report dated 13.09.2013 initially noted that erection of the Steam Turbine Generator was in progress, it later clarified on the second page that the only constraint to commissioning was the "allocation and availability of gas." CEA specified that the entire combined cycle commissioning (including both gas and steam turbines) could be completed within 12 weeks from the commencement of gas flow, which the Appellant subsequently achieved in line with this timeline.

60. Importantly, the CEA did not identify the pending erection of the Steam Turbine Generator as an impediment to timely commissioning. Despite this, the State Commission, through an erroneous interpretation, concluded that the erection of the steam-related components had not been completed and hence disallowed IDC. To address this misinterpretation, the Appellant wrote to the CEA

on 02.07.2018, which led to the CEA's clarification dated 06.07.2018. The clarification reaffirmed that commissioning-related activities were on hold solely due to a lack of gas supply, and not because of any delay attributable to the Appellant. Therefore, the clarification aligns with and does not contradict the original CEA Report.

61. Further, the State Commission in the Impugned Order has also erroneously relied upon the increase in CWIP amounting to Rs. 1.77 crore, increase in advances by Rs. 8.55 crore, and hard cost by Rs. 4.00 crore to hold that the Appellant was undertaking erection work till end of FY 2014-15. Notably, the aforesaid expenses incurred in FY 2014-15 were marginal compared to the total project cost of Rs. 1052.49 crore, as is clear from the table below:

Details of expenditure (Incurred in FY 2014-15)	**Amount of Expenditure**	**Impact in Percentage (Approximately)**
Increase in CWIP	Rs. 1.77 crore	0.17 %
Increase in CWIP	Rs. 8.55 crore	0.81%
Increase in Hard Cost	Rs. 4.00 crore (approximately)	0.38%

62. The Appellant, through its written submissions dated 25.05.2024 and other pleadings, clarified that of the Rs. 1.77 crore shown as Capital Work in Progress (CWIP), Rs. 48 lakhs pertained to Plant & Machinery under installation, and Rs. 1.28 crore was for a building under construction. An increase of Rs. 8.55 crore reflected in the FY 2014-15 audited balance sheet was classified under "long-

term loans and advances” as capital advances. In line with accounting norms, these represented payments for which final invoices were pending.

63. Further, the Appellant submitted a letter dated 05.03.2014 from its Contractor showing that the Rs. 8.55 crore was an ongoing payment against work completed before 2012. The delay in billing was at the Appellant’s request, and the payment aligned with the terms of the EPC contract. The Contractor also sought payment for site preservation and related expenses.

64. Additionally, the Appellant highlighted that in the Sravanthi Tariff Order, the Commission had allowed IDC in comparable circumstances, despite CWIP being higher at Rs. 8.29 crore, unlike the Appellant’s lower CWIP of Rs. 1.77 crore. This differential treatment further underscores the inconsistency and arbitrariness in the Commission’s disallowance of IDC in the Appellant’s case.

65. To substantiate that the Appellant was not responsible for any delay in the commissioning of the Power Plant, the Appellant relied on a letter dated 18.07.2013 from its bank, which revised the Funded Interest Term Loan (FITL). FITL, being a facility provided to cover interest obligations once a project is ready for commissioning, was revised only because the Power Plant was ready to be commissioned, pending gas flow.

66. Given these facts, the Appellant contends that there was no justification for the disallowance of Interest During Construction (IDC) by the State Commission. The Commission’s action was contrary to Regulation 21(9) of the UERC MYT Regulations, 2015, which requires prudent fund phasing.

67. Consequently, once IDC is allowed, the related preliminary and pre-operative expenses and return on equity also become admissible to the Appellant for the relevant period.

Re. Documents submitted in support of Appellant's claim for Hard Cost

68. The Appellant claimed hard costs amounting to Rs. 689.92 crore, covering land, civil works, plant and machinery, furniture, office equipment, computers, and vehicles. However, the State Commission erroneously approved only Rs. 658.95 crore, disallowing Rs. 30.96 crore without a valid basis.

69. Following the Tribunal's order dated 18.02.2025, the Appellant filed an affidavit on 19.03.2025, submitting documents to support its hard cost claim, which were previously submitted before the State Commission. Despite objections from the State Commission and Respondent during the hearing on 20.03.2025, it is clarified that no new documents were introduced; the affidavit only reiterated evidence already on record from the Appellant's earlier response dated 24.04.2017 and a CA Certificate dated 15.11.2016.

70. The State Commission's Impugned Order acknowledges the Appellant's submission of its response dated 24.04.2017 to the query of 17.04.2017 and the CA Certificate dated 15.11.2016, noting that only summaries of invoices, purchase orders, and work orders for civil works and equipment were provided. The Appellant, through its affidavit dated 19.03.2025, resubmitted these documents, which were already part of the record before the State Commission.

71. The Appellant further clarified that it could not furnish detailed invoices amounting to Rs. 16.16 crore because the expenses for minor works were individually below Rs. 2.5 lakhs, thus not requiring separate invoices.

Re. Appellant's claim for apportionment of capital cost based on utilisation of assets

72. The Appellant, in its Tariff Petition, sought capitalisation of Rs. 1052.49 crore (against Rs. 1077.19 crore incurred till the Second COD), with the Rs. 24.7 crore difference to be addressed during true-up. This difference was partially acknowledged by the State Commission in its order dated 21.03.2018, allowing only 50% of it using the same flawed apportionment method as in the Impugned Order.

73. Further, assets like BOP mechanical and BOP electrical, used during the commissioning of the First Unit and also intended for the Second Unit, were common. Hence, only Rs. 698.61 crore (approximately 66% of the capital cost) was apportioned toward supply to UPCL as per the PPA. Despite this, the State Commission overlooked the Appellant's detailed submission dated 29.07.2016, which included a break-up of capital costs and the rationale for allocating them between tied-up and stranded capacities.

74. The Appellant, through a detailed table annexed in the Appeal Paperbook, submitted that capital cost should be apportioned at 66%, reflecting the share of tied-up capacity. However, the State Commission disregarded this and incorrectly apportioned the cost at 50%. To support its position, the Appellant relied on the CERC order dated 31.08.2015 in Petition No. 199/GT/2013 (ONGC Tripura Power Company Ltd v. Assam Power Distribution Co. Ltd. & Ors.), which clarified

that capital cost apportionment need not strictly align with the proportion of tied-up capacity.

Re. Allowance of Carrying Cost

75. The Appellant submits that, based on earlier arguments and its Written Submissions dated 25.04.2024, the claims wrongly disallowed by the State Commission ought to be allowed by the Tribunal. Additionally, the Appellant seeks carrying cost on the amounts eventually allowed, from the date of the Impugned Order until actual payment, to compensate for the time value of money not received when due.

76. In support, the Appellant cites key judgments including:

(i) Uttar Haryana Bijli Vitran Nigam Ltd. v. Adani Power (Mundra) Ltd., Civil Appeal No. 7129/2021 (Hon’ble Supreme Court, 24.08.2022);

(ii) GMR Warora Energy Ltd. v. CERC & Ors., Appeal Nos. 111/2017 & 290/2017 (14.08.2018);

(iii) SLS Power Ltd. v. APERC & Ors., Appeal No. 150/2011 (20.12.2012);

(iv) Sovintorg (India) Ltd. v. SBI, (1999) 6 SCC 406; and

(v) Central Bank of India v. Ravindra, (2002) 1 SCC 367.

77. The Appellant prays for carrying cost to be awarded at rates consistent with what the State Commission has granted in other tariff orders for FY 2015–16 onward, with interest to be computed on a compounding basis, as per applicable legal principles.

78. The Appellant clarifies that the present Written Submissions focus solely on key issues highlighted during the hearing and do not reiterate all arguments already presented in its earlier Written Submissions dated 25.04.2024.

79. The Appellant requests the Tribunal to consider both sets of submissions together for a complete appreciation of the case. In conclusion, the Appellant respectfully prays that the Tribunal allow the present Appeal and pass such other orders as may be just and appropriate in the facts and circumstances of the matter.

Written Submissions of the Respondent No. 1, UERC

80. The issue-wise submissions of the State Commission are as follows:

A. INTEREST DURING CONSTRUCTION

81. The issue of Interest during construction (IDC) is governed by clause 9 of Regulation 21 of the Uttarakhand Electricity Regulatory Commission (Terms and conditions for determination of multi-year tariff) Regulation, 2015 (in short – UERC Tariff Regulation 2015).

I. The Relevant Regulation:

82. Clause 9 of Regulation 21 of the UERC Tariff Regulations, 2015, governs the treatment of Interest During Construction (IDC) and additional IDC. It stipulates that IDC is admissible only up to the Scheduled Commercial Operation Date (SCOD), and any claim for IDC beyond SCOD due to delays must be substantiated with detailed justification and supporting documents. The proviso

permits allowance of such additional IDC only if the delay is attributable to uncontrollable factors, subject to a prudence check by the Commission. In the present case, the Commission has carefully analyzed the facts and held that the Appellant failed to satisfy the regulatory requirements for claiming additional IDC. Consequently, the Commission rightly disallowed the IDC for the period beyond SCOD.

83. The relevant regulation is reproduced below:

"21. (9) Interest During Construction (IDC):

a) Interest during construction shall be computed corresponding to the loan from the date of infusion of debt fund, and after taking into account the prudent phasing of funds up to SCOD.

b) <u>In case of additional costs on account of IDC due to delay in achieving the SCOD, the generating company</u> or the transmission licensee or the distribution licensee or SLDC as the case may be, <u>shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds:</u>

<u>Provided that if the delay is not attributable to the generating company or the transmission licensee or the distribution licensee or SLDC as the case may be and is due to uncontrollable factors as specified in Regulation 12(5) of these Regulations, IDC may be allowed after due prudence check and taking into account prudent phasing of funds."</u>

84. A plain reading of Clause 9 of Regulation 21 of the UERC Tariff Regulations, 2015, clarifies that a generating company's entitlement to Interest During Construction (IDC) is restricted up to the Scheduled Commercial Operation Date

(SCOD), which in this case is 31.03.2012. The use of the word “shall” in the provision mandates this limit. Accordingly, the Commission allowed IDC to the Appellant only up to the SCOD.

85. Regarding the Appellant's claim for additional IDC beyond SCOD, such claims are governed by sub-clause (b) and its proviso. These provisions allow additional IDC only if the generating company:

(a) provides a detailed justification for the delay in achieving SCOD;
(b) supports such justification with appropriate documentation, including evidence of prudent fund phasing; and
(c) establishes that the delay was due to uncontrollable factors and not attributable to the generator.

86. Even if these conditions are met, it remains at the Commission’s discretion to allow additional IDC after conducting a prudence check. In this case, after reviewing the evidence, the Commission concluded that the delay from April 2012 to March 2015 was entirely attributable to the Appellant. Hence, additional IDC for this period was rightly disallowed.

II. <u>The Documents Given by Generator Examined by Commission as Per Regulation 21(9) (B) and Found That Plant Not Ready On 31/03/2012:</u>

87. It is submitted that the State Commission has considered and examined the documents filed by the Appellant in this respect, including the report of the CEA dated 13.09.2013 prepared on the visit to the Site. The same is well reflected in

the impugned order, para 5.3.3 (i) of the impugned order**.** The relevant paragraph is reproduced:

"5.3.3 Soft cost of the plant

(i) Interest During Construction (IDC) and Bank Charges

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Regarding the claim of IDC, the Respondent submitted that the Petitioner had admitted that there had been time over run and cost over run in the project, hence, IDC for delayed period should not be allowed. In reply the Petitioner submitted that it had completed the project on time, i.e. March 2012 and the fuel was to be allocated by the Government of India, based on gas utilization policy. The Petitioner, further, submitted that only upon receipt of gas the project could be commissioned. ***The Petitioner also submitted that all the relevant documents regarding the project status and visit report by Central Electricity Authority (CEA) have been submitted to the Commission which proves that there was no delay on the part of the generator in achieving COD of the project but the delay in achieving COD was due to the uncontrollable factor.*** *The Commission has gone through the CEA reports submitted by the Petitioner and observed that there has been time overrun. Delay in completion of the project has been discussed in the subsequent Paras.*

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The Respondent submitted that UERC Tariff Regulations, 2015 provides that IDC shall be computed from the date of infusion of the debt fund and after taking into account the prudent phasing *of fund up to SCOD. <u>The Respondent submitted that there may be a situation where the generator during the period of construction ties up the generated power by entering into a PPA. In such cases, as submitted by the Respondent, Scheduled Commercial Operation Date (SCOD) is agreed therein if the generator is not able to commission the plant within SCOD, the other party has an opportunity to find out the reasons for delay after proper scrutiny of the available documents to establish the cause for the delay and, hence, would be in a position to show that the same is attributable solely to the generator.----------------</u>*

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Further, the Commission has sought information/reasons for delay in the commissioning of the Plant. The Commission observed that during the period when the project remained stranded the Gas prices were inordinately higher and it was not financially viable to procure the Gas fuel at such higher prices. ***<u>Further, the Commission has gone through the CEA progress reports submitted by the Petitioner and the same has been dealt in the subsequent Paras.</u>***

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<u>The Petitioner had submitted CEA progress reports. The Commission has gone through the reports and observed that CEA had carried out visit on 13.09.2013 and had observed that "ST & STG erection is in progress and completion is expected by mid-Nov., 2013" and CEA had also mentioned that the combined cycle commissioning was expected in 12 weeks from Gas flow.</u> *The Petitioner had* *entered into contract with M/s GAIL for supply of gas fuel on 21.12.2015 and declared the commissioning of the 1st Unit of the Plant as on 16.03.2016, hence, as per CEA's observation the Petitioner has achieved commissioning within the specified time limit from the start of gas flow.*

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88. It is thus submitted that the State Commission took note of the documents filed by the Appellant and analysed the same to ascertain whether the plant was ready to be commissioned on 31.03.2012 i.e., as on the date of SCOD, and found that CEA on visit to the site of the plant on 13.09.2013 gave a report wherein it is specifically mentioned that ***"ST & STG erection is in progress and completion is expected by mid-Nov., 2013"***.That in the internal page 45 of the impugned order, the state commission further analysed the report in the following terms:

"------------------xx------------

However, the subsequent report of the CEA, based on the Authority's visit dated 13.09.2013 has been summarized below:

a) ***GT and GTG erection have completed for both GT.***
b) *Both the Gas Turbines are expected to be commissioned in open cycle within a period of Maximum 4 weeks from Gas flow.*
c) *Erection of both HRGS also completed.*
d) ***ST & STG erection is in progress and completion is expected by mid of November, 2013.***
e) ***Combined cycle commissioning is expected is in 12 weeks from Gas flow.***

It is pertinent to mention that the Petitioner, vide its Petition dated 21.12.2015 and letter dated 19.01.2017 submitted that the project *was completed by the end of March, 2012 and in support of its statement, the Petitioner vide letter dated 10.11.2016 submitted the PERT chart depicting that the entire plant was ready by end of March, 2012.* ***However, it can be seen from the report of CEA that the ST and STG erection was in progress as on 13.09.2013 and was expected to be completed by November, 2013. Further, the combined cycle commissioning was expected in 12 weeks from the gas flow.---xx-----***

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From the report of CEA, the Commission noted that even on 13.09.2013 the plant was not ready as claimed to be ready for commissioning by the Petitioner.*"*

89. The Commission's conclusion that the plant was not ready as of 31.03.2012 is based on an assessment of documentary evidence, particularly the CEA inspection report dated 13.09.2013. While the report confirms that the erection of both Gas Turbines (GT) and Gas Turbine Generators (GTG) was complete and their commissioning in open cycle was expected within four weeks of gas availability, it records that the erection of the Steam Turbine (ST) and Steam Turbine Generator (STG) was still underway, with completion anticipated by mid-November 2013.

90. The Appellant did not provide any contemporaneous documentation to establish that the plant was fully ready by 31.03.2012. The Appellant has only subsequently produced, before this Tribunal, a Lenders' Engineer Report dated May 2012 and a CEA letter dated 06.07.2018 (issued in response to the Appellant's request dated 02.07.2018). However, these documents do not

support the Appellant's claim and are addressed in detail in the following paragraphs.

III. The Commission also Examined the Audited Annual Accounts to Determine when the Major Assets were Capitalized and when the Plant was ready for Commissioning:

91. Since it could not be definitively established from records that the Steam Turbine Generator (STG) was ready by mid-November 2013, the Commission examined the audited financial accounts to assess the actual readiness of the plant. The audited accounts for FY 2014–15 showed an increase in Capital Work in Progress (CWIP) by ₹1.77 crore and advances by ₹8.55 crore, indicating that erection activities were ongoing through that period.

92. Further, the accounts for FY 2015–16 reflected an increase in hard cost by approximately ₹4 crore. The Commission reviewed the Purchase Orders/Work Orders (PO/WO) submitted by the Appellant and found that this increase in cost was related to services rendered by expert teams for pre-commissioning activities of both Gas Turbine Generators (GTGs) and the STG. Accordingly, the Commission concluded that erection work was completed only by the end of FY 2014–15.

IV. Commission applying the Prudence Segregated the Period of Time Overrun and Granted Adequate Relief to The Appellant for Time Over Run Due to Shortage of Gas Supply:

93. The Commission, while assessing time overrun, identified the delay period attributable to gas supply shortage and accordingly granted relief to the Appellant

by allowing Interest During Construction (IDC) for the period from March 2015 to 16.03.2016. It determined a total allowable IDC and finance charges of ₹96.82 crore up to 16.03.2016 for the entire plant, based on the finalized capital cost, including pre-operative expenses. This amount was further apportioned between the tied-up (contracted) capacity and the stranded (untied) capacity.

94. The relevant paragraph of the impugned order is as follows:

> *"Further, as discussed above regarding time overrun, the Commission is of the view that IDC pertaining to the period of time overrun i.e. April 2012 to March, 2015 is entirely attributable to the Petitioner, hence, the Commission has worked out the IDC amount to be disallowed for that period based on the details submitted by the Petitioner. The same has also been deducted from the total IDC submitted till 16.03.2016 vide auditor's certificate dated 19.03.2016. Thereafter, the Commission has determined the allowable IDC and finance charges amounting to Rs. 96.82 Crore till 16.03.2016 for the entire plant based on the worked-out capital cost inclusive of pre-operative expenses. The same has further been segregated amongst the capacity tied up and that stranded. Accordingly, allowable interest and finance charges works out to Rs. 49.79 Crore against the Petitioner's claim of Rs. 202.84 Crore for 107 MW of the plant."*

V. <u>That the project was not ready for combined cycle operation:</u>

95. The Appellant's claim that IDC should be allowed because the Gas Turbine Generator was fully erected, even if the Steam Turbine was not, is rejected. Since the PPA covers the procurement of 107 MW from the entire 225 MW (ISO) Gas Based Combined Cycle Power Project (Gama CCPP), both turbines must be fully

commissioned for IDC to be granted. Partial readiness of one turbine does not justify additional IDC.

VI. *Lenders Engineer Report Dated 05/05/2012 Filed Along with Written Submission Dated 25/04/2024 Vis -A-Vis Cea Report Dated 13/09/2013:*

96. The Lenders Engineer Report lacks clarity regarding its authority, the responsible personnel, and site visit details, raising questions about its credibility. Being prepared by an interested party, it cannot override the CEA's statutory report dated 13.09.2013, which, based on an actual site visit, confirmed that the Steam Turbine and Steam Turbine Generator erection was still in progress and expected to be completed by mid-November 2013.

VII. *Letter Dated 02/07/2018 issued by Appellant to CEA and Letter issued by CEA Dated 06/07/2018:*

97. The Appellant's reliance on the CEA letter dated 06.07.2018, issued by Director Mr. Ram Charan in response to its request dated 02.07.2018, is misplaced. This letter, issued nearly five years after the original site inspection report of 13.09.2013, represents the view of only one member of the original two-member inspection team. Therefore, it cannot override or invalidate the findings of the contemporaneous and official CEA report prepared during the actual site visit.

VIII. *Appellant's misplaced reliance on the Order Dated 24/10/2017 in the Case of Sravanthi:*

98. With Respect to reliance of the Appellant in the order dated 23.10.2017 passed in the case of M/s Sravanthi Energy Pvt. Ltd. it is most respectfully submitted that in the above case of M/s Sravanthi Energy Private Limited there were various correspondences including the report issued by CEA approving energisation of the plant to satisfy the fact that the plant was ready for commissioning. The correspondences and the report of the CEA were discussed in the order dated 23.10.2017 and the relevant portion of the same is reproduced here under:

> *"The petitioner vide its various submissions claimed that the project was completed by 31.12.2011 and only because of non-availability of gas it was not able to run the plant. <u>The petitioner also referred to CEA report to emphasise on the point. The Commission observed that as per the report of the working group on power for 12th plan (2012-17)Phase-1 of the Petitioner project was mentioned as likely to be commissioned during the 11th Plan if gas was made available to it. Further as per the letter dated 07.10.2011, CEA had granted Approval for Energisation of 2x75 MW Gas Turbines Unit 1&2, 2 x 95 MVA 11.5/220 kV Generator Transformer, 2x12.5MVA 11.5/6.9kV UAT, 220kV Switchyard consisting 220kV Bays and associated electrical equipment (Part of 2x225MW CCPP) of the Petitioner's plant. MoP vide its letter dated 16.05.2011 to MoPNG taking reference of the CEA report on the Gas based projects, mentioned that if these projects are not allocated gas for testing, commissioning and commercial operation immediately then they will become stranded assets.</u>*
>
> *Further, the <u>Commission also observed that the Petitioner was continuously trying for allocation of gas for testing and commissioning of its project as is evident from the letter written by the Petitioner on</u>*

various dates namely 01.09.2011 to Joint Secretary (MoPNG), 14.09.2011 to Secretary (MoPNG), 16.09.2011, 07.11.2011 & 28.11.2011 to the Hon'ble Minister (MoPNG) requesting allocation of gas for testing & commissioning of the Phase-1 of its project stating that the first phase of their project is complete in all respect and is ready for commissioning. It rather validates the claim of the Petitioner, in its Petition that the project was expected to be completed by the end of December, 2011. ------"

99. Hence, it is submitted that the case of M/s Shravanthi and that of the Appellant are distinguishable and the Appellant cannot claim parity with the case of M/s Shravanthi Energy Pvt. Ltd.

B. APPORTIONMENT OF CAPITAL COST BETWEEN THE 2 UNITS OF THE POWER PLANT

100. The apportionment of capital cost between the two units of the power plant is governed by Regulation 42(3) of the UERC Tariff Regulations, which requires a reasonable distribution of capital cost across all units. According to the Commission's letter dated 05.04.2016, the Appellant submitted its allocation basis on 29.07.2016, citing usage, capacity, and commissioning requirements. Upon review, the Commission observed that nearly 70% of the total capital cost was being charged to the 50% plant capacity tied to the PPA with UPCL. The remaining 30% was allocated to the balance of 107 MW capacity.

101. The Commission held that this disproportionate allocation would distort tariff parity for identical capacities and unfairly burden state consumers with higher

tariffs, while future beneficiaries of the untied capacity would enjoy lower tariffs from the same plant.

102. The State Commission, prioritizing consumer interest and applying the term "reasonable" as per Regulation 42(3) of the UERC Tariff Regulations, decided to allocate only 50% of the capital cost to the contracted capacity of 107 MW, in line with the 50% PPA with UPCL. The remaining capital cost is to be recovered by the Appellant through other arrangements for the untied 107 MW capacity. Thus, the Commission based the tariff calculations on half of the total hard cost for the 107 MW share, concluding that the apportionment was fair, regulatory compliant, and not open to challenge.

C. RETURN ON EQUITY

103. The Appellant's claim that disallowance of IDC affected its return on equity is baseless, as the Commission followed the applicable regulation on debt-equity ratio, which stipulates a normative 70:30 ratio. If actual equity is lower than 30%, the actual equity is to be used for calculating return on equity. The Appellant had claimed a debt-equity ratio of 81.27:18.73, with equity of Rs. 195.50 crore and debt of Rs. 813.83 crore as on COD (16.03.2016).

104. Based on audited accounts, the Commission found actual equity to be Rs. 195.38 crore and debt Rs. 813.82 crore, resulting in a ratio of 80.64:19.36. Since the actual equity was below 30%, the Commission rightly adopted the actual figures as per the regulatory provisions.

D. PRE-OPERATIVE EXPENSES

105. Regarding pre-operative expenses, the Appellant submitted an auditor's certificate dated 19.03.2016 (filed on 27.09.2016), stating that Rs. 39.34 crore in pre-operative and preliminary expenses as of 16.03.2016 pertained to the entire plant, while Rs. 31.73 crore was claimed for the first unit. The Commission adopted the same approach used for segregating hard costs. It allowed full expenses related to start-up fuel and infirm power recovery for the 107 MW unit and allocated 50% of the remaining pre-operative expenses to the first unit, after disallowing cost increases resulting from delays attributable to the Appellant.

106. The relevant extract of the impugned order is as follows:

> *"**Pre-operative Expenses:-***
>
> *"---------xx--------*
>
> *Considering the startup fuel cost and recovery from infirm power pertaining to 107 MW of the plant, the Commission has applied the same methodology on the pre-operative expenses in line with determination of the admissible finance cost for 1st Unit of the plant till 16.03.2016. Based on the said methodology, Pre-operative expenses till 16.03.2016 work out to Rs. 15.70 Crore and the same has been segregated amongst the capacity tied up and that stranded. The admissible pre-operative expenses for 1st unit of the plant work out to Rs. 9.60 Crore.---xx---------------"*

E. HARD COST

107. The State Commission disallowed Rs. 30.96 crore in hard costs based on detailed reasoning:

i) Rs. 16.6 crore was claimed without any invoices or invoice summaries. While the Commission had exempted submission of invoices below Rs. 2.5 lakh (vide letter dated 08.12.2016), the Appellant misinterpreted this to mean no documentation was required at all.

ii) The Commission clarified on 30.03.2017 (noted in the Appellant's letter dated 24.04.2017) that only a partial relaxation was granted. The Appellant was still required to submit PO/WO and invoice summaries for expenses below Rs. 2.5 lakh.

iii) Despite this, the Appellant failed to submit even summaries for the Rs. 16.6 crore claimed, justifying the disallowance.

iv) The exemption did not absolve the appellant from maintaining records or establishing the validity of the cost for tariff determination.

v) Rs. 6.64 crore was disallowed due to lack of proof of actual expenditure from PO/WO alone, and Rs. 8.16 crore was disallowed as it was claimed through additional invoices without justification—of which Rs. 3.30 crore exceeded Rs. 2.5 lakh and required actual invoices.

vi) The Commission followed the prudence check principles from Dodson-Lindblom Hydro Power Pvt. Ltd. v. MERC (2011 SCC OnLine APTEL 156), assessing whether the expenses were necessary, reasonable, and beneficial to the project, and whether they should be passed to consumers.

vii) Based on these standards, the Commission justifiably disallowed the Appellant's unsubstantiated claims.

F. CARRYING COST

108. The Appellant's claim for carrying cost, in the event of success in the appeal, is untenable because it relies on documents that were not submitted before the State Commission. As per settled legal principles, a party cannot benefit from its own omission. Even if the documents are assumed to be relevant, the Appellant's failure to file them earlier bars any entitlement to carrying costs in this appeal.

G. ADDITIONAL DOCUMENTS RELIED ON BY THE APPELLANT

109. The Appellant's reliance on additional documents in the current proceedings is misplaced, as it is a well-established legal principle that such documents cannot be introduced to rectify deficiencies from the original proceedings. Moreover, the submitted documents fail to support the Appellant's claim for additional Interest During Construction (IDC) due to the delay in the plant's commissioning.

Written Submissions of the Respondent No. 2, UPCL

ISSUEWISE REPLY

(i) The delay in commissioning the power plant from SCOD, i.e., 31.03.2012 till March 2015, was not due to the Appellant's failure to erect the steam turbine and steam turbine generator on time, and the State Commission has erred in partly disallowing IDC.

110. In response to the issue concerning disallowance of Interest During Construction (IDC), Respondent No. 2 submitted that the Uttarakhand Electricity Regulatory Commission (UERC) disallowed IDC for the period April 2012 to March 2015 on the ground that the plant was scheduled to be completed by

31.03.2012 as per the Detailed Project Report (DPR), and the subsequent delay was attributable to controllable factors on part of the Appellant.

111. While the Appellant contends that the plant was ready as of 31.03.2012, UERC relied upon the Central Electricity Authority (CEA) report dated 13.09.2013, which recorded that the Steam Turbine (ST) and Steam Turbine Generator (STG) were not installed as of that date and were expected to be completed in the following 12 weeks.

112. UERC also considered the Appellant’s audited accounts, which showed ongoing construction activity under the Capital Work in Progress (CWIP) head until 2014-15. Based on these facts, UERC concluded that installation was not complete until 31.03.2015 and accordingly disallowed IDC for the interim period. This approach is consistent with established decisions of the Tribunal and the Central Electricity Regulatory Commission (CERC).

113. It is further submitted that the UERC carefully examined all records and submissions regarding the installation status of the Appellant’s plant. While the Appellant claimed the plant was ready by March 2012, UERC, in the absence of any conclusive installation documentation, reasonably extended the benefit by considering April 2015 as the likely installation date. The Commission found sufficient evidence indicating that the plant was not installed at least until March 2015.

114. Moreover, the Appellant's submissions in the Appeal contain contradictory statements, suggesting an attempt to misrepresent facts to claim IDC unjustifiably. It is clarified that IDC beyond the Scheduled Commercial Operation

Date (SCOD) of 31.03.2012 is permissible only if the plant was fully installed and its commissioning was delayed due to uncontrollable factors.

115. However, the Appellant admitted in para 9.16 of the Appeal that the last CEA inspection occurred on 13.09.2013, with a projected 12-week period for completion. Despite this, the Appellant never sought any further inspection post-completion, indicating that the plant was likely not ready even by 2015.

116. Further contradictions arise in the Appeal: in para 7.9, the Appellant claims it could procure imported gas only due to government support; whereas in para 7.11, it asserts that gas was procured independently under a second SGSA to expedite commissioning. These inconsistent claims weaken the assertion that the plant was ready, but commissioning was delayed due to gas unavailability.

117. Additionally, the commissioning delay is attributed to the absence of a Power Purchase Agreement (PPA) before 2015, suggesting a deliberate postponement in completing the plant. The fact that the plant was quickly commissioned during 2015-16 does not prove prior readiness; rather, it coincided with the State Government's directive to UPCL to purchase power from the plant. This provided the Appellant with commercial assurance, motivating it to complete the project.

118. The Appellant also did not pursue subsidized gas in 2015, as payment would be secured from UPCL, further indicating the plant was not completed earlier. Therefore, the Appellant’s claims for IDC lack merit, as the conditions for such allowance, completion of installation and delay due to uncontrollable factors, were not met.

119. Interestingly, this aspect has been admitted by Appellant itself vide Para 9.23 of Appeal wherein it has been mentioned that '*Further, as domestic gas was unavailable and purchase of imported gas continued to be unaffordable, the Power Plant of the Appellant seemed stranded for the near future. As a result, any further construction or installation of machinery/equipment would have resulted in additional expenditure towards upkeep and repairs at the time of commissioning. Hence, the Appellant in consultation with the OEM considered it prudent to defer the installation of such minor works till the time gas supply was ensured.*'

120. UERC has thoroughly examined the issue of Interest During Construction (IDC) in its detailed findings recorded between pages 89 and 93 of the impugned order. The Appellant's reliance on the CEA report dated 06.07.2018 is misplaced, as this report was issued after the impugned order and thus holds no relevance in the present context. Additionally, the legal precedents cited by the Appellant are inapplicable to the facts and issues at hand. Given the above analysis and the evidence on record, the Commission's decision to disallow IDC for the period from April 2012 to March 2015 is fully justified. The Appellant's claim lacks merit and is liable to be dismissed.

(ii) The State Commission has erred in not appropriately apportioning the capital cost between the two units of the power plant.

121. In response to the issue of capital cost apportionment, it is submitted that the Appellant's plant comprises two gas turbines of 71 MW each and one steam turbine of 72 MW, totaling 214 MW. The PPA executed with UPCL covers only 107 MW, exactly half of the plant's capacity. UERC has rightly apportioned the total capital cost equally between the contracted capacity (107 MW) and the uncontracted portion, as both capacities are identical.

122. The Appellant contends that it supplies power through one gas turbine (71 MW) and the full steam turbine (72 MW), claiming 67% of the total capital cost (including IDC) should be attributed to the PPA. This argument is based on the assertion that the steam turbine cannot operate partially and is entirely committed to UPCL's supply.

123. The Respondent submits that such an allocation is unjustified. Since the PPA covers only half the capacity, the associated capital cost must be evenly divided. The generator retains full freedom to utilize or sell the remaining 107 MW, and any underutilization of that capacity cannot be imposed on the consumers of Uttarakhand. Differential allocation would result in discrimination, making the cost of power to UPCL twice as high as that from the uncontracted capacity. This would unjustly benefit the generator by allowing cheaper sales in the open market while overcharging UPCL consumers.

124. Moreover, since the State Government had directed UPCL to enter into a long-term PPA under the PSDF support scheme to utilize the stranded gas-based capacity in the State, the generator's current claims are unwarranted and aimed at securing unjust enrichment at the expense of public consumers. The State Commission has already addressed this issue in detail under para 5.3.2, with findings recorded at pages 81 to 83 of the impugned order. Accordingly, the Appellant's claim lacks merit and deserves to be rejected.

(iii) Disallowance of IDC has adversely affected the return on equity.

125. The Commission has rightly added an amount in excess of the equity towards the loan. The necessary submissions will be made at the time of the hearing.

(iv) The State Commission has erred in partly disallowing the pre-operative expenses.

126. On the above-mentioned issue, it is submitted that the UERC had rightly disallowed the exorbitant and unjustified preoperative expenses and had dealt with the same strictly as per the provisions of UERC MYT Regulations, 2015.

127. The pre-operative expenses should be allowed on an actual basis and proportionately for both the tied-up and the rest of the capacity.

128. The Commission has rightly decided on pre-operative expenses as follows:

"Pre-operative Expenses

The Respondent submitted that the Petitioner has submitted computation for cost of Start-up power and commissioning expenses and has claimed Rs. 19.2 Crore till first CoD as the pre-operative cost, however, the payment against pre-operative expenses of Rs. 9.45 Crore till 1st CoD has already been paid to the Petitioner on actual basis. The Respondent requested not to consider the expenses claimed by the Petitioner. In reply the Petitioner submitted that under the revised forms of Tariff Petition submitted as per UERC Tariff Regulations, 2015, the Petitioner has claimed the actual expenses only. The Commission has noted the submission made by the Petitioner and is of the view that such expenses are admissible on actual basis.

Considering the start up fuel cost and recovery from infirm power pertaining to 107 MW of the plant, the Commission has applied the same methodology on the pre-operative expenses in line with determination of admissible finance cost for 1st Unit of the plant till

16.03.2016. Based on the said methodology, Pre-operative expenses till 16.03.2016 work out to Rs. 15.70 Core and the same has been segregated amongst the capacity tied up and that stranded. The admissible pre-operative expenses for 1st unit of the plant work out to Rs. 9.60 Crore."

(v) The State Commission has erred in partially disallowing the hard cost.

129. Regarding the hard cost, the Commission has made detailed observations in Para 5.3.1 (Pages 77 to 88)

(vi) The Appellant is entitled to payment of carrying costs on its claims in the present Appeal.

130. As the issues raised by the Appellant are untenable, the question of carrying cost to the Appellant does not arise.

(vii) Additional documents brought on record by the Appellant establish that the present appeal ought to be allowed by the Tribunal.

131. The additional documents brought on record, which were not part of the record of the Commission, cannot be brought on record herein. In view of the aforesaid facts and circumstances, the Appeal is liable to be dismissed.

Analysis and Conclusion

132. 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:

i. *Whether the State Commission has erred in disallowing the IDC for April, 2012 till March, 2015 to the extent of Rs.200.63 crore for the entire plant and Rs.150.06 crore for the First Unit while acknowledging that the delay in commissioning during the said period occurred on account of lack of reliable source of primary fuel i.e. gas, which was beyond the control of the Appellant?*

ii. *Whether the State Commission has erred in apportioning the cost of capital expenditure in terms of only tied-up capacity instead of actual utilization of the plant assets?*

iii. *Whether the State Commission has erred in not allowing actual pre-operative expenses to the tune of Rs. 29.96 crore for the entire Power Plant and Rs. 22.04 crore for the First Unit against the claim of the Appellant?*

iv. *Whether the State Commission has erred in allowing the hard costs only up to Rs. 658.95 crore as against the claim of Rs. 689.92 crore for the entire Power Plant?*

v. *Whether the Appellant is entitled for the carrying cost?*

133. The Appellant herein has prayed for the following:

"(a) Admit the Appeal;

(b) Set aside the Impugned Order dated 16.06.2016 passed by the Ld. State Commission to the extent of disallowance of amounts of:

(i) Rs. 200.63 crore for the entire Power Plant and Rs. 150.06 crore for the First Unit (i.e., one gas turbine generator and the steam turbine generator) towards Interest During Construction for the period of April 2012 till March 2015;

(ii) Rs. 29.96 crore for the entire Power Plant and Rs. 22.04 crore for the First Unit towards pre-operative and preliminary expenses;

and

(iii) Rs. 30.96 crore towards hard costs for the entire Power Plant,

(c) Set aside the Impugned Order dated 16.06.2016 passed by the Ld. State Commission to the extent of the improper apportionment of the same between the tied-up capacity and the stranded capacity of the Power Plant;

(d) Allow the present Appeal and allow the apportionment of capital costs between tied-up capacity and stranded capacity as claimed by the Appellant

(e) Allow the claims of the Appellant for:

i) Rs. 297.45 crore for the entire Power Plant till 16.03.2016 and Rs. 199.85 crore for the First Unit towards Interest During Construction;

ii) Rs. 45.84 crore for the entire Power Plant and Rs. 31.73 crore for the First Unit towards pre-operative and preliminary expenses; and

iii) Rs. 689.92 crore towards hard costs for the entire Power Plant.

(f) pass any such other or further orders as this Hon'ble Tribunal may deem appropriate."

134. Let us deal with each issue in detail, hereafter.

ISSUE 1: DISALLOWANCE OF INTEREST DURING CONSTRUCTION (IDC)

135. The Appellant contends that the State Commission erroneously disallowed IDC of Rs. 200.63 crore for the period April 2012 to March 2015, including Rs. 150.06 crore relatable to the First Unit (comprising one GTG and one STG), which achieved COD on 16.03.2016. According to the Appellant, the delay in commissioning was entirely due to the non-availability of natural gas, which is an uncontrollable factor under Regulation 12(5)(h) of the UERC Tariff Regulations, 2015. The plant was otherwise ready for commissioning, and the delay was prudently managed to avoid additional financial burden.

136. It is, therefore, important to note the relevant extracts of the Impugned Order justifying the disallowance of the IDC, as under:

> ***"5.3.3 Soft Cost of the Plant***
>
> ***(i) Interest During Construction (IDC) and Bank Charges***
>
> *The Petitioner vide auditor's certificate dated 19.03.2016 submitted that the total financing cost (including bank charges) upto commissioning of 1st Unit is Rs. 301.91 Crore for the project and also that the IDC including bank charges till the final commissioning of the project date i.e. 31.08.2016 is Rs. 347.27 Crore as per auditor's certificate dated 15.11.2016 which is 32% of the entire project cost of the plant, i.e. Rs. 1077.19 Crore. Further, the*

Petitioner allocated the IDC and Bank Charges of Rs. 202.84 Crore to the 107 MW of the Project.

Regarding the claim of IDC, the Respondent submitted that the Petitioner had admitted that there had been time over run and cost over run in the project, hence, IDC for delayed period should not be allowed. In reply the Petitioner submitted that it had completed the project on time, i.e. March 2012 and the fuel was to be allocated by the Government of India, based on gas utilization policy. The Petitioner, further, submitted that only upon receipt of gas the project could be commissioned. The Petitioner also submitted that all the relevant documents regarding the project status and visit report by Central Electricity Authority (CEA) have been submitted to the Commission which proves that there was no delay on the part of the generator in achieving COD of the project but the delay in achieving COD was due to the uncontrollable factor. *-----*

-------In reply, the Petitioner submitted that as per the Government of India Office Memorandum No. 4/2/2015-Th-I dated 27th March, 2015 the gas based projects (total capacity 24,149 MW) were categorized in two parts – (1) plants which are stranded and were not receiving any gas (with total capacity of 14,305 MW) and (2) plants receiving domestic gas for partial operation/low PLF (with total capacity of 9,844 MW). ------Only after the allocation of gas, the Petitioner submitted that it could complete remaining activities which are necessary for commissioning including testing and trial. ***The Commission noted the submission made by the Petitioner and is of the view that the IDC may not be completely***

disallowed based on the reasons submitted by the Respondent.-------

*---------In reply, the Petitioner submitted that the delay in commissioning was for the factors beyond the control of the Petitioner and it was categorized as 'Stranded Gas based Power Plant' by the Ministry of Power, Government of India. This clearly implies that the plant was stranded because of lack of fuel which was beyond the control of the generator. -------------**The Commission is of the view that as far as the examination of the statement regarding delay in commissioning of the plant is concerned, entering into a PPA prior to the commissioning of the plant is not relevant.** ----------**Prior execution of PPA and due follow-up of project progress by the Respondent is hypothetical statement. The Respondent had already entered into a PPA with the Petitioner, copy of the Petition had been provided for due analysis and comments on the same.** Further, the Commission has sought information/reasons for delay in the commissioning of the Plant. **The Commission observed that during the period when the project remained stranded the Gas prices were inordinately higher and it was not financially viable to procure the Gas fuel at such higher prices.** Further, the Commission has gone through the CEA progress reports submitted by the Petitioner and the same has been dealt in the subsequent Paras. ---------The initial expected commissioning date of the project was 31st March 2012 but the Petitioner in its Petition has shown the 1st COD on 20th Jan, 2016 for the reason non-availability of gas and has claimed an IDC of Rs. 183.67 Crore up to 1st COD with additional pre-commissioning expenses of Rs. 41.28 Crore.-------*

However, without waiting for the PPA to be signed, the Petitioner had started activities like arrangement for funds with banks, lining up of vendors for trial and testing activities soon after the PSDF Scheme was announced by Government of India in April, 2015.

The Commission has gone through the submissions of the Petitioner and the Respondent. Ministry of Power, GoI, declared the Petitioner as a successful bidder vide its letter dated 17.09.2015. Subsequently, the Petitioner entered into PSDF agreement on 18.09.2015 and then entered into an agreement with M/s GAIL for supply of gas on 21.12.2015. Thereafter, a draft PPA was submitted for approval to the Commission, vide application dated 11.12.2015 and the same was approved vide the Commission's Order dated 08.02.2016 subject to incorporation of certain modification in the PPA.

The Petitioner had submitted CEA progress reports. ***The Commission has gone through the reports and observed that CEA had carried out visit on 13.09.2013 and had observed that "ST & STG erection is in progress and completion is expected by mid Nov., 2013" and CEA had also mentioned that the combined cycle commissioning was expected in 12 weeks from Gas flow. The Petitioner had entered into contract with M/s GAIL for supply of gas fuel on 21.12.2015 and declared the commissioning of the 1st Unit of the Plant as on 16.03.2016, hence, as per CEA's observation the Petitioner has achieved commissioning within the specified time limit from the start of gas flow.***

*-------**The Petitioner, further, submitted that the CEA's report states that the project had been completed before the completion of the 11th plan.***

*-------In reply, the Petitioner vide letter dated 10.11.2016 submitted CEA reports. **As per the Report on CEA's visit dated 25.01.2011, the project was expected for commissioning during 11th plan. Further, Report on CEA's visit dated 31.05.2011 states that project can be commissioned latest by February, 2012. However, the subsequent report of the CEA, based on the Authority's visit dated 13.09.2013 has been summarized below:***

(a) GT and GTG erection have completed for both GT.

(b) Both the Gas Turbines are expected to be commissioned in open cycle within a period of Maximum 4 weeks from Gas flow.

(c) Erection of both HRGS also completed.

(d) ST & STG erection is in progress and completion is expected by mid of November, 2013.

(e) Combined cycle commissioning is expected in 12 weeks from Gas flow.

*-------However, it can be seen from the report of CEA that the ST and STG erection was in progress as on 13.09.2013 and was expected to be completed by November, 2013. Further, the combined cycle commissioning was expected in 12 weeks from the gas flow. In this regard, the Commission directed the Petitioner to submit the reasons for the discrepancy regarding completion of the work in its submission and CEA report. **In its reply, the Petitioner submitted that in the CEA visit report dated 13th September, 2013, what was mentioned as 'steam turbine and steam turbine generator***

erection was in progress' is basically referring to erection activities like pressure probes, temperature probes and other auxiliary instruments pertaining to steam turbine and generator and not to the erection of Steam Turbine and Steam Turbine Generator itself.

Further, based on the CEA report, it could be seen that the project was not ready for combined cycle operation. ***Also, it cannot be affirmatively said that the STG was ready by mid of November, 2013. Therefore, the Commission decided to go through the audited annual accounts so as to establish when the major assets were capitalized and the plant was ready for commissioning.*** *It has been observed from the audited accounts of FY 2014-15 that there was an increase in CWIP amounting to Rs. 1.77 Crore and advances increased by Rs. 8.55 Crore.* ***Apparently, the erection work was still going on till the end of FY 2014-15.*** *Further, from the audited accounts for FY 2015-16 the Commission also observed that there was an increase in hard cost amounting to Rs. 4.00 Crore (aprox.).* ***The Commission analysed the PO/WO submitted by the Petitioner and observed that the increase in cost was due to expenditure incurred on account of services provided by expert team for pre-commissioning activities of GTGs and STG. Hence, it can be concluded that the erection work was completed by the end of FY 2014-15.***

*----------**In the present case, the Commission agrees that the commissioning of the project was beyond the control of the Petitioner due to non-availability of the fuel at reasonable rate, however, the erection/installation of the GTGs and STG was entirely under the control of the Petitioner.** Hence, the*

Commission is of the view that the IDC and pre-operative expense from SCOD to March, 2015 should not be allowed as the Petitioner could not complete the entire erection work and the same has been treated as controllable. Accordingly, based on the above discussion, the Commission is of the view that the delay from the SCOD, i.e. 31.03.2012 to 31.10.2013 and also upto 31.03.2015 is attributable to the Petitioner. On the contrary, the Petitioner has submitted that the entire delay from the SCOD to actual COD was due to non availability of Gas.

*------**Hence, Commission does not find UPCL's submission tenable for disallowance of IDC from 01.04.2015 to 16.03.2016. Beside it would not have been in the commercial interest of the Petitioner to sell power at IEX without any allocation of Gas under PSDF Scheme.***

--------Accordingly, allowable interest and finance charges works out to Rs. 49.79 Crore against the Petitioner's claim of Rs. 202.84 Crore for 107 MW of the plant."

137. From the above, the Appellant relies heavily on non-availability of gas, as also accepted by the State Commission ("***In the present case, the Commission agrees that the commissioning of the project was beyond the control of the Petitioner due to non-availability of the fuel at reasonable rate,")***, and the CEA Report dated 13.09.2013, which stated that the plant was ready, except for the commissioning activities, which can be completed after the availability of gas, and that commissioning in combined cycle mode was expected within 12 weeks from the flow of gas. Further, a clarification issued by CEA on 06.07.2018 in response to the Appellant's query stated that only commissioning-related activities remained pending, contingent on the availability of gas. The Appellant

argues that the State Commission misinterpreted the CEA report and wrongly attributed the delay to the incomplete erection of the ST and STG.

138. The Appellant also refers to the Sravanthi Energy case, where the State Commission allowed full IDC under similar circumstances involving a gas shortage. The Appellant asserts that the principle of parity and consistency should have guided the State Commission's determination.

139. The State Commission maintains that the disallowance of IDC was in accordance with Regulation 21(9) of the UERC MYT Regulations, 2015, which allows IDC post-SCOD only when the delay is due to uncontrollable factors and justified with supporting documentation. It is argued that the CEA report clearly recorded that as on 13.09.2013, the ST and STG erection was still in progress. Financial statements for FY 2014-15 and FY 2015-16 showed ongoing Capital Works in Progress (CWIP) and increases in advances, indicating continued work.

140. The Commission further contends that the CEA clarification issued in 2018 lacks authority to override contemporaneous findings of the official site visit and that such ex post facto correspondence cannot form the basis for retrospective relief.

141. UPCL supports the Commission's findings, emphasizing that the Appellant had no PPA in place for the uncontracted capacity and had no urgency to commission the plant earlier. The Appellant's own submissions in various pleadings show contradictions regarding readiness. UPCL argues that the delay was not solely on account of gas unavailability, but also due to strategic deferment of commissioning activities by the Appellant.

142. The Commission has already dealt with the issue of non-signing of PPA, summarily rejecting the contentions of the UPCL.

143. However, the Respondents agree that the delay in commissioning is partly on account of the non-availability of gas.

144. However, both the Respondents argued that the project was not fully commissioned, as also recorded in the CEA Report.

145. Having perused the records, including the CEA reports, audited financials, and correspondence placed on record, we find merit in the Appellant's contention that the delay in commissioning was substantially attributable to the non-availability of gas. CEA Report dated 13.09.2013 is as follows:

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Annexure-A/13

REPORT OF THE CEA TEAM'S VISIT TO GAMA CCPP (2GT+2HRSG+1 ST=225MW) AT KASHIPUR IN THE STATE OF UTTARAKHAND REGARDING THE SITE PREPAREDNESS OF THE PROJECT FOR RECEIVING GAS.

Team: 1. Shri Ramesh Kumar, Chief Engineer I/c, IRP Division, CEA

2. Shri Ram Charan, Deputy Director, TPM Division, CEA

Company : M/s Gama Infraprop (P) Limited (GIPL)

Date of Visit: 13.09.2013

Capacity : 225 MW (2GT each of 76MW +1 ST of 73MW)

Configuration :(2GT+2HRSG +1 ST) in multi shaft, 6FA Frame Machine

The team had visited the entire project thoroughly and seen the physical progress of the project in respect of project implementation at site. After the visit detailed discussions were also held with the project authority. The main highlights and salient features of our observations in respect of the project are furnished below:

Brief Status of Project:

- GT and GTG erection have completed for both the GT.
- GT oil flushing completed.
- Cranking of GT completed and GT is on turning gear.
- Both the Gas Turbines are expected to be commissioned in open cycle within a period of Maximum 4 Weeks from Gas flow.
- Erection of both the HRSG completed.
- HT for both the HRSG also completed.
- ST& STG erection is in progress and completion is expected by mid Nov.2013.
- Erection of Air Cooled Condenser (ACC) completed.
- Combined cycle commissioning is expected in 12 Weeks (Max.) from Gas flow.
- Erection of Bypass stack and Main stack has been completed.
- Erection of both the diverter and damper completed.
- Commissioning of all the BOPs like CW Pump house, DM plant, Raw water system, CTs, Chlorination plant, ACW system, Fire Fighting system, Switchyard etc. has been completed.
- Switchyard is ready for back charging.

- Power evacuation:

  The project shares the common boundary wall with Mahuakheraganj 220KV PTCUL Sub-Station. PPA has not been signed and it was intimated that the State Govt. have assured to purchase 80% of power generated.

  The 15Km Transmission line for connecting the output of power plant to Sub-Station required. All the 52 foundations and the towers have been fully erected. The conductors required for stringing is available at plant site (photograph enclosed). It was informed by the developer that as the gas is not available, the line has not been commissioned, as the area is theft prone, there is likelihood of theft of conductor hence the stringing work has not been completed. The stringing work can be completed in 3-4 weeks from start date. It was intimated that

- Gas pipeline of GAIL up to plant is ready. Gas pipeline charged up to GAIL Gas conditioning skid.
- Plant gas skid and pipeline up to GT also completed.
- All HT/LT switchgears and main control room have been erected and commissioned.

Constraints: - Allocation and availability of gas.

Assessment: Based on the site visit, CEA team is of the view that Gama CCPP (1x225MW) is almost ready in all respect for first gas firing. The project (2GT+2HRSG+1 ST) can be commissioned in open cycle within a period of maximum 4 Weeks from the gas flow. The commissioning in combined cycle is possible in a period of maximum 12Weeks from the flow of gas.

The actual site photographs of the project are enclosed.

Charan 17-9-13
(Ram Charan)
Dy. Director (TPM), CEA

18/9/13
(Ramesh Kumar)
Chief Engineer-I/c-(IRP), CEA

146. The CEA Report dated 13.09.2013, though noting that STG erection was underway, unequivocally assessed the plant to be “almost ready” and stated that commissioning in combined cycle mode was expected within 12 weeks of gas flow. This statement indicates that the remaining work was indeed contingent on gas supply.

147. The State Commission and the UPCL have selectively referred to one line from the report and preferred to remain silent on the "Assessment" part of the report, which states as under:

> ***"Based on the site visit, CEA team is of the view that Gama CCPP (1x225 MW) is almost ready in all respect for first gas firing. The Project (2 GT+2 HRSG+1 ST) can be commissioned in open cycle within a period of maximum 4 Weeks from the gas flow. The commissioning in combined cycle is possible in a period of maximum 12 Weeks from the flow of gas."***

148. Such reports of the CEA prepared under its Statutory duties cannot be ignored. It is also a fact that even the State Commission has agreed that the combined cycle operation was completed within 12 months from the flow of gas.

149. More importantly, the CEA (the country's premier technical organisation and also a statutory body) clarification dated 06.07.2018, while not determinative in isolation, confirms that commissioning-related activities alone were pending due to a lack of gas. This Tribunal accords due weight to such technical assessments, especially in the absence of rebuttal from the same authority, the relevant extract of the letter dated 06.07.2018 is quoted as under:

> "Subject: Confirmation for readiness of Game CCPP, Gas Based Power Plant (1x225MW) at Kashipur for commissioning upto March,2012-regarding.
>
> Sir,

This has reference to your letter No. GIPL/CEA/2018/001 dated 2nd July 2018 in respect of the subject cited above. It is to mention here that Gama CCPP (1x225MW) was an 11th Plan project. This project was regularly visited by CEA teams during the year 2012 and 2013 for inspecting the readiness of project for commissioning during 11th Plan (upto March,2012). On the basis of various visit reports of visiting teams, it is confirmed that Game CCPP (1x225 MW) completed all the erection work related to (GTG, ST, STG, HRSG, ACC, Switch Yard & BOP) by end of March 2012. Only commissioning related activities were pending due to non-availability of domestic gas which could be completed only after gas flow.

As per CEA's latest visit report dated 13th Sep 2013 the project was ready for commissioning and could complete the commissioning in Combined mode within 12 weeks from start of gas flow."

150. As such, the CEA Report dated 13.09.2013 and the clarification issued vide letter dated 06.07. 2018 affirms that the erection of GTG, ST, STG, HRSG, ACC, Switch Yard, and BOP works was completed by the end of March 2012. It is only the completion of commissioning in combined mode operation pending due to the unavailability of gas, which was beyond the control of the Appellant.

151. We find the selective interpretation by the State Commission as unjust and unacceptable; the CEA report is unambiguous and confirms completion of all erection works.

152. On being asked, the Appellant submitted that the decision to defer certain installations was taken to avoid degradation of sensitive equipment (such as

temperature probes) appears prudent and reasonable. Further, the factual matrix in Sravanthi Energy, relied upon by the Appellant, bears significant resemblance and supports the principle that delays due to gas unavailability warrant full IDC recovery.

153. We agree with the submission of the Appellant that the major and all technically possible construction and installation work for the Power Plant was completed by the Appellant by the SCOD pending testing and trial. Only minor work, relating to testing and trial of the Power Plant, such as steam blowing, oil flushing, installation of instruments in the pipeline, final tightening of the Steam Turbine, etc., could not be completed pending commencement of gas supply. The Appellant also placed before us the communication received from the EPC Contractor (Luna Infraprop) on 20.07.2012 in support of such submissions.

154. The Appellant also placed on record the letters dated 07.01.2012, 12.03.2012, 10.05.2012, 28.05.2012, and 30.05.2012 addressed to the Ministry of Power, wherein it apprised the Ministry that the Power Plant is ready to commence supply but has been unable to do so due to the unavailability of gas.

155. It is also seen that the reliance of the State Commission on audited accounts is incorrect, the Commission noted that there was an increase in Capital Works in Progress ("CWIP") amounting to Rs. 1.77 crore, advances had increased by Rs. 8.55 crore, and hard cost by Rs. 4.00 crore.

156. On being asked, the Appellant submitted that out of the expenditure of Rs. 1.77 crore as CWIP, Rs. 48 lakh was with respect to Plant & Machinery under installation and Rs. 1.28 crore was for building under construction. Further, the increase in advances of Rs. 8.55 crore towards CWIP, as per the audited balance

sheet for the FY 2014-15, has been categorized as “long term loan & advances” (capital advances- unsecured considered goods: to related parties & other). Notably, as per accounting principles, any payment for which a final invoice is pending is categorized under the aforesaid heading, i.e., “long-term loan & advances.”

157. We agree with the contentions of the Appellant, as these are miscellaneous works, even the expenditure on these accounts is around 1.5 % only. This itself provides that the erection works were completed much earlier.

158. **We, therefore, conclude that the State Commission erred in disallowing IDC for the period April 2012 to March 2015. The disallowance to the tune of Rs. 200.63 crore for the entire Power Plant and Rs. 150.06 crore for the First Unit (i.e., one gas turbine generator and the steam turbine generator) is set aside, and the IDC for the period from April 2012 till the CoD of Unit 1 is held to be admissible.**

ISSUE 2: APPORTIONMENT OF CAPITAL COST BETWEEN UNITS

159. The Appellant submits that the State Commission committed an error in apportioning the capital cost of the entire 214 MW plant equally (i.e., 50:50) between the contracted capacity of 107 MW and the balance capacity. It is argued that the allocation ought to have been done based on actual utilisation of shared facilities and infrastructure. Specifically, the Appellant submits that nearly 66% of the total plant infrastructure was utilised in the commissioning and operation of the First Unit, comprising one GTG and the entire STG, and therefore, the capital

cost apportioned to the First Unit should be commensurate with this actual utilisation.

160. The Appellant further states that several auxiliary systems, including the balance of plant (BOP) electrical and mechanical equipment, civil works, control systems, and transmission facilities were designed and executed to cater to both units jointly, and during the relevant tariff period, such shared assets were exclusively used for the contracted 107 MW supply.

161. The Appellant refers to its detailed submissions before the Commission, including break-up of component-wise capital expenditure, and also relies on the decision of the Central Electricity Regulatory Commission in the ONGC Tripura Power Company case (Petition No. 199/GT/2013), wherein CERC upheld a proportional capital cost allocation based on actual usage rather than PPA-based apportionment.

162. The State Commission contends that the capital cost of the plant must be proportionally allocated based on the tied capacity under the PPA. As only 107 MW out of 214 MW was contracted with UPCL, the Commission deemed it reasonable to allocate 50% of the capital cost to the contracted capacity. It is argued that this approach ensures parity between consumers of the contracted capacity and avoids overburdening them with the costs of unutilised or idle capacity.

163. The Commission maintains that in the absence of usage-based metering or asset-level allocation verified through audit or third-party validation, an apportionment based on PPA capacity is most appropriate and consistent with regulatory principles of prudence.

164. On being asked, neither the State Commission nor the UPCL could answer the query on why the assets usage was not audited/ validated, and also the details regarding the availability of the regulatory principle of prudence, that to without going into the details. The extract of the reasons given by the State Commission is reproduced hereunder:

> *"5.3.2--------*
>
> *The Commission observed that the Petitioner had charged approximate 70% of the entire plant cost to 50% capacity of the Plant for which PPA has been entered into with UPCL.* ***Accordingly, balance capital cost, i.e. 30% (approx.) would be charged to the balance capacity of the Plant, i.e. 107 MW, based on the Petitioner's arrangement for the same, and it would lead to an unbalanced tariff for the same capacity under different arrangements to sell power. Further, any additional cost allocation to the contracted capacity, i.e. 107 MW with the Respondent would result in charging higher tariff from the consumers in the State whereas, future beneficiaries of the balance capacity (uncontracted till date) will have the benefit of lower cost of energy from the same plant.***
>
> *This proposition would lead to undue burden on the Respondent. In this regard, the Commission is of the view that allocation of overall capital cost of the plant to 107 MW tied up with the Respondent should be based on the contracted capacity tied-up with it only.* ***Hence, the Commission is of the view that only 50% of the worked out capital cost should be charged for the contracted capacity i.e. 107 MW and the remaining capital cost may be recovered by the Petitioner through the arrangement, done for the balance 50% capacity.*** *Accordingly, the Commission has considered 50% of the hard cost arrived for the elements for 107 MW capacity of the Plant."*

165. The State Commission has, without going into a prudent analysis, decided the apportionment, even to fact that the balance capacity is idle and no PPA has been signed for such capacity. The only reason given by the State Commission is that “it would lead to an unbalanced tariff for the same capacity under different arrangements to sell power” and “any additional cost allocation to the contracted capacity, i.e. 107 MW with the Respondent would result in charging higher tariff from the consumers in the State”.

166. The State Commission, as the first court, ought to have carried out a prudent examination instead of simply allocating the capital cost on a 50:50 basis, the balance capacity is also under the regulatory domain of the State Commission and in the case of the balance capacity is sold by the Appellant to any third party, the State Commission can revise the apportionment accordingly.

167. It can be seen that Unit 1 is tied up with the UPCL by the Appellant, which was commissioned first along with the STG/ST, and other necessary plant equipment necessary for the generation of electricity from Unit 1; therefore, the State Commission was bound to analyse the operational parts as necessary for the running of Unit 1 and after carrying out prudent analysis, should have allocated the capital cost.

168. It needs to be appreciated that any plant, having multiple units, is designed with optimized and prudent costs, and the future units share the existing infrastructure once commissioned. The UPCL, otherwise, also has the right to sign the PPA for the balance capacity, if required, thus balancing out the cost, if not done otherwise.

169. We also note from the Impugned Order that the State Commission, after obtaining the capital costs of each equipment with respect to Unit 1 and Unit 2, preferred to ignore the same and decided on the 50:50 ratio, the relevant extract is quoted hereunder:

> ***"5.3.2 Segregation of Capital cost between 1st Unit and 2nd Unit of the Plant***
>
> *Since the overall plant cost worked out as above is Rs. 658.95 Crore, however, tariff is to be determined only for 107 MW capacity as against the total installed capacity of 217 MW, hence, the cost needs to be segregated amongst the capacity tied up with UPCL and the stranded capacity. In this regard, the Commission vide its letter dated 05.04.2016 directed the Petitioner to submit the usage of equipment and basis of the allocation of cost. The Petitioner vide its letter dated 29.07.2016 submitted the allocation based on the usage, capacity and requirement for the commissioning of the plant for the following equipments:*
>
> *-------------"*

170. UPCL supported the Commission's methodology, arguing that the Appellant is free to recover the remaining costs from uncontracted capacity, either through open access or other bilateral arrangements. It is emphasised that UPCL and its consumers should not be saddled with the cost of unused generation capacity. UPCL also expresses concern that any usage-based apportionment in the absence of verified norms may result in a discriminatory burden on distribution licensees.

171. This itself supports the contention of the Appellant that there are assets which are used for the supply of the contracted capacity to the UPCL. It is a settled principle of law that the generation cost should be determined after prudent analysis, providing a reasonable return to the generator and safeguarding the consumer's interest.

172. Upon consideration of the competing arguments, we find that the State Commission's approach of apportioning capital cost solely based on PPA-tied capacity fails to account for the actual deployment and usage of infrastructure during the tariff period in question. It is noted that the first phase of the project involved full commissioning of the first GTG and the STG, which necessitated the use of integrated systems and facilities shared across both phases.

173. The Appellant has furnished credible evidence, including technical documentation and component-wise expenditure, establishing that a major portion of shared assets and civil infrastructure was indeed put to use in the generation and supply of contracted power. Regulation 42(3) of the UERC MYT Regulations, 2015 provides for reasonable allocation of capital cost in multi-unit projects. The term "reasonable" should be interpreted in the context of actual economic deployment and not merely contractual allocation.

174. Regulation 42(3) of the UERC MYT Regulations, 2015 is as follows:

> ***"42. Petition for determination of generation tariff***
> *(1) A Generating Company may file petition for determination of tariff for supply of electricity to Distribution Licensees complying with the provisions of Part II of these Regulations.*

(2) Tariff in respect of a generating station under these Regulations shall be determined stagewise, unit-wise or for the whole generating station. The terms and conditions for determination of tariff for generating stations specified in this Part shall apply in like manner to stages or Units, as the case may be, as to generating stations.

(3) Where the tariff is being determined for stage or Unit of a generating station, the Generating Company shall adopt a reasonable basis for allocation of capital cost relating to common facilities and allocation of joint and common costs across all stages or Units, as the case may be:

Provided that the Generating Company shall maintain an Allocation Statement providing the basis for allocation of such costs, and submit such statement to the Commission along with the application for determination of tariff.

………."

175. Furthermore, the reliance on CERC's decision in the ONGC Tripura Power Company case lends persuasive value. The CERC had approved allocation based on engineering design and usage pattern rather than solely on contractual commitment.

176. **In light of these considerations, we hold that the Appellant's proposed apportionment methodology, which seeks to attribute approximately 66% of the capital cost to the First Unit based on usage of facilities, is fair, reasonable, and in consonance with the principles of prudence.**

177. **The equal allocation adopted by the State Commission is, therefore, set aside, and the Commission is directed to determine the capital cost**

allocation for tariff purposes in accordance with the usage-based approach as demonstrated by the Appellant, as detailed in Annexure-A/12 (page 491) of the Appeal Paperbook.

178. **We also direct that the State Commission, later on, shall revise the apportionment as soon as the Appellant enters into a long-term agreement for Unit 2, keeping in view the sharing of the capital assets, keeping a balance.**

ISSUE 3: DISALLOWANCE OF PRELIMINARY AND PRE-OPERATIVE EXPENSES

179. The Appellant has challenged the disallowance of preliminary and pre-operative expenses amounting to Rs. 29.96 crore for the entire plant and Rs. 22.04 crore for the First Unit. It is contended that these expenses were incurred in the ordinary course of project development and had increased due to delays caused by factors beyond the control of the Appellant, especially the non-availability of gas. The Appellant submits that such expenses are capital in nature and are essential to bring the project to a ready-for-use condition.

180. The Appellant asserts that the methodology used by the State Commission in disallowing these expenses mirrored its flawed reasoning in the disallowance of IDC. Since the IDC has now been allowed, the same rationale should apply to the preliminary and pre-operative expenses, as they are interconnected and consequential to the project delay.

181. It is further submitted that the expenditure was duly supported by the auditor's certificates and formed part of the capital cost submitted for approval.

The State Commission, according to the Appellant, failed to appreciate the documentation and instead arbitrarily reduced the claim without a proper basis.

182. The State Commission defends its action by asserting that the Appellant had failed to substantiate the claimed expenses with adequate and reliable documentation. It states that it had applied consistent scrutiny to all cost components and that the preliminary and pre-operative expenses were reduced in proportion to the deductions made under other heads, like IDC and hard costs.

183. The Commission submits that only those costs that were proven to be incurred prudently and within reasonable limits were allowed. The inability of the Appellant to produce invoices or work orders for a portion of the expenses led to disallowance on prudence grounds. The Commission also argues that pre-operative expenses, which accumulate due to avoidable delays, should not be passed on to consumers.

184. UPCL echoes the position taken by the State Commission, stating that the Appellant has not demonstrated with sufficient clarity or evidence that the pre-operative expenses claimed were necessary, reasonable, and uncontrollably incurred. It cautions against permitting inflated or poorly documented claims that could distort the tariff structure and impose unfair burdens on consumers.

185. This Tribunal finds that preliminary and pre-operative expenses are a well-recognized and permissible component of capital cost under the regulatory framework, particularly in infrastructure projects involving gestation. What remains critical is the standard of prudence and documentation supporting such claims.

186. We note from the record that the increase in pre-operative expenses corresponded with the prolonged gestation period of the project, which, as already held, was substantially due to the unavailability of gas. It follows that the costs linked to maintaining the site, staffing, insurance, consultancy, and incidental activities during this extended period were unavoidable and legitimate.

187. Furthermore, the Appellant's submission that a portion of the disallowance was due to a lack of itemized documentation needs to be considered in the context of practical realities. Not all minor expenditure under this head will be supported by invoices exceeding material thresholds, and such expenditure may still be valid and prudently incurred. The auditor-certified figures provide sufficient assurance of their authenticity.

188. Since this Tribunal has allowed the IDC in full, and the pre-operative expenses are inextricably linked to that delay, we find no reason to uphold the partial disallowance by the State Commission.

189. We, therefore, allow the claim of the Appellant in respect of preliminary and pre-operative expenses, subject to observations made herein above.

ISSUE 4: DISALLOWANCE OF HARD COST

190. The Appellant has contested the disallowance of Rs. 30.96 crore under the head of hard cost by the State Commission. It is submitted that the total claim of the Appellant under hard cost amounted to Rs. 689.92 crore, which included the cost of land, civil works, plant and machinery, furniture, fixtures, office equipment, computers, and vehicles. The State Commission allowed only Rs. 658.95 crore, disallowing the balance without sufficient justification.

191. The Appellant explains that out of the disallowed amount, Rs. 14.8 crore was substantiated with copies of invoices, purchase orders, and work orders submitted to the Commission. The remaining Rs. 16.16 crore, although not supported by invoice-level documentation, pertained to numerous minor works and purchases, each valued below Rs. 2.5 lakhs, where standard commercial practice does not mandate the retention or production of exhaustive documentation.

192. The Appellant asserts that these expenditures were capitalised in accordance with standard accounting practices and duly verified by the statutory auditors. The State Commission, it is argued, applied an unduly rigid evidentiary standard and failed to consider the materiality threshold applicable in practical project execution.

193. The State Commission maintains that the disallowance was necessitated due to the Appellant's failure to furnish proper evidence in support of a portion of the claimed expenditure. According to the Commission, Regulation 21(1) of the UERC Tariff Regulations, 2015 mandates a prudence check for approval of capital cost, and documentation plays a pivotal role in establishing prudence.

194. It is further submitted that the claimed expenses, which were not supported by valid invoices or reliable third-party confirmations, could not be passed through in the tariff. The Commission denies any arbitrariness in its approach and states that only those costs that were properly substantiated were admitted.

195. UPCL supports the Commission's decision and reiterates that the burden of proof lies on the Appellant to demonstrate that the costs were genuinely

incurred, necessary for project completion, and prudently managed. It argues that the absence of invoices for a substantial portion of the disallowed amount justifies the disallowance and guards against inflated tariff claims being passed on to end consumers.

196. This Tribunal acknowledges that hard cost constitutes a core component of project capital expenditure, encompassing fixed assets essential to plant construction and operation. The principle of prudence must be applied holistically, bearing in mind the scale of the project and practical norms of documentation.

197. From the material on record, it is evident that the Appellant furnished substantial documentation in support of Rs. 14.8 crore out of the disallowed Rs. 30.96 crore.

198. As for the remaining Rs. 16.16 crore, we find it appropriate to grant liberty to the Appellant to submit relevant documents in support of these claims, and accordingly, the State Commission is directed to allow such claims after a prudence check.

199. Importantly, the expenditures were capitalised and subjected to a statutory audit, which lends credibility to the Appellant's claim. The auditors' certification, coupled with the absence of any indication of overstatement or duplication, ought to have been given due consideration by the Commission.

ISSUE 5: RETURN ON EQUITY AND DEBT-EQUITY RATIO

200. The State Commission in the Impugned Order has observed as under:

"The Petitioner has claimed financing of additional capitalization in debt equity ratio of 70:30. However, as mentioned above, the Commission has not considered any amount of additional captialisation. Hence, financing of the same also has not been considered, however, the same will be reviewed at the time of truing up based on the actual funding and applicable regulations."

201. In light of the above, we direct the State Commission to decide the issue in the trueing up order in accordance with Regulation 24 and Regulation 26.

CARRYING COST

202. The consistent judicial position is that carrying cost is a legitimate compensatory measure designed to protect the economic interests of stakeholders when legitimate claims are withheld or deferred.

203. In the present case, we have found that several key cost components IDC, pre-operative expenses, and hard cost, were wrongly disallowed by the State Commission. As a result, the Appellant was denied the opportunity to recover these amounts through the tariff. This deferral of recovery undeniably entailed financial implications.

204. The Appellant's claim is not based on fault or delay attributable to the Commission, but on the established doctrine of restitution. Once this Tribunal has held that the original denial of cost was unjustified, the consequential financial impact must be remedied by awarding carrying costs.

205. We are of the considered view that the Appellant is entitled to carrying cost on the amount of additional capital cost now allowed, calculated from the date of the supply of power under the PPA signed with UPCL until the effective date of recovery through tariff adjustment.

206. Accordingly, the State Commission is directed to compute and allow carrying costs on the admissible additional capital cost elements, applying the rate as per the applicable prevailing norms.

207. In light of the foregoing discussions and findings across all issues raised in the present appeal, this Tribunal is of the view that the Impugned Order dated 16.05.2017 passed by the Uttarakhand Electricity Regulatory Commission suffers from material legal and factual infirmities in so far as it disallowed legitimate components of capital cost and consequential entitlements of the Appellant.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 259 of 2017 has merit and is allowed. It is hereby ordered as follows:

i. The disallowance of Interest During Construction (IDC) for the period from April 2012 to March 2015 was unjustified; accordingly, the IDC is allowed from April 2012 to the COD of the entire plant, i.e., including Unit 1 and Unit 2.

ii. The capital cost apportionment undertaken by the State Commission on a 50:50 basis between the contracted and uncontracted capacities fails to reflect the utilisation of plant and infrastructure for the operation of Unit 1. The Appellant's proposed methodology, based on the usage and deployment of the assets, is accepted. The Commission shall reassess apportionment following this direction as concluded in the foregoing paragraphs, considering the capital cost of the equipment used for the purpose of generating electricity from Unit 1.

iii. Preliminary and pre-operative expenses incurred by the Appellant, which were linked to the prolonged gestation of the project due to gas shortage, were prudent and supported by audit certification. Accordingly, the full amount as admissible is allowed corresponding to unit 1.

iv. The hard costs as observed in the foregoing paragraphs are allowed.

v. The Appellant is also entitled to carrying cost on the differential amounts as allowed. The Commission is directed to compute this based on the applicable prevailing norms.

The Impugned Order dated 16.05.2017 is hereby modified to the extent indicated above. The Uttarakhand Electricity Regulatory Commission is directed to pass a consequential order within two months from the date of this Judgment, strictly in conformity with the findings and directions contained herein.

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

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

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

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks