

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

**APPEAL No. 204 of 2016**

Dated : 22<sup>nd</sup> July, 2025

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

**In the matter of:**

**Aravali Power Company Private Limited**

NTPC Bhawan, Core-7, Scope Complex,  
7, Institutional Area, Lodi Road,  
New Delhi – 110 003

...Appellant

Versus

- 1. Haryana Power Purchase Center (HPPC)**  
Through its Chief Engineer,  
Shakti Bhawan, Sector-VI,  
Panchkula, Haryana - 134109
- 2. Tata Power Delhi Distribution Ltd. (TPDDL)**  
Through its Chief Executive Officer,  
33 KV Grid Substation, Hudson Road,  
Kingsway Camp, Delhi – 110009
- 3. BSES Rajdhani Power Ltd. (BRPL)**  
Through its Chief Executive Officer,  
BSES Bhawan, Nehru Place,  
New Delhi - 110019
- 4. BSES Yamuna Power Ltd. (BYPL)**  
Through its Chief Executive Officer,  
Shakti Kiran Building,  
Karkardooma, Delhi – 110092
- 5. Central Electricity Regulatory Commission**

Through its Secretary  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110001

...Respondents

Counsel for the Appellant(s) : Anand K. Ganesan  
Swapna Seshadri  
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Sarthak Sareen for App. 1

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Vineet Kumar for Res. 2

Raj Bahadur Sharma  
Mohit K. Mudgal  
Sachin Dubey  
Mohit Jain for Res. 3

Mohit K. Mudgal  
Apar Gupta  
Tulika Bhatnagar  
Sachin Dubey  
Mudit Marwah  
Mohit Jain  
Naman Kumar for Res. 4

Sethu Ramalingam for Res. 5

## **J U D G M E N T**

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. In this appeal, assail is to the order dated 6<sup>th</sup> May, 2015 passed by the 5<sup>th</sup> Respondent – Central Electricity Regulatory Commission

(hereinafter referred to as “the Commission”) in petition No. 229 of 2019 whereby the Commission has approved tariff for Indira Gandhi Super Thermal Power Project stage-I of the Appellant for the period from the date of commercial operation of its unit-I upto 31<sup>st</sup> March, 2014.

2. The Appellant – M/s Aravali Power Company Private Limited is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003. It has been promoted as a joint venture by NTPC Limited, a Govt. of India undertaking holding 50% of the equity share capital along with Indraprastha Power Generation Company Limited, a Govt. of Delhi enterprise holding 25% of the equity share capital and Haryana Power Generation Corporation Ltd., a Govt. of Haryana enterprise holding the remaining 25% equity share capital.

3. The Appellant has set up the Indira Gandhi Super Thermal power project with a total capacity of 1500 MW comprising of three units having capacity of 500 MW each. The three units of the power project i.e. unit-I, unit-II and unit-III were commissioned on 5<sup>th</sup> March, 2011, 21<sup>st</sup> April, 2012 and 26<sup>th</sup> April, 2013 respectively. The electricity generated from the generating station is supplied to Respondent Nos. 1 to 4. 50% of the power generated from the generating station is supplied to 1<sup>st</sup> Respondent – Haryana Power Purchase Centre and the remaining 50%

is supplied to Respondent Nos. 2 to 4 (Discoms operating in Delhi) based as on their respective power purchase agreements entered into with the Appellant.

4. The Appellant was formed as a joint venture company by NTPC, IPGCL and HPGCL in the year 2005. A Memorandum of Understanding (MoU) dated 24<sup>th</sup> August, 2006 was executed between these three entities for development of 1500 MW coal based power project in the State of Haryana for exclusive use of Haryana and Delhi on long term management contract of at least 25 years on the terms to be decided by the parties.

5. In December, 2006, feasibility report was issued stating therein that site for the power project was finalized near village Jharli in Jhajjar District, Haryana. It was specifically stated therein that the proposed super thermal power project is to be commissioned prior to Common Wealth Games, 2010.

6. The Board of Directors of the Appellant, in the meeting held on 5<sup>th</sup> July, 2007 accorded investment approval for the said thermal power project. Accordingly, main plant award was issued by the Appellant on 21<sup>st</sup> August, 2007. Financial closure of the project was achieved on 24<sup>th</sup> January, 2008.

7. Thereafter, the implementation of the power project commenced and continued. Finally the three units of the power project achieved commissioning on 5<sup>th</sup> March, 2011, 21<sup>st</sup> April, 2012 and 26<sup>th</sup> April, 2013 respectively.

8. The Appellant filed petition No. 229 of 2010 before the Commission on 5<sup>th</sup> August, 2010 for determination of tariff for the power project for the period starting from anticipated date of commercial operation of its units till 31<sup>st</sup> March, 2014. The petition has been disposed off by the Commission vide the impugned order dated 6<sup>th</sup> May, 2015.

9. Aggrieved by the said impugned order, the Appellant had filed a Review Petition also before the Commission which has been dismissed by the Commission vide order dated 9<sup>th</sup> February, 2016 holding that the order dated 6<sup>th</sup> May, 2015 does not suffer from any error apparent on the face of record.

10. Accordingly, the Appellant has now approached this Tribunal by way of the instant appeal.

11. The grounds upon which the Appellant has impugned the tariff order passed by the Commission are :-

- (a) Consideration of zero date as the date of award of main plant package instead of the date of financial closure;
- (b) Consideration of Scheduled Commissioning Date as per the schedule tied up with the vendors instead of benchmark timelines provided in the Tariff Regulations, 2009;
- (c) Non-consideration of justifications provided by the Appellant for delay in execution of various works while circulating the IDC and IEDC;
- (d) Disallowance of the additional return on equity of 0.5% as provided in Regulation 15 of the Tariff Regulations, 2009.
- (e) Non-consideration of the fact that the hard costs of the project were within the benchmark costs and there was no cost over-run;
- (f) Non-consideration of IDC on the notional loan by virtue of equity deployed in excess of normative.

12. Despite raising the above noted several grounds in challenge to the impugned order of the Commission, it was submitted on behalf of the Appellant on 5<sup>th</sup> September, 2024 that the scope of the appeal may be restricted to the aspect of consideration of scheduled dates of commissioning of the project as all other issues were dependent upon

determination of such dates. The submission on behalf of the Appellant was not objected to by the Learned Counsels for the Respondents. Accordingly, we have heard the Learned Counsels for the Parties on this limited aspect.

13. Thus the issue to be determined by us in this appeal would be *“Whether the timelines for computation of Scheduled Commercial Operation Date (SCOD) of the Appellant’s power project must be determined as per the date of award for main plant package i.e. steam generator package, as done by the Commission in the impugned order or as per the investment approval accorded for the power project by the Board of Directors of the Appellant, as contended by the Appellant”*.

14. Before analyzing the rival contentions of the parties on this issue, we find it apposite to extract herein the relevant portion of the impugned order of the Commission :-

***“Analysis***

*17. As stated, the project was conceived to meet the power demands in the wake of CWG-2010 from 3.10.2010 to 14.10.2010 and accordingly it was envisaged to commission at least Unit-I of the generating station prior to October, 2010. However, Unit-I was synchronized on 10.10.2010, during CWG-2010, and the unit was*

run on full load on 31.10.2010. It is noticed that the agenda for the Board meeting of the petitioner company on 5.7.2007 does not specifically mention the schedule dates for commissioning of units / generating station except that the feasibility report had indicated that Unit-I was to be declared under commercial operation after 42 months from the date of main plant order and the subsequent units at an interval of 6 months thereafter. From the information submitted by the petitioner, it would only be fair and reasonable to take the schedule date of commercial operation either as per feasibility report or as per the schedule tie-up with the vendor of main plant contract instead of reckoning the Scheduled date of commercial operation (SCOD) from the date of financial closure as submitted by the petitioner. In our view, the time schedule as per contractual agreement with the vendor would be more appropriate as the contractual /commercial implications accrue based on provisions of the contract. Accordingly, we reckon the scheduled CODs of the units of the generating station as per the schedule tied-up with the vendor for main plant contract. As per the contract with the vendor of Steam Generator Package, the synchronization of Unit-I is 35 months from the date of award and for Unit-II & III at an interval of 3 months each. Accordingly, considering the SCOD after

*6 months from the date of synchronization, the SCODs of Unit-I, Unit-II and Unit-III works out to 41 months, 44 months and 47months respectively from the date of award of Steam Generator Package. The submissions of the petitioner that the date of financial closure (24.1.2008) should be considered as the zero date, in our view, is not acceptable considering the fact that the petitioner had applied to Power Finance Corporation (PFC) for financial assistance only on 1.8.2007 and 21.8.2007. On the contrary, the petitioner had entered into an agreement with the main plant contractor wherein the completion schedules, as mentioned above (para 16 above) were part of the contract and the cost of the package was quoted based on the said completion schedule. It is therefore evident that the petitioner had entered into a contract keeping in view the scheduled completion time and cost, for bankability of the project. It is further observed that the timeline specified by the petitioner is comparable to the timelines of similar projects of NTPC and other central generating stations. In this background, the contention of the petitioner that the delay of COD of the units was due to the delay in financial closure merits no consideration. Accordingly, the date of financial closure cannot be considered as the zero date, as submitted by the petitioner.*

*18. Based on the above discussions, the SCODs, the actual COD and the time overrun have been computed as under:*

<i>Units</i>	<i>Date of main plant (Zero date)</i>	<i>Period of synchronization (months)</i>	<i>Period of COD (months)</i>	<i>Schedule COD (from date of main plant award)</i>	<i>Actual COD</i>	<i>Time overrun (approx)</i>
<i>Unit-I</i>	<i>21.8.2017</i>	<i>35</i>	<i>41</i>	<i>21.1.2011</i>	<i>5.3.2011</i>	<i>1.5 months</i>
<i>Unit-II</i>		<i>38</i>	<i>44</i>	<i>21.4.2011</i>	<i>21.4.2012</i>	<i>12 months</i>
<i>Unit-III</i>		<i>41</i>	<i>47</i>	<i>21.7.2011</i>	<i>26.4.2013</i>	<i>21 months</i>

*Accordingly, there has been a delay of 1.5 month for Unit-I, 12 months for Unit-II and 21 months for Unit-III of the generating station.*

*(Emphasis supplied)*

15. Manifestly, the Commission has determined the SCOD's of the three units of the Appellant's generating station as per the date of award of main plant contract and as per schedule tied up by the Appellant with the vendor.

16. It is pertinent to note there that the case of the Appellant before the Commission was to reckon the SCOD of the power project from the date of financial closure i.e. 24<sup>th</sup> January, 2008. However, it is now contended on behalf of the Appellant before us that instead of date of financial closure, the SCOD of the power project should be reckoned

from the date of investment approval i.e. 5<sup>th</sup> July, 2007 which is prior to the date of financial closure. It was submitted on behalf of the respondents that the Appellant has taken a u-turn and is attempting to project a totally different case before this Tribunal which is contrary to the case set up by it before the Commission.

17. In this regard, we may note that since the contentions of the Appellant to the fact that SCOD of the power project should be reckoned from the date of financial closure, have not been accepted by the Commission in the impugned order, it is permissible for the Appellant to tune down its case and to contend that the SCOD of the power project may be reckoned from a date prior to the date of financial closure i.e. date of investment approval. The contention of the Appellant would remain that the Commission has erred in determining the SCOD of the power project as per the date of award for main plant package.

18. It is also intriguing that the Appellant has sought the project its case before us on the basis of investment approval is dated 5<sup>th</sup> July, 2007 but the said document had not been produced either before the Commission or along with the memorandum of appeal. It was when this Tribunal found during the course of hearing that the minutes of meeting of the Board of Directors of Appellant's company in which investment

approval was accorded, are material in determining the issue under consideration, that vide order dated 10<sup>th</sup> February, 2025, Appellant was directed to file the same. Accordingly, copy of feasibility report and the above noted minutes of meeting dated 5<sup>th</sup> July, 2007 of the Board of Directors of the Appellant's company in which investment approval was accorded, were filed on behalf of the Appellant along with affidavit dated 17<sup>th</sup> March, 2025. It is important to note that filing of these documents was not objected to by the learned Counsel for the Respondents.

19. We have considered the rival submissions made by Learned Counsels for the parties and have perused all the relevant documents.

20. It is true that the feasibility report states that the power project in question is to be commissioned prior to Common Wealth Games, 2010. At the same time, it is mentioned in clause 2.13.00 of the report that the commercial operation of 1<sup>st</sup> unit of the project will be in 45 months from the main plant order and of the subsequent units at an interval of six months thereafter.

21. Clause 1.00.00 under the heading "Project Implementation" which relates to project schedule, also mentions that the commercial operation of the 1<sup>st</sup> unit will be in 45 months from the main plant award and subsequent units at an interval of six months thereafter. This clause

further reiterates that the “Zero Date” of the project has been reckoned from the main plant award whereas the activities like evaluation of tenders, commercial negotiations, finalization of contract and placement of orders have been shown from the date of investment approval to the placement of main plant order. It is, therefore, evident that as per the feasibility report, the process for evaluation of tenders, commercial negotiations, finalization of contract and subsequent of orders were to commence from the date of investment approval and conclude by the date of placement of main plant order which was to be treated as “Zero Date”.

22. Investment approval was accorded by the Board of Directors of Appellant’s Company on 5<sup>th</sup> July, 2007. In respect of the commercial operation date of the power project, it is recorded in the minutes of the said meeting as under :-

*“He informed that as per feasibility report, the commercial operation date of 1<sup>st</sup> unit would be 42 months from the date of main plant order and the subsequent units at an interval of 6 months thereafter.*

*CEO further informed that as per schedule tied-up with vendor of Steam Generator Package, the 1<sup>st</sup> unit would be synchronized*

*on coal in 35 months from the award date on best effort basis with unit 2 and 3 at an interval of 3 months each. However all effort should be made by the Company to synchronize the 1<sup>st</sup> unit by 34 months.”*

23. It appears ex facie that the information given by the GM of NTPC to the Board in the said meeting, as recorded in the above extracted portion of the minutes, was absolutely incorrect. He has informed the board that as per the feasibility report, commercial operation date of 1<sup>st</sup> unit would be 42 months from the date of main plant order whereas the feasibility report mentions that the commercial operation of the 1<sup>st</sup> Unit of the project would be 45 months from the date of main plant award, as already noted herein above. It is true that the GM of NTPC has also informed the Board in this meeting that as per the schedule tied up with the vendor of steam generator package, 1<sup>st</sup> unit would be synchronized on coal in 35 months from the award date on best effort basis with unit-II, unit-III at an interval of three months each. This at best, can be taken as an assurance given by the GM to the Board in right earnest and therefore cannot be made basis for determining the SCOD of the three units of the power project. This assurance of the GM, NTPC appears to be based upon the contract executed by the Appellant with BHEL, the

supplier of steam generator package, which mentions the date of synchronization of unit-I as 35 months from the date of award of the contract.

24. In view of these facts and circumstances of the case, we find that the Commission was right in reckoning the SCOD of the power project from the date of award for main plant package instead of date of financial closure, as contended by the Appellant, but has erred in considering the period for commercial operation of the 1<sup>st</sup> unit of the project as 35 months from the date of award of such contract. The Commission ought to have determined the commissioning schedule as 45 months from the date of main plant contract for the 1<sup>st</sup> unit of the project with the interval of six months thereafter for the other two units as specified in the feasible report.

25. The contention of the Appellant that the SCOD of the power project should be reckoned from the date of investment approval has no basis and is not borne out from any document on record. Even the investment approval mentions that commercial operation date for 1<sup>st</sup> unit would be 42 months from the date of main plant order, even though the period of “42 months” has been recorded incorrectly therein as per the erroneous information given by the GM of NTPC.

26. We have carefully perused the previous judgements of this Tribunal relied upon by the Learned Counsels for respondents in this matter. In none of those judgements has this Tribunal considered the commissioning period mentioned in the contract between the generating company and the vendor for determining the SCOD of the power project. In all those cases, this Tribunal has determined the SCOD of the power projects from the date of investment approval. However, in this case, as already noted herein above, the Commissioning schedule has been mentioned incorrectly in the investment approval on the basis of a wrong information provided by the GM, NTPC. Therefore, we find it appropriate to consider the commissioning schedule for power project in question as specified in the feasibility report.

27. Hence, we direct that the SCOD of the three units of the power project of the Appellant shall be reckoned as per the schedule given in the feasibility report i.e. 45 months from the date of main plant contract for unit-I with an interval of six months thereafter respectively for unit-II and III. The impugned order is hereby set aside to the above extent.

28. Accordingly, the case is now remanded back to the Commission for determining the timelines for the power project afresh in terms of this judgement after hearing the parties again. The Commission shall

endeavore to pass the fresh order expeditiously and not later than four months from the date of the judgement.

Pronounced in the open court on this 22<sup>nd</sup> day of July, 2025.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

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*REPORTABLE / NON-REPORTABLE*

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