IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.359 OF 2018
APPEAL No.115 OF 2019
AND
APPEAL No.203 OF 2019

Dated: 15.09.2025

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

In the matter of:

APPEAL No.359 OF 2018

Uttarakhand Power Corporation Ltd.
"Victoria Cross Vijeta Gabar Singh Urja Bhawan"
Kanwali Road, Dehradun 248001
Uttarakhand
Through its Authorized Representative … Appellant

Versus

***1*. Uttarakhand Electricity Regulatory Commission**
"Vidyut Niyamak Bhawan,
Near I.S.B.T., P.O. Majra Dehradun (Uttarakhand)-248171
Through its Secretary

***2*. M/s Him Urja Pvt. Ltd.**
E-14, East of Kailash
New Delhi 110065
Through its Director

Email Id: info@himurja.co.in … Respondent(s)

Counsel for the Appellant(s) : Pradeep Misra

Counsel for the Respondent(s) : C. K. Rai
Anuradha Roy
Vinay Kumar Gupta for Res. 1

Anand K. Ganesan
Neha Garg
Swapna Seshadri
Ashwin Ramanathan for Res. 2

APPEAL No.115 OF 2019

M/s Him Urja Pvt. Ltd.
138/2, Vasant Vihar
Dehradun – 248006 … Appellant

Versus

1. **Uttarakhand Power Corporation Ltd.**
Through its Chairman and Managing Director
Victoria Cross Vijeyta Gabar Singh Urja Bhawan
Kanwali Road, Balliwala Chowk,
Dehradun 248001, Uttarakhand

2. **Uttarakhand Electricity Regulatory Commission**
Through its Secretary
Vidyut Niyamak Bhawan,
Near ISBT, Majra
Dehradun-248 171 … Respondent(s)

Counsel for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Ashwin Ramanathan

Counsel for the Respondent(s) : Pradeep Misra for Res.1

C. K. Rai
Anuradha Roy
Vinay Kumar Gupta for Res.2

APPEAL No.203 OF 2019

M/s Him Urja Pvt. Ltd.
138/2, Vasant Vihar
Dehradun – 248006 … Appellant

Versus

1. **Uttarakhand Power Corporation Ltd.**
Through its Chairman and Managing Director
Victoria Cross Vijeyta Gabar Singh Urja Bhawan
Kanwali Road, Balliwala Chowk,
Dehradun 248001, Uttarakhand

2. **Uttarakhand Electricity Regulatory Commission**
Through its Secretary
Vidyut Niyamak Bhawan,
Near ISBT, Majra
Dehradun-248 171 … Respondent(s)

Counsel for the Appellant(s)	:	Anand K. Ganesan Swapna Seshadri Ritu Apurva
Counsel for the Respondent(s)	:	Pradeep Misra Manoj Kumar Sharma for Res.1 C. K. Rai Anuradha Roy Vinay Kumar Gupta for Res.2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Appeal Nos.359 of 2018 and 115 of 2019 are directed against the order dated 17.05.2018 passed by Uttar Pradesh Electricity Regulatory

Commission (hereinafter referred to as “the Commission”) in the petition filed by M/s Him Urja Private Limited seeking adjustment of tariff for its Vanala Small Hydro Project (15MW) necessitated due to additional capital expenditure incurred from FY 2013-14 up to 07.07.2016 on account of natural calamities that struck State of Uttarakhand in the months of June and July, 2013. While disposing off the petition, the Commission has applied Uttarakhand Electricity Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil Fuel based Co-generation Stations) Regulations, 2010 as amended from time to time and partly allowed the additional capital expenditure incurred by M/s Him Urja Private Limited.

2. In appeal no.203 of 2019, assail is to the order dated 10.04.2019 passed by the Commission in petition no.70/2018 filed by M/s Him Urja Pvt. Ltd. seeking adjustment of tariff for Vanala small hydro power project necessitated due to additional capital expenditure incurred from 07.07.2015 to 31.03.2018 for balance protection work and for rectifying catastrophic damages caused to the plant by the natural calamity that occurred in the State of Uttarakhand in the month of June, 2016.

3. As the appeal nos.359/2018 and 115/2019 arise out of the same order dated 17.05.2018 of the Commission, we find it appropriate to dispose off

the two appeals vide this common judgment. Further, we find that the third appeal bearing no.203/2019 also arises in identical facts and circumstances in which the first two appeals have arisen and therefore, the same was tagged with these two appeals. Accordingly, all the three appeals were heard together and are being disposed off vide this common judgment.

4. In order to avoid any confusion, we shall be referring to the parties by their names instead of appellants and respondents.

5. M/s Him Urja Private Limited is a company incorporated under the Companies Act, 1956 and is engaged in the business of generation and supply of electricity. Since its incorporation, the company has been developing and operating run of river small hydro generation projects in the State of Uttarakhand. It is operating two projects in the State of Uttarakhand namely Rajwakti and Vanala.

6. The present appeals relate to 15MW (2x7500 kW) small hydro power project set up by Him Urja at Vanala, District Chamoli in the State of Uttarakhand. The project achieved commercial operation on 05.12.2009. The generating station is connected to 66kv Srinagar-Joshimath transmission line at Mangrauli Sub-station near Nandprayag, Chamoli. The

project specific levelized tariff for the generating station was determined by the Commission vide order dated 10.04.2014.

7. In the months of June/July 2013 a catastrophic natural disaster hit Uttarakhand due to excessive rainfall resulting in extraordinary flooding, landslide etc. The damage caused to life and property in the region was unprecedented and of unexpected magnitude.

8. As per the case set up by M/s Him Urja before the Commission, there was heavy inundation due to floods that occurred in Nandakini River on 16-17 June 2013 and 15-16 July 2013 that damaged the channel, desilting tank and pipeline of the Vanala Hydroelectric Power Project situated on the same river Nandakini. Some machines and equipment were stated to have been washed away due to floods. Consequently, the generation of electricity stopped with effect from 16.06.2013 due to such damage to the project.

9. It was further contended that there were as many as 20 cloudburst in the project area on 15.07.2013 at around 07.30am. Entire area was totally cutoff as the bridges were washed away and the roads were cutoff due to numerous landslides. In view of damage caused to the generating station, M/s Him Urja had to incur substantial loss and expenditure on the repairs as well as additional capitalization.

10. Accordingly, M/s Him Urja approached the Commission by way of petition seeking adjustment of tariff as per Sections 61 and 62 of the Electricity Act, 2003, read with Regulations 14 and 15 of UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and Non-fossil fuel based Co-generation Stations) Regulations, 2010 (hereinafter referred to as "UERC Tariff Regulations, 2010") as amended from time to time necessitated by the additional capital expenditure incurred from FY 2013-14 to 07.07.2016 for rectifying damages caused to the power plant by unprecedented natural calamity/floods that occurred in the State of Uttarakhand in the months of June and July, 2013.

11. The said petition has been disposed off by the Commission vide impugned order dated 17.05.2018. While acknowledging the occurrence of the natural disaster that damaged the power project of M/s Him Urja as well as the necessity to adjust the tariff applicable for the supply of power from the generating station of M/s Him Urja at Vanala, the Commission did not accept the claims of M/s Him Urja in entirety and allowed additional expenditure incurred by M/s Him Urja for rectifying the damages caused to the power plant only partly.

12. In appeal no.359/2018, Uttarakhand Power Corporation Limited (in short "UPCL") has assailed the said order of the Commission on following grounds/issues: -

(a) In the facts and circumstances of the instant case, additional capitalization allowed to the power project of M/s Him Urja for which project specific tariffs had been determined, is contrary to UERC Tariff Regulations, 2010 as amended from time to time;

(b) ROE determined by the Commission in the impugned order is contrary to the provisions of UERC Tariff Regulations, 2010 as amended from time to time;

(c) Not allowing decapitalizing the historic value of assets damaged/replaced is erroneous; and

(d) Determination of O&M expenses in the impugned order is contrary to the provisions of UERC Tariff Regulations, 2010 as amended from time to time.

13. M/s Him Urja has impugned the said order of the Commission in appeal no.115/2019 on following grounds/issues: -

(i) The Commission has erred in holding that there has been a "time overrun" in carrying out restoration work in the power plant;

(ii) The Commission has erred in disallowing Incidental Expenditure During Construction (IECD) corelating it to delay in carrying out the restoration work despite no additional cost having been incurred on account of “time overrun”;

(iii) The Commission has erred in adopting debt-equity ratio of 83:17 for the purpose of calculation of tariff; and

(iv) The Commission has erred in granting liberty to UPCL to approach it for upward revision of CUF in case the CUF of the project remains higher than the approved CUF for three consecutive years.

14. Another natural calamity is stated to have struck the State of Uttarakhand on 20.06.2016 causing severe landslide due to cloudburst on the upper side hills. Heavy floods are stated to have occurred causing damage to the RCC Power Channel of the Vanala power project due to which generation of electricity stopped. It is stated that restoration work was immediately started to make the project operational once again but Nandakini River got again inundated by flood on 30.06.2016 which caused damage to weir/ diversion, desilting tank, training walls, RCC power channel, protection wall on river side and transmission tower etc. of the power project.

The entire area of desilting tank and weir had submerged with the debris and the generation of electricity stopped in the project.

15. According to M/s Him Urja during restoration work, new assets wre appended to the existing assets and the existing assets were strengthened in order to protect it against future calamities to minimize the loss and consequential loss of generation. It is stated that on account of said natural disaster and the resultant damage caused to the generating station, M/s Him Urja had to incur substantial loss as well as expenditure on repairs and additional capitalization.

16. Accordingly, M/s Him Urja filed petition before the Commission for adjustment of tariff necessitated by said additional capital expenditure incurred from 07.07.2016 to 31.08.2018 for rectifying damages caused to the plant by the said natural calamity that occurred in Uttarakhand State in June/July 2013. The said petition was disposed off by the Commission vide order dated 10.04.2019 which has been impugned by M/s Him Urja in appeal no.203/2019.

17. The grounds/issues on which the said order dated 10.04.2019 of the Commission has been assailed by M/s Him Urja are noted hereinbelow: -

(A) The Commission has erroneously restricted the payment made by M/s Him Urja to the contractor to the unit rates quoted by the lowest bidder;

(B) The Commission has erroneously classified salaries and wages under the head IEDC and disallowed IEDC corelating it to the delay in carrying out the restoration work;

(C) The Commission has erroneously adopted debt-equity ratio of 83:17 for the purpose of calculation of tariff.

18. We have heard Shri Pradeep Misra, learned counsel for UPCL, Ms. Aishwarya Subramani, learned counsel for M/s Him Urja, and Mr. C K Rai, learned counsel for the Commission. We have also gone through the written submissions filed by the learned counsels.

Our Analysis: -

Appeal No.359 OF 2018: -

19. Before analyzing the grounds/issues raised in this appeal by the appellant UPCL, it is necessary to take note of following events.

20. On 06.07.2010, the Commission notified UERC Tariff Regulations, 2010 which are applicable to all cases where the tariff for supply of electricity from renewable energy sources to the distribution licensee is to be

determined by the Commission under Section 62 of the Act. Regulations 11, 14 and 15 which relate to tariffs, tariff structure and determination of project specific tariff are the material and are quoted hereinbelow: -

"11. Tariffs

……..

(2) ***The RE Based Generating Stations and Co-generating Stations, except those mentioned under Proviso 1 & 2 to sub-Regulations 2, may opt for the generic tariff, as determined based on norms specified in these Regulations for different technologies, or may file a petition before the Commission for determination of "Project Specific Tariff"……***

(3) Project Specific Tariff, on case to case basis, shall be determined by the Commission in the Following cases:

(a) For projects opting to have their tariff determined on the basis of actual capital cost instead of

normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR or the normative CUF specified under Chapter 5 for the relevant technology, whichever is highe*r;*

……

14. Petition and proceedings for determination of Project Specific Tariff

(1) The RE Based Generating Stations and non-fossil fuel based Co-generating Stations may make an application for fixation of Project Specific Tariff based on actual Capital cost in respect of the completed units of the RE Based Generating Stations and Co-generating Stations in such formats and along with such information as the Commission may require from time to time.

……..

15. Tariff Structure

……..

(3) <u>The generic tariff will be determined separately for each kind of renewable source and for each type of renewable technology for which norms have been specified in these Regulations</u>.

(4) <u>The generic tariff would be based on normative parameters as per the norms specified in these Regulations for each type of source</u> *and the year of commissioning of the Plant. Tariff in respect of a RE Based Generating Stations and Co-generating Stations under these Regulations shall be applicable for the whole generating station. Provided that the tariff for supply of electricity from the plant, having more than one unit commissioned in different years, shall be based on weighted average of the capacities of the units commissioned in different years.*

……..”

21. Regulation 3(1)(ii) defines “useful life” in relation to a unit of generating station as follows:-

“3(1)(ii) “Useful Life” in relation to a unit of a generating station including evacuation system shall mean the

following duration from the date of commercial operation (CoD) of such generation facility, namely:

"(i) Wind energy power project	*25 years.*
(ii) Biomass power project, non-fossil fuel cogeneration	*20 years.*
(iii) Small Hydro Plant	*35 years.*
(iv) Solar PV/Solar thermal power plants	*25 years."*

22. The control period/review period has been defined in Regulation 12 which is extracted hereinbelow: -

"12. Control Period or Review Petition.

(1) The Control Period or Review Petition under these Regulations shall be upto [31.3.2018], with FY 2009-10 as the base year and FY 2010-11 as the first year of the Control Period.

Provided that the benchmark capital cost for Solar PV and Solar thermal projects may be reviewed annually by the Commission.

Provided further that the tariff determined as per these Regulations for the RE projects commissioned during the Control Period, shall continue to be applicable for the entire Tariff Period (Useful life of the plant) as specified under Regulation 3(1)(ii).”

23. As regards Return on Equity (ROE), Regulation 19 provides as under:-

“19. Return on Equity.

(1) The value base for the equity shall be as determined under Regulation 16(2).

(2) The Return on Equity shall be:

(a) Pre-tax 19% per annum for the first 10 years.

(b) Pre-tax 24% per annum 11th year onwards.”

24. On 14.08.2012, the Commission amended these RE Regulations, 2010 and notified UERC (First Amendment) Tariff Regulations, 2012. By way of this amendment, definition of “force majeure” was introduced after Regulation 3(1)(i) of RE Regulations, 2010 as under: -

"3(1)(i)(a) ***"Force Majeure Event"*** *means, with respect to any party, any event or circumstances which is not within the reasonable control of, or due to an act or omission of, that party and which, by the exercise of reasonable care and diligence, that party is not able to prevent, including, without limiting the generality of the foregoing:*

i. *Lightning, storm, earthquakes, flood, natural disaster and action of the natural elements'*
ii. *…..*
iii. *….."*

25. Also a proviso was added to Regulation 15(9) which, after amendment reads as follows: -

"(9) The tariff being normative, any shortfall or gain due to performance or other reasons to be borne/retained by the RE Based Generating Stations and Co-generating Stations and no true up of any parameter, including additional capitalization for whatsoever reasons, shall be taken up during the validity of the tariff.

Provided that any additional expenditure of capital nature which becomes necessary on account of damages caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) after prudence check by the Commission, shall be allowed as additional capitalization after adjusting the proceeds from any insurance scheme for all the generating stations covered under these Regulations. For additional capital expenditure admitted, as above, appropriate adjustment in tariff shall be allowed for balance life of that project based on the norms given in Chapters 4 & 5 of the Regulations.

Provided that additional capitalization on this account would only be allowed if appropriate and adequate insurance cover was available for the generating station at the time of occurrence of natural calamities referred to in first proviso above."

26. M/s Him Urja filed petition no.19/2012 before the Commission on 22.11.2012 for determination of "project specific tariff" for its 15MW small hydro power project at Vanala. Thereafter, UPCL entered into a Power Purchase Agreement (PPA) with M/s Him Urja on 21.12.2012 for purchase of power from the said power project at the provisional rate of tariff of Rs.3.50/kWh in accordance with the directions issued by the Commission vide letter date 04.12.2012.

27. Vide order dated 10.04.2014 passed in the above noted petition no.19/2012 of M/s Him Urja, the Commission determined "project specific tariff" for the said Vanala power project at Rs.4.00/kWh in accordance with the UERC Tariff Regulations, 2010.

28. On 20.06.2014, the Commission further amended the Tariff Regulations, 2010 by notifying UERC (Second Amendment) Tariff Regulations, 2014. The necessity of the said Second Amendment has been explained in the Statement of Reasons issued by the Commission along with the amended regulations in the following words: -

> "*The Commission based on the representation received from the SHPs generators issued a draft amendment to Principal Regulations-1 & Principal Regulations-2 inviting*

comments from all stakeholders. The draft amendment covered the following:

iv. Additional capitalization on account of Force Majeure events.

……

1. Additional capitalization on account of Force-Majeure (Amendment in Regulation 14 (7) of the Principal Regulations-1 and Amendment in Regulation 15 (9) of the Principal Regulations-2)

……..

Analysis and Decision

The developers have sought securing revenue losses incurred on account of stoppages caused by natural calamities and also to cover calamity of 2013 for additional capitalization. Since the provisions for recovery of such losses do not exist in the Principal Regulations, the same cannot be introduced retrospectively by notification of amendment in Regulations. ***The Commission vide amendment Regulations is not specifying entirely new Regulations, but is amending***

<u>the existing Regulations recognizing problems being faced by hydro developers</u> *and, hence, introducing reliefs sought is not being considered. …….*

……..."

29. Accordingly, following two new provisos were attached to Regulation 15(9) of the Principal Regulations by way of this second amendment: -

*"**Provided that any additional expenditure of capital nature which becomes necessary on account of damages caused by natural calamities (but not due to flooding of powerhouse attributable to the negligence of the generating company) after prudence check by the Commission, shall be allowed as additional capitalisation after adjusting the proceeds from any insurance scheme for all the generating stations covered under these Regulations**. For additional capital expenditure admitted, as above, appropriate adjustment in tariff shall be allowed for balance life of that project based on the norms given in Chapters 4 & 5 of the Regulations.*

Provided that additional capitalisation on this account would only be allowed if appropriate and adequate insurance cover was available for the generating station at the time of occurrence of natural calamities referred to in first proviso above*."*

30. Thereafter, M/s Him Urja filed petition before the Commission on 30.01.2017 under Sections 61 and 62 of the Electricity Act, 2003 read with Regulations 14 and 15 of UERC Tariff Regulations, 2010 seeking adjustment of tariff in respect of said Vanala small hydro power project on account of additional capital expenditure incurred from FY 2013-14 to 07.07.2016 for rectifying the damage caused to the plant by the unprecedented natural calamity that occurred in the Uttarakhand Sate in the months of June and July 2013. The said petition has been disposed off by the Commission vide impugned order dated 17.05.2018 thereby partly allowing the additional capital expenditure incurred by the appellant during the said period for repairing the damages caused to the plant.

31. As per the provisions of Regulation 15 of UERC Tariff Regulations, 2010, the renewable energy based generating stations may opt for "generic

tariff" specified in the regulations for different technologies on the basis of norms provided therein or may file a petition before the Commission for determination of "project specific tariff". Further, as per Regulation 15(9), as amended by way of Second Amendment in the year 2014, no true up of any parameter is permissible during the validity of tariff and any shortfall or gain due to tariff or other reasons is to be borne/retained by the RE based generating stations and cogeneration stations.

(a) Additional capitalization: -

32. It is vehemently argued by the learned counsel for UPCL that the project specific tariff for the Vanala small hydro power project of M/s Him Urja once determined by the Commission vide order dated 10.04.2014 is valid for the entire life of the project and therefore, no additional capitalization for any reason whatsoever could have been allowed. It is also submitted that the Commission ought not to have tinkered with the other components of the tariff as well. We do not see any force in these submissions of the learned counsel.

33. Purportedly, these submissions have been made by the learned counsel on the basis of the provisions of Regulation 15(9), which has already been extracted hereinabove and which envisaged that no true up of any

parameter of tariff shall be allowed during the validity of the normative tariff determined by the Commission for a RE based power project. The expression used in Regulation 15(9) is “tariff being normative” i.e. normative tariff which is akin to “generic tariff” worked out for a RE based generating station on the basis of normative parameters specified in the Regulations. Thus, it is limpid that the Regulation 15(9) is applicable to only those RE based generating stations who have opted for “generic tariff” and is not applicable to the RE based generating stations who have opted for “project specific tariff” which has been determined by the Commission on the basis of the notified parameters related to the power project including capital cost. Therefore, evidently the said Regulation is not applicable to the power project of M/s Him Urja at Vanala for the reason that concededly M/s Him Urja opted for project specific tariff for the said power project which was determined by the Commission vide order dated 10.04.2014.

34. Even otherwise also, in case it is assumed that the Regulation 15(9) is applicable to the said power project of M/s Him Urja, then also a reference can be conveniently made to the two provisions attached to it by way of Second Amendment on 20.06.2014 which clearly carve out exception for additional capitalization for those projects also who had opted for generic tariff, in case the additional capitalization is necessitated on account of a

force majeure event. It is not disputed on behalf of UPCL that the power project of M/s Him Urja had extensive damage during the months of June/July, 2013 due to unprecedented heavy rainfall, floods, landslide and cloudburst in the State of Uttarakhand causing widespread flooding and devastation in the entire State. On account of said disastrous natural calamity, the project of M/s Him Urja was severely damaged and even some of the machines as well as equipment were washed away due to floods. It is also not disputed that such disastrous natural calamity was a "force majeure" event. Therefore, it cannot be countenanced that the Commission committed any illegality in revisiting the tariff for the power project of M/s Him Urja by allowing additional expenditure which was necessitated by *force majeure* events i.e. the disastrous natural calamity stated hereinabove.

35. It was also argued on behalf of UPCL that no additional capitalization could have been claimed by M/s Him Urja or allowed by the Commission in respect of any *force majeure* event that had occurred before 01.04.2014 on which date the Second Amendment to UERC Tariff Regulations, 2010 came into force vide which additional provisos were added to Regulation 15(9). This argument appears to be based upon misinterpretation of the proviso attached to Regulation 15(9) by way of Second Amendment in the year 2014. The proviso, which carves out an exception for allowing additional

capitalization necessitated on account of damages due to natural calamities, nowhere specifies that the natural calamity which caused the damages should have occurred after 01.04.2014. What the proviso envisages is that in case any additional expenditure of capital nature becomes necessary on account of damages caused by natural calamities, the same shall be allowed by the Commission after prudence check. The proper and purposive interpretation of the proviso would indicate that the additional expenditure should have been incurred after 01.04.2014 even though the natural calamity which necessitated the same had occurred before 01.04.2014. In the instant case it is not in dispute that the additional expenditure claimed by M/s Him Urja had been incurred by it after 01.04.2014.

36. Therefore, the argument on behalf of UPCL that the Commission has retrospectively applied the Second Amendment to UERC Tariff Regulations, 2010 is devoid of any force and merits outright rejection.

(b) Determination of ROE:

37. It is further submitted on behalf of UPCL that the Commission has erred in calculation of ROE against the equity as the Regulations provide for ROE as pre-tax at 19% for first 10 years and pre-tax 24% from 11th year onwards. It is argued that the calculation of years should be from the year of

investment of equity whereas Commission has considered first 10 years from the date of commercial operation and has given additional 5% ROE for almost 07 years.

38. On behalf of the Commission and M/s Him Urja, it is contended that ROE has been allowed as per Regulation 19 of UERC Tariff Regulations, 2010 which provides as follows: -

> *"(1) The value base for the equity shall be as determined under Regulation 16(2).*
>
> *(2) The Return on Equity shall be:*
>
> *(a) Pre-tax 19% per annum for the first 10 years.*
>
> *(b) Pre-tax 24% per annum 11th year onwards"*

39. It is further argued that while specifying the pre-tax ROE in the UERC Tariff Regulations, 2010, the post-tax ROE has been grossed up for the first 10 years with the provisional MAT rate considering the fact that the generating company will avail the MAT credit in the initial 10 years in accordance with the provisions of the Income Tax Act and thereafter post-tax ROE had been grossed up with the applicable Corporate tax rate to work out the Pre-tax Return on Equity of 24% per annum. It is also submitted that the benefit of MAT credit and taxes are levied from the commissioning of the

plant in accordance with the provisions of Income Tax Act irrespective of date of additional capitalisation.

40. The relevant extract of the impugned order on this issue is reproduced hereinbelow: -

> *"3.4.3.2 Return on Equity (RoE)*
>
> *With regard to computation of RoE, Regulation 19 of the RE Regulation, 2010 specifies as under:*
>
> *"(1) The value base for the equity shall be as determined under Regulation 16(2).*
>
> *(2) The Return on Equity shall be:*
>
> *(a) Pre-tax 19% per annum for the first 10 years.*
>
> *(b) Pre-tax 24% per annum 11th year onwards."*
>
> *As mentioned under the head of 'Debt-Equity Ratio', the Petitioner has considered 30% of the total expenditure as Equity whereas the Commission has considered Rs. 3.65 Crore as equity which is 16.93% of the admissible additional capitalisation as approved above.* ***The said project was put to commercial operation in FY 2009-10 and accordingly, 10 years for the project gets***

completed in FY 2018-19.Therefore, return on equity on the equity deployed towards the additional capital cost has been computed considering pre-tax rate of 19% p.a. till FY 2018-19 and pre-tax rate of 24% p.a. from FY 2019-20 for the balance useful life of the project in accordance with the RE Regulations, 2010."

41. Since in the instant case, the power project was put under commercial operation in FY 2009-10, first 10 years of the project got over in FY 2018-19. Accordingly, the Commission has allowed the return on equity on the equity portion of the additional capitalisation considering the rate 19% per annum from FY 2009-10 to FY 2018-19 and pre-tax rate of 24 per annum from FY 2019-20 for the balance useful life of the project. Therefore, it is evident that the Commission has considered the ROE for the power project as per the relevant Regulations and no error can be found in the impugned order on this aspect.

(c) Not allowing decapitalization:

42. It is next argued on behalf of the UPCL that the Commission has erred in not allowing decapitalization according to the historic value of assets damaged/replaced in the power project by M/s Him Urja.

43. On this aspect, the Commission has observed in the impugned order as under: -

> ***"De-Capitalization and Insurance claim***
>
> ***3.2.8*** *The Petitioner has submitted that the diversion weir, feeder channel, RCC Channel, Pipe, D Tank etc were damaged or/and washed away. However, the Commission observed from the audited accounts of FY 2013-14 that these assets were still part of the gross block as no amount pertaining to the above mentioned assets had been de-capitalized. In this regard, the Commission directed the Petitioner to clarify the treatment of the capital cost of damaged assets and also directed the Petitioner to submit Fixed Assets Register. In reply, the Petitioner submitted that there was no substantial basis for arriving at the cost of the abandoned assets as it appeared in the books of accounts since in the books of accounts it appeared as block of asset and from this block of asset it was not possible to segregate/identify the cost of abandoned assets out of the block. The Commission analysed the Fixed Asset Register and observed that the*

value of block of asset say the cost of pipeline also included the cost of control valves, Sluice gates, steel surge including cost of approach road relating to MS Pipe line and RCC Channel. Therefore, it will not be appropriate to consider cost from Fixed Asset Register as it includes the cost of other assets also within the asset block.

Accordingly, the Commission decided to analyse the insurance claim to work out the cost of de-capitalised assets. The Petitioner was directed to submit the survey investigation report and the same was submitted vide letter dated 15.06.2017. It was observed from the report that the insurance claim has been made according to the replacement cost and not as per the historical cost. The Petitioner vide letter dated 14.09.2017 submitted that it has received an amount of Rs. 5.57 Crore against the claim of Rs. 7.34 Crore. In this context, Respondent vide its letter dated 28.10.2017 submitted that against the total claim of Rs. 7.34 Crore, gross loss was of Rs. 6.53 Crore and

the same should be considered as paid by the Insurer. In this regard, it is pertinent to mention that as per the insurance surveyor final report, Rs. 7.34 Crore was the gross amount claimed against which the insurance surveyor assessed the gross loss of Rs. 6.53 Crore and finally settled the claim at Rs. 5.57 Crore.

Ideally the asset which is not usable or does not exist should be written off from the GFA at the original cost/WDV. However, instead of submitting actual/ historical cost of assets written off, the Petitioner submitted an estimate of Rs. 7.34 Crore as amount claimed from insurance company at the replacement or current market cost. The current cost cannot be deducted from the gross block as it is an indicator of what would be the replacement cost of an asset and cannot be the historical cost at the time of commissioning of the project earlier. Besides, if the cost of an asset damaged would have been higher than what the insurance company settled, even in

such scenario such loss will have to be allowed as uncontrollable in accordance with the prudent accounting principles and the same would apply vice-versa.

Hence, as discussed above, the Commission has decided to reduce the amount of loss equivalent to the claim settled by the insurance company of Rs. 5.57 Crore as that was the amount which was part of the capital cost as on the date of commissioning on which the tariff has already been fixed earlier. Now since the amount of loss does not form part of the GFA of the Petitioner and to recoup the same the Petitioner has claimed additional capitalisation, hence, it would not be reasonable to allow any portion of the lost asset as part of the GFA. Accordingly, the same has been reduced from the additional capitalisation allowed to the Petitioner."

44. Perusal of the above noted portion of the impugned order reveals that the Commission found from the audited accounts of M/s Him Urja that the damaged assets and/or washed away assets were part of the gross block as

no amount pertaining to such assets had been decapitalized. M/s Him Urja had contended before the Commission that there was no substantial basis to decapitalize for arriving at the cost of abandoned assets as it appear in the books of accounts as block of assets and from the block of assets it was not possible to segregate/identify the cost of abandoned assets. Accordingly, it appears that the Commission analyzed the Fixed Asset Register and found that the value of block of assets i.e. the cost of pipeline also included the cost of control valves, sluice gates include the cost of approach road relating to MS Pipeline and RCC channel. Thus, the Commission did not find it appropriate to consider the cost from Fixed Asset Register as it included the cost of other assets also with the asset block.

45. The Commission has also examined the insurance surveyor report and found that the insurance claim had been made according to the replacement cost and not as per the historic cost. As per surveyor report Rs.7.34 crore was the gross amount claimed against which the insurance surveyor assessed the gross loss of Rs.6.53 crore and finally settled the claim at Rs.5.57 crore.

46. We find ourselves in agreement with the argument on behalf of the Commission that ideally, the asset which is not usable or does not exist should be written off from the gross block but in the instant case, the assets

got washed away/damaged not because of ignorance/fault of M/s Him Urja but due to natural calamities, which was beyond its control. In such scenario as submitted on behalf of the Commission, losses were allowed as uncontrollable in accordance with the prudent accounting principles.

47. Since the Commission has reduced the amount of asset written off equivalent to the claim settled by the insurance company in the sum of Rs.5.57 crores, we find that the Commission has applied prudent practice in the facts of the instant case, and therefore, the findings of the Commission on this aspect do not call for any interference.

(d) Determination of O&M expenses:

48. It is further argued on behalf of UPCL that the Commission has determined O&M cost contrary to UERC Tariff Regulations, 2010.

49. The relevant portion of the impugned order on this issue is extracted hereinbelow: -

> *"3.4.2 …*
>
> ***It is pertinent to mention that the Normative O&M expenses are linked to the capacity of the Small Hydro Plant and not with the capital cost of the plant.***

Further, the Petitioner ***vide Para 3.22 of the Petition has admitted that the work of restoration did not create any new asset capable of generating additional power capacity and no new generation capacity was added to the project. The capacity to generate power remains the same as before at 15 MW. The new assets were appended to the existing assets. According, the Petitioner's project is not eligible for any additional normative O&M expenses as no increase in installed capacity has resulted from these restoration and protection works.***

Further, as far as the submission of the Petitioner regarding extra O&M expenses towards additional capitalisation incurred, the Commission is of the view that under the RE Regulations, 2010, there is no separate provision for O&M expenses on additional capitalisation."

50. It is manifest from the perusal of the above extracted portion of the impugned order that the Commission has disallowed O&M expenses on account of additional capitalization on the ground that there was no increase in the installed capacity of the plant due to additional capitalization incurred

for restoration and protection of work. Therefore, the contention raised on behalf of UPCL that the Commission has determined O&M cost erroneously is baseless and not borne out from the contents of the impugned order.

51. Hence, no merit is found in the appeal under consideration filed by UPCL and the same is liable to be dismissed.

Appeal Nos.115 OF 2019 and 203 OF 2019:

52. The grounds/issues upon which M/s Him Urja has assailed the order dated 17.05.2018 of the Commission in this appeal have already been noted in Paragraph No.13 hereinabove and are reproduced hereinbelow for the sake of convenience: -

(i) The Commission has erred in holding that there has been a "time overrun" in carrying out restoration work in the power plant;

(ii) The Commission has erred in disallowing Incidental Expenditure During Construction (IEDC) corelating it to delay in carrying out the restoration work despite no additional cost having been incurred on account of "time overrun";

(iii) The Commission has erred in adopting debt-equity ratio of 83:17 for the purpose of calculation of tariff; and

(iv) The Commission has erred in granting liberty to UPCL to approach it for upward revision of CUF in case the CUF of the project remains higher than the approved CUF for three consecutive years.

53. The grounds/issues upon which M/s Him Urja has challenged the order dated 10.04.2019 of the Commission in this appeal have been noted in Paragraph No.17 hereinabove and reproduced herein again for the sake of convenience: -

(A) The Commission has erroneously restricted the payment made by M/s Him Urja to the contractor to the unit rates quoted by the lowest bidder;

(B) The Commission has erroneously classified salaries and wages under the head IEDC and disallowed IEDC corelating it to the delay in carrying out the restoration work;

(C) The Commission has erroneously adopted debt-equity ratio of 83:17 for the purpose of calculation of tariff.

(i) <u>Time Overrun:</u>
<u>[This issue is involved in appeal no.115/2019 only as issue no.(i)]</u>

54. The Commission has declined the time overrun on the ground that M/s Him Urja has delayed the repair/restoration work of the power project beyond

period of two years as stated by M/s Him Urja itself in the Detailed Project Report (DPR) dated 03.11.2013 without submitting reasons for such delay. The relevant portion of the impugned order is extracted hereinbelow: -

> *"It is to be noted that as per DPR dated 03.11.2013, the scheduled completion period for restoration and protection works was set as two years. Further, the Petitioner itself has mentioned in the Petition that it could start assessment of the damages in August 2013 only and thereafter it was able to prepare methodology for restoration of the Project. In the DPR, the Petitioner has also discussed the ways and means to access the location of works at the project site. The relevant extract of the DPR is as follows:*
>
> *"Access to the Project Site at the location of Works*
>
> *... therefore it was decided after discussion with the engineers to construct a ropeway across the river having a length of about 300 m and elevation difference of about 80m to carry the material at the pipe. Further, small ropeways were required o be*

constructed to carry the material at the various locations of the site which is otherwise inaccessible"

All the facts and geographical status of the Plant area was very well known to the Petitioner and the Petitioner itself has set such target to complete the restoration work as well as protection works considering all scenarios as mentioned in DPR.

Further, as far as the lack of funds is concerned, it is pertinent to mention that the Petitioner has made financial arrangements with M/s L&T Infra. The Petitioner has submitted that it had approached M/s L&T Infra to extend further loan to carry out the restoration works and M/s L&T Infra vide letter dated 12.09.2013 sanctioned the loan of Rs. 22 Crore by way of conversion of one year debt including interest obligation of the existing facilities in to Fresh Loan due to natural calamity and funds for critical repair and maintenance of the Existing projects. Further, the Petitioner should have made proper financial planning prior to execution of the work. Financial crunch is an

internal matter of the company and time overrun on account of lack of funds cannot be justified.

As discussed above, the Petitioner was very well aware of the geographical situation of the project site as well as its financial position and therefore, the Petitioner itself, considering the factual position, had set the schedule period of two years for completion of the restoration and protection works. Further, the Petitioner was given an opportunity to submit the reasons for delay in completion of the restoration and protection work, however, the Petitioner submitted general statements without providing any documentary evidence. Accordingly, time overrun is not allowable."

55. Learned counsel for M/s Him Urja argued that the period of two years mentioned in the DPR for completion of the repair/restoration work of the power project was merely an estimate and the Commission has erred in considering the same as a specific or definite timeline. In this regard, he has referred to following extract of the DPR: -

" …

The estimate of time required for completion of works may be around two years. Most of the site is not accessible through mechanical means of transport, therefore, it may take longer period."

56. The learned counsel further argued that even though there was no requirement for preparation of DPR, M/s Him Urja prepared the DPR as a matter of abundant caution to ascertain time and cost implications of the restoration work. He pointed out that in the DPR itself, it is stated that the site is not accessible through mechanical means of transport and therefore, the Commission ought not to have reckoned period of two years from the date of DPR and the period of two years ought to be reckoned from the date the site became accessible. He also referred to the report submitted by consultant appointed by the Commission itself wherein the consultant has stated that the actions taken by the developer i.e. M/s Him Urja were necessary to render the power station operational and the cost claimed appears to be reasonable. He would further submit that despite the period of repair/restoration of work exceeding the estimated two years as stated in the DPR, no additional costs were incurred and in fact, the total cost incurred in the restoration work was lower than the cost estimated in the DPR, and therefore, the Commission was not justified in declining the time overrun.

57. Learned counsels appearing for the Commission and UPCL argued that the Commission has carefully gone through the DPR as well as other contentions made on behalf of M/s Him Urja during the proceedings before it and has rightly come to the conclusion that the delay was within the control of M/s Him Urja and thus not allowable.

58. It cannot be gainsaid that there was no requirement for M/s Him Urja to prepare DPR and it appears that the DPR was prepared as a matter of abundant caution, as submitted by learned counsel for M/s Him Urja, to ascertain the time and cost implication of the repair/restoration work. From the perusal of above quoted extract of the DPR, it is evident that the large portion of the site was not accessible at that time through mechanical means of transport and accordingly it was stated that the repair/restoration work may take longer than the estimated time period of two years. Therefore, we agree with the submissions made on behalf of M/s Him Urja that the period of two years mentioned in the DPR was merely an estimate and not a specific or definite timeline within which the restoration/repair work would be completed.

59. Further, it is evident from the perusal of the impugned order of the Commission itself that the Commission had appointed Professor Devadutta Das, Former Professor, IIT Roorkee, as an independent Consultant for establishing the necessity of works and reasonableness of the cost incurred

by M/s Him Urja in coordination with the Project Officer of the UREDA. The Consultant had submitted his report to the Commission on 03.05.2018, which is also noted in the impugned order. However, intriguingly, the Commission chose to ignore the said report while returning its findings on the aspect of time overrun. In the said report, after comparison of the rate in the DPR with the corresponding items as per the Uttarakhand PWD rates and other factors, the Consultant has concluded that the actions taken by the developer i.e. M/s Him Urja were necessary to render the power station operational and the cost claimed appears to be reasonable. It is not disputed on behalf of the Commission or the UPCL that the total cost incurred in the repair/restoration work of the power project was lower than that estimated in the DPR. Therefore, manifestly no additional costs were incurred by M/s Him Urja in completing the repair/restoration work despite exceeding the estimated time duration of two years as stated in the DPR.

60. Even if we agree to the submissions on behalf of the Commission that the time period for completion of the project should have been specific and not indefinite as mentioned in the DPR and the time period of two years mentioned in the DPR has to be considered as definite time period for completion of repair/restoration work, in that case also the period of two years cannot be reckoned from the date of the DPR and ought to have been

reckoned from the date when the entire site became accessible through mechanical means of transport. It was totally unjust on the part of the Commission to accept and consider only that portion of the DPR which appears unfavorable to M/s Him Urja and to conveniently ignore or discard portion of the DPR which favored M/s Him Urja.

61. Hence, the findings of the Commission on this issue are not sustainable. It is evident that the time overrun had occurred on account of the reasons not attributable to M/s Him Urja and no additional cost was incurred due to the time overrun. Therefore, the Commission has erred in not allowing the same. We hold M/s Him Urja entitled to corresponding cost on account of time overrun accordingly.

(ii) Classification of "Salary & wages" under the head IEDC:
[Issue no.(ii) in appeal no.115/2019 and issue no.(B) in appeal no.203/2019]

62. On this issue, the Commission has observed in the order dated 17.05.2018 as under: -

> *"With regard to Managerial staff, it is to be noted that the Commission vide its Order dated 10.04.2014 had allowed normative O&M expenses based on the prevailing Regulations wherein such expenses had already been*

factored in while specifying the norms for O&M expenses. Further, if the amount as claimed for Managerial Staff is considered for tariff determination, it will eventually result in double recovery of the same expenses. Accordingly, expenses pertaining to Managerial Staff have not been considered.

Further, the delayed period has been considered as controllable factor as discussed under the head of Time Overrun, accordingly, IEDC for the delayed period has not been allowed to the Petitioner.

Based on the above discussion, details of the IEDC claimed and the admissible IEDC is as follows:

Table-6: Detail of IEDC claimed and allowed (Rs. in Crore)

S. No.	***Particular***	***Claimed***	***Approved***
1	*Salary & Wages*	*7.44*	*4.38*
2	*Hire Charges of Equipment & Vehicles*	*1.10*	*0.68*
3	*Repair & Maintenance of Equipments & Vehicles*	*0.23*	*0.18*
4	*Vehicle Running Expenses*	*0.23*	*0.19*
5	*Freight & Cartage*	*0.06*	*0.04*
6	*Mining Royalty*	*0.02*	*0.02*

Sub-Total	*9.09*	*5.48*

”

63. In order dated 10.04.2019, the Commission has observed in this issue as under: -

> *“4.2.10 With regard to Salary & Wages, the Commission observed that the Consultant vide its Report submitted that the Petitioner has incurred Rs. 3.88 Crore under the head of ‘Salary & Wages’ whereas the Petitioner has claimed Rs. 4.30 Crore. With regard to the variation, the Petitioner submitted that salary paid to the managerial staff from 01.04.2017 to 31.03.2018 was not included in the Consultant’s report, however, the same has been claimed as incidental expenses. The Commission has followed the same view as taken in Order dated 17.05.2018. The Commission vide its Order dated 10.04.2014 had already allowed normative O&M expenses which includes employees salary also, based on the prevailing Regulations wherein such expenses had already been factored in while specifying the norms for O&M expenses. Further, if the amount as claimed for managerial staff is considered for tariff determination, it*

will eventually result in double recovery of the same expenses. Accordingly, expenses pertaining to Managerial Staff have not been considered."

64. The Commission has, thus, disallowed salary and wages paid to managerial staff on the ground that doing so will result in double recovery of the same expenses as the same have been factored in while allowing normative O&M expenses vide order dated 10.04.2014 and has disallowed IEDC for the delayed period as the delayed period was considered by the Commission as controllable factor under the head "time overrun".

65. It is pointed out by the learned counsel appearing for the Commission that in the review order dated 17.09.2018, the Commission has clarified that the terminology IEDC used in impugned order dated 17.05.2018 has to be read as "other charges". He argued that "other charges" are inclusive of "salary and wages", "hire charges of equipment and vehicles", "repair and maintenance of equipment and vehicles", "running expenses of vehicles" etc. It is argued that the Commission vide order dated 10.04.2014 while determining the project specific tariff for the said Vanala small hydro power project of M/s Him Urja for the first time, had allowed normative O&M expenses based on the prevailing regulations while such expenses had

already been factored in while specifying the norms for O&M expenses and thus, allowing such charges would result in double recovery of same expenses. On these submissions, the learned counsel justified disallowance of salary pertaining to managerial staff.

66. It was submitted by learned counsel for M/s Him Urja that the developer had used workers on "as and when required basis" and such workers were deployed during the period of repair/restoration work only. It is argued that the Commission has erred in observing that allowing salary and wages paid to such workers would result in double recovery of same expenses.

67. In our opinion, even if salary and wages payable to direct labour, contract labour, and managerial staff had already been factored in while satisfying the norms for O&M expenses at the time of determination of project specific tariff for the project in question vide order dated 10.04.2014, the Commission ought not to have disallowed the salary and wages paid during repair/restoration work as such workers were casual workers having been employed for carrying out only the said repair/restoration work which could not have been anticipated at the time of passing the order dated 10.04.2014. We find it inexplicable as to how allowing such charges would result in double recovery of same expenses. The workers employed by M/s Him Urja for repair/restoration work were not its regular employees/workers and hiring of

such workers was necessitated only on account of the severe damage caused to the power project due to unprecedented natural calamities. Therefore, one wonders as to how the same could have been anticipated and factored in while determining project specific tariff of the power project vide order dated 10.04.2014.

68. Hence, the findings of the Commission on this aspect also are liable to be set aside. The Commission has committed an error in disallowing the "salary & wages" paid by M/s Him Urja for repair/restoration work as part of IEDC. We hold that entire expenses incurred by M/s Him Urja towards "salaries & wages" during repair/restoration work on both the occasions shall be allowed as part of additional cost of the power project.

(iii) <u>Adoption of debt-equity ratio of 83:17:</u>
<u>[Issue no.(iii) in appeal no.115/2019 and issue no.(E) in appeal no.203/2019]</u>

69. On this issue the Commission has observed in the order dated 17.05.2018 as under: -

> *"3.3.2 The Petitioner has considered 70% of the total spending as debt and the balance amount as equity. It is to be noted that the Petitioner has got the loan amounting to Rs. 22 Crore sanctioned from L&T Infra for the purpose*

of critical repair and maintenance for the Vanala Project. In this regard, the Regulation specifies that where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff. The Commission has observed from the books of accounts that during FY 2014-15 and FY 2015-16 funds through equity amounting to Rs. 0.50 Crore and Rs. 0.55 Crore have been raised. Further, the Petitioner has received an amount of Rs. 5.57 Crore on account of Material Loss and Rs. 8.20 Crore on account of Loss of Profit from the insurance company due to natural calamity occurred in Year 2013.

Further, it is to be noted that the Petitioner has incurred total hard cost of Rs. 11.04 Crore net of amount received from insurance company on account of material loss and IEDC of Rs. 9.09 Crore & IDC of Rs. 1.91 Crore. With regard to IDC, as mentioned under the head of Interest During Construction, the Petitioner has requested the Commission to consider the IDC worked out based on normative 70% debt month to month of actual expenditure

incurred whereas based on the submission of the Petitioner, IDC worked out to Rs. 6.34 Crore (excluding penal interest and additional interest).

Accordingly, based on the above discussion, total additional capital cost incurred works out to Rs. 26.48 Crore considering the IDC worked out of Rs. 6.34. Further, considering the sanctioned loan from L&T Infra amounting to Rs. 22.00 Crore and the balance, i.e. Rs. 4.48 Crore has been considered as equity based on which Debt: Equity ratio works out to 83.07:16.93. The same has been applied on the approved additional capital cost of Rs. 21.55 Crore.

3.3.3 Accordingly, based on the above discussion, Debt-Equity claimed by the Petitioner and approved by the Commission is as follows:

Table-8: Debt:Equity Ratio Claimed and Approved

Particular	*Claimed*		*Approved*	
	Rs. In Crore	*%*	*Rs. In Crore*	*%*

Debt	*15.44*	*70.00*	*17.90*	*83.07*
Equity	*6.62*	*30.00*	*3.65*	*16.93*
Total	*22.05*	*100.00*	*21.55*	*100.00*

”

70. In order dated 10.04.2019, the Commission has held in this regard as under: -

> ***“4.3 Debt-Equity Ratio***
>
> *4.3.1 The Commission noted that the Petitioner has considered a Debt-Equity ratio as 70:30. In this regard, Regulation 16(2)(b) of RE Regulations, 2010 specifies as under:*
>
> > *“(b) For project specific tariff, the following provisions shall apply: If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan.*
> >
> > *Provided that where equity actually deployed is less than 30% of the capital cost, the actual equity shall be considered for determination of tariff.*

Provided further that the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment.

Provided further that subsidy available from MNRE, to the extent specified under Regulation 25, shall be considered to have been utilized towards pre-payment of debt leaving balance loan and 30% equity to be considered for determination of tariff.

Provided further that it shall be assumed that the original repayments shall not be affected by this prepayment."

4.3.2 As discussed in above paragraphs of this Order, the entire work has been executed with internal funds. Therefore, the Commission has considered equity equivalent to 30% of the admissible additional capital cost and equity in excess of the 30%, i.e. 70% has been considered as normative debt in the present case in accordance with the aforesaid regulation.

4.3.3 Accordingly, based on the above discussions, Debt-Equity claimed by the Petitioner and approved by the Commission is as follows:

Table-5: Debt:Equity Ratio Claimed and Approved

Particular	*Claimed*		*Approved*	
	Rs. In Crore	*%*	*Rs. In Crore*	*%*
Debt	*9.28*	*70.00*	*6.14*	*83.07*
Equity	*3.98*	*30.00*	*2.63*	*16.93*
Total	*13.26*	*100.00*	*8.77*	*100.00*

"

71. It is argued on behalf of M/s Him Urja that the Commission has, in the order dated 17.05.2018, erroneously treated the loan availed through L&T Infra is loan for critical repair and maintenance of the project. The loan was for servicing of the existing debt. It is submitted that the entire detail was furnished by M/s Him Urja to the Commission which have not been considered. It is argued that the Commission has erroneously considered IDC of Rs. 6.34 against the claimed IDC of Rs.1.91 crores by M/s Him Urja based on normative debt of 70% as provided under Regulation 16(2)(b) of UERC Tariff Regulations, 2010. It is submitted that the debt – equity ratio of

83:17 worked out by the Commission is obscure and not justified in the facts and circumstance of the case.

72. The learned counsel further argued that the Commission has in order dated 10.04.2019 erroneously mentioned that entire work has been executed with internal funds.

73. On behalf of the Commission, it is argued that: -

(A) It is submitted that the Commission allowed Debt -Equity ratio as 70:30, as per the Regulationl6(2)(b) of RE Regulations 2010.That the State Commission had directed the Appellant vide its Order dated 15.03.2018 to submit the supporting documents w.r.t drawl, interest rates, Repayment Schedules of loans. In reply, the Appellant vide its submission dated 03.04.2017 submitted that M/s L&T Infrastructure Finance Company Limited has sanctioned an additional term loan of Rs. 22 Crore to meet the overall finance deficit including repairs of the damages occurred due to natural calamity in June & July, 2013 to the project. The Appellant also submitted Sanction Letter dated 12.09.2013 vide which the financial institution approved the conversion of upto one year (principal and interest) debt obligation of existing facilities into Fresh

Loan due to natural calamity and for critical repair and maintenance of the project.

(B) After analysing the sanction letter dated 12.09.2013, the State Commission has observed that there was an ambiguity in it as it was not clear from the sanction letter whether the principal and interest obligation of one year was converted into fresh loan for payment of the outstanding principal & interest or for critical repair & maintenance of the project or for both. Accordingly, the State Commission directed the Appellant to submit the funding pattern. However, the Appellant vide its submission dated 03.04.2017 submitted that the date wise funding pattern is not maintained and the funds were not directly identifiable as the funding was done for the composite purpose including repair of the project as well as debt servicing.

(C) Subsequently, the State Commission also observed that the DPR for estimation of restoration works was prepared on 03.11.2013 whereas the loan was sanctioned in September, 2013, i.e. before the estimation of restoration expenditure. In this regard, the Appellant was directed to submit the basis for the financing of Rs. 22 Crore along with supporting documents. In reply, the Appellant vide its letter dated 15.06.2017

submitted that the additional loan of Rs. 22 Crore was sanctioned by L&T Infra Finance Company Limited based on the repayment of principal and interest of the existing loan facility at that time. Though the damage had occurred to Vanala project and that too was commissioned in 9 months, but the loan was granted for both the projects (Vanala& Rajwakti) for 12 months in accordance with the RBI guidelines. Subsequently, the Appellant vide its submission dated 14.08.2017 clarified that the entire loan amount was spent for Vanala Project only as there was no damage to the Rajwakti project. The relevant extract of the Appellant's reply dated 14.08.2017 is as follows:

> *"There was no damage to Rajwakti Project. The project was shut down for a period of about two months due to silting of channel due to disaster. The silt was removed as normal maintenance operation. No insurance claim was made for Rajwakti Project before insurance company. Therefore, the entire loan amount was spent for Vanala project only."*

(D) During the proceedings in the matter, UPCL vide its submission dated 22.09.2017 stated that the Appellant had only stated about the amount of additional term loan and filed sanction letter dated 12.09.2013.

UPCL also submitted that the sanction letter nowhere provides any bifurcation of the amount which can be utilized for restoring the damaged cost due natural calamity in 2013. In reply, the Appellant vide its letter dated 06.10.2017 submitted that the nomenclature of the sanctioned loan was to meet the regulatory requirements of financial institutions and it did not have funds of its own and had carry forward losses of Rs. 30 Crore therefore the amount spent on repairs had to be financed through loan.

The relevant extract of the Appellant's reply dated 06.10.2017 is as follows:

"1. As explained earlier the basis of the sanction of the loan was the interest and installment of the Rajwakti and Vanala projects for one year. There was no damage to Rajwakti project and no claim was made before the insurance. The nomenclature of the loan was to meet the regulatory requirements of the financial institution....

4. ... The petitioner did not have funds of its own and had been suffering carry forward losses of Rs. 30 Crores therefore the amount spent on repairs has been financed through loan. It is incumbent upon the

authority to reasonably asses the interest component to be fair to the petitioner"

Further, the subject of the sanction letter dated 12.09.2013 is as follows:

"Sub: Conversion of up to one year (both principal and interest) debt obligation of existing facilities in to Fresh Loan due to natural calamity and funds for critical repair and maintenance of the Exiting projects."

(E) Based on the submissions of the Appellant, it can very well be concluded that the one year debt (principal and interest) was converted into a fresh loan which was used for the purpose of critical repair and maintenance of the Vanala project damaged due to natural calamity in June & July, 2013. Further, the State Commission has applied prevailing RE Regulations to determine the Debt equity ratio.

74. M/s Him Urja Pvt. Ltd. vide its reply dated 15.06.2017 has categorically submitted that the additional loan of Rs.22 Crores was taken from L&T Infra Finance Company with the main purpose of repayment of principal and interest of the existing loan facility at that time as the company was facing

financial constraints at that time. However, the Commission has, on its own, erroneously considered the said loan having been availed by M/s Him Urja for critical repair and maintenance of the project which is contrary to what was submitted by M/s Him Urja and also contrary to the certificate of sanction of loan issued by L&T Infra, duly taken on record by the Commission. We find the approach of the Commission totally unjust and irrational and, therefore, cannot be sustained. The Commission is directed to re-examine the matter in the light of the submissions of M/s Him Urja Pvt. Ltd. and remove the excess loan component in the debt equity ratio so as to determine the final ROE.

(iv) <u>Granting of liberty to UPCL:</u>
<u>[Issue raised in appeal no.115/2019 only]</u>

75. M/s Him Urja is aggrieved by the unilateral liberty granted by the Commission to UPCL in the impugned order dated 17.05.2018 to approach it again for upward revision of CUF if the CUF of the project remains higher than recovery of approved CUF for three consecutive years. It is argued that the Commission ought to have granted corresponding liberty to M/s Him Urja also for approaching it for downward revision of the CUF if the same is not achieved.

76. The relevant portion of the impugned order in this regard is extracted hereinbelow: -

> *"2.11 …*
>
> *It can be analysed from the above generation data, that the total generation i.e. 141.33 MU from the re-commissioning of the project till date (i.e. 37 months) is much higher than what the plant had achieved (i.e. 111.85 MU) from the original commissioning to the date of disaster (i.e. 43 Months). It is clear from the aforesaid details that with the construction/extension of the D-tank, the generation has increased. Further, the major additional capitalisation claimed were under the strengthening works which were basically for protection work and a nominal additional capitalisation of Rs. 0.60 Crore for E/M works which will not anyhow extend the life of the entire project. Accordingly, life of the entire project cannot be extended as there is no increase/value addition to P&M due to additional capitalisation, however, capitalization pertaining to protection work will provide a safe guard against the future calamities.*

Further, the Consultant vide its report dated 03.05.2018 submitted that the project was not able to perform optimally as projected during the monsoon months of July to September due to excessive silt in the river which has changed drastically during the monsoon months due to some construction activities upstream as also due to landslides. The Consultant also mentioned that the extension of the D tank has increased the PLF in year 2017 and after the completion of third chamber of D tank, the PLF will further increase to 55%. The relevant extract of the report is as follows:

> *"The Vanala D Tank was also designed for the same parameters as that for Rajwakti SHP. Therefore, Vanala project was not able to operate during the Monsson months. The Vanala project was able to achieve PLF of 21% to 36% till 2016. After 2013 disaster it was noticed that further landslides alongside the river have taken place thereby increasing the silt content during the monsoon months. Therefore, it was decided to add on vortex type D Tank and the exiting tanks were augmented*

by creating one additional D Tan chamber and also increasing the length of D Tanks by about additional 60m. The extension of the D tank was completed in the year 2016-17. ***During the year 2017 HUPL has been able to achieve PLF of 48.13% and is likely to further increase to 55% after third chamber of the D Tank extension is ready.*** *It can also be seen from the table of generation of the month July August September that the PLF has increased from 40% to 84%. It may noted that the according to water availability the plant runs at full capacity during June to Sept. Thus it can be seen that the expenses incurred on the D Tank have resulted in substantial improvement in generation from the project."*

(Emphasis added)

With regard to PLF, Regulation 11(3) of RE Regulations, 2010 specifies as follows:

"11. *Tariffs*

(1) XXX

(2) XXX

(3) For projects opting to have their tariffs determined on the basis of actual capital cost instead of normative capital cost as specified for different technologies under Chapter 5, the CUF (generation) for recovery of fixed charges shall be taken as that envisaged in the approved DPR of the normative CUF specified under Chapter 5 for the relevant technology, whichever is higher."

Accordingly, based on the aforesaid Regulation, the Commission has considered the CUF of 46.55% for the purpose recovery of allowable annual fixed charges as levelized tariff in its Order dated 10.04.2014.

In the present case, tariff being project specific in nature, as the actual allowable expenditure for the extension of the D Tank is to be recovered from the beneficiary as annual fixed charges, therefore, the benefit of increase in generation due to such extension should also be passed on to the beneficiary by way of increased CUE Accordingly, the Commission is of the view that in case the CUF of the generating plant remains higher than

approved CUF in Order dated 10.04.2014 for the purpose of recovery of the annual fixed charges consecutively for three years, the beneficiary may approach the Commission for upward revision of the CUF for the purpose of recovery of approved AFC in line with the Judgment of Hon'ble APTEL in Appeal no. 50 & 65 of 2008 and IA. 98 & 143 of 2008."

77. It is submitted on behalf of the Commission that the benefit of increase in generation due to change in the project design should be passed on to the beneficiaries by way of increased CUF. It is submitted that as the DPR is silent about the revised CUF and there is a modification in the design of the plant which has warranted additional cost incident on the consumers of the State, a review of CUF was required.

78. We note that said liberty was granted by the Commission to UPCL on its own as no such liberty was asked for by UPCL. Therefore, demands of justice would have been met by granting similar liberty to M/s Him Urja also for approaching the Commission for downward revision of CUF if the same is not achieved for three consecutive years. This would have balanced the rights of both the parties. We, accordingly, grant such liberty to M/s Him Urja

also which shall be effective from the date of CoD of the project. The impugned order of the Commission stands modified accordingly.

(A) Restricting the payment made by M/s Him Urja to the contractor for repair/restoration work to the unit rates quoted by the lowest bidder (issue raised in appeal No.203/2019 only):

79. The reasoning given by the Commission in restricting the payment made by M/s Him Urja to the contractor for repair/restoration work to the unit rates quoted by the lowest bidder is extracted hereinbelow: -

> *"4.2.8 With regard to payment to Contractor, the Commission observed that the Petitioner has claimed Rs. 12.24 Crore which reconciles with the amount mentioned in the Consultant's report. In the matter, the Commission directed the Petitioner to submit the basis/mode of selection of the Contractor and all the contracts and amendment thereof, if any. In reply, the Petitioner submitted that they had invited quotations from various contractors for repair/renewal/replacement of damaged*

works and for restoration and in response received three quotations from the contractors as detailed below:

Table-3 Details of Quotation received

Sl. No.	***Name of Contractor***	***Period required for completion of work in days***	***Amount in Crore***
1.	*M/s Ramose Infra Pvt. Ltd.*	*102*	*9.26*
2.	*M/s Bhawana Associates Pvt. Ltd.*	*160*	*8.97*
3.	*M/s Gurmeet Earthmovers Co. Ltd.*	*140*	*10.16*

In the matter, the Commission asked the Petitioner to submit the reason for selection of M/s Ramose Infra Pvt. Ltd. with quotation of Rs. 9.26 Crore whereas M/s Bhawana Associates Pvt. Ltd. had quoted least amount of Rs. 8.97 Crore. In reply, the Petitioner submitted that M/s Ramose Infra Pvt. Ltd. had quoted higher than M/s Bhawana Associates Pvt. Ltd., however, it was taking less time than the time proposed by M/s Bhawana Associates Pvt. Ltd. The Petitioner also submitted that since the original structure was built by M/s Ramose Infra Pvt. Ltd. therefore it had full knowledge and awareness of the difficulties and ways to surmount them. Further,

equipments of M/s Ramose Pvt. Ltd. were lying near the site therefore mobilisation was easy. The time period required for completion of works by M/s Ramose Pvt. Ltd. was less than others and therefore higher price was offset by the gain in generation and assurance to complete the work satisfactorily.

The Commission examined the contracts executed by the Petitioner with M/s Ramose Infra Pvt. Ltd. and observed that the Contract price was amended to Rs. 11.07 Crore excluding taxes against the actual payment of Rs. 11.52 Crore. In reply, the Petitioner submitted that the amended contract was executed on the basis of quantity assessed by the site engineers during the course of execution of work after the water level receded, but the contractor's bills were based on the actual quantity of work executed.

The Commission also observed that the amended Contract price value was Rs. 11.07 Crore which was even higher than the maximum price quoted by the M/s Gurmeet Earthmovers Co. Ltd. In reply, the Petitioner

submitted that the damages at the site were not visible soon after the disaster. The site was covered with debris and the river under flood conditions thereby making the site inaccessible. The full impact of disaster unfolds only after all the debris was removed from the site and water in the river recedes. The Petitioner also submitted that the revised contract was executed with M/s Ramose Infra Pvt. Ltd. on 26.09.2016 with increased quantities for total value of Rs. 11.07 Crore excluding taxes. The time period for execution of works were also increased to 31.03.2017 in view of the increase quantities and adverse conditions obtained due to high floods continuing till September, 2016. The Petitioner also submitted that the explanation was given to Insurance Surveyor for delay which was accepted by it. Further, the Petitioner submitted that the contractor work was completed on 31.03.2018 as per submission dated 25.03.2019 against the revised scheduled completion date of 31.03.2017.

The Commission understands that M/s Ramose Infra Pvt. Ltd. was selected by the Petitioner so that works could be

completed as soon as possible. In the original contract, M/s Ramose Infra Pvt. Ltd. had offered 102 days for completion of the works whereas in the revised contract time period was extended to 31.03.2017, i.e. 211 days from schedule start date. The Commission understands the intention of the Petitioner to get the work done as soon as possible, however, it can also not be denied that the instead of 102 days as offered by M/s Ramose in the tender documents, the work completion took more than 200 days. Hence, the purpose of selection of M/s Ramose Infra Pvt. Ltd., i.e. based on least number of days, was defeated. Ms/ Bhawana Associates Pvt. Ltd. might have completed the entire work in the offered time in tender document. The Commission also observed that the unit rates claimed by M/s Ramose Infra Pvt. Ltd. were higher, in comparison to the unit rates for same specifications/type of work, as quoted by M/s Bhawana Associates Pvt. Ltd. Accordingly, the Commission is of the view to consider the unit rates as quoted by M/s Bhawana Associates Pvt. Ltd. and the actual quantity of work executed to determine the revised contract cost.

Accordingly, based on the above discussion, considering the units rates as offered by M/s Bhawana Associates Pvt. Ltd. and actual quantity of work executed, the Commission has worked out revised amount of Rs. 11.83 Crore against the actual payment of Rs. 12.24 Crore (inclusive taxes) to the Contractor."

80. It is argued on behalf of M/s Him Urja that M/s Ramose Infra Pvt. Ltd. was selected for the repair/restoration work of the power project despite its bid being higher/costlier than M/s Bhawana Associates Pvt. Ltd. for the reason that M/s Ramose Infra Pvt. Ltd. was the contractor who had originally constructed the project and had also undertaken the restoration work in the aftermath of the disaster that struck the project in the year 2013. It is also pointed out that M/s Ramose Infra Pvt. Ltd. had proposed a shorter time period for completion of the repair/restoration work than M/s Bhawana Associates Pvt. Ltd., which also was a persuasive factor in selecting M/s Ramose Infra Pvt. Ltd. for the said work. It is further submitted that at that time, nobody could have envisaged that M/s Ramose Infra Pvt. Ltd. would delay the completion of restoration work and therefore M/s Him Urja could

not be penalized for such delay even though it had acted wisely and prudently in selecting M/s Ramose Infra Pvt. Ltd.

81. On behalf of the Commission and UPCL, it is argued that the reasoning given by M/s Him Urja for selecting the costlier bidder is not tenable. It is pointed out that experience of previous work on the part of M/s Ramose Infra Pvt. Ltd. did not prove helpful as the time for completion of work taken by it was more than 200 days and the contract executed with it had to be amended to Rs.11.07 crores excluding taxes against the actual payment of Rs.11.52 crores which is much higher than the original offer of the contractor i.e. Rs.9.26 crores. It is submitted that the entire purpose of selecting M/s Ramose Infra Pvt. Ltd. even with the higher price quoted was defeated and therefore such action of M/s Him Urja cannot be said to be prudent.

82. We are unable to agree to the submissions made on behalf of the Commission and UPCL. No fault can be found in selection of M/s Ramose Infra Pvt. Ltd. by M/s Him Urja for the repair/restoration work of the project even though the bid of M/s Ramose Infra Pvt. Ltd. was on higher side. There was difference of Rs.29 lakhs only in the bids submitted by M/s Ramose Infra Pvt. Ltd. and M/s Bhawana Associates Pvt. Ltd. However, M/s Ramose Infra Pvt. Ltd. had quoted 102 days for completion of the work whereas M/s Bhawana Associates Pvt. Ltd. had quoted 160 days for the same. Further,

concededly M/s Ramose Infra Pvt. Ltd. had constructed the project originally and had also undertaken its restoration work in the aftermath of the disasters that had occurred in the year 2013 and therefore, the said contractor was familiar with the overall project. It was not possible on the part of M/s Him Urja to anticipate at the time of engaging the contractor M/s Ramose Infra Pvt. Ltd. that the contractor would not complete the restoration work in given time and would cause delay in the same.

83. It is evident that the intention behind selection of M/s Ramose Infra Pvt. Ltd. for the repair/restoration work by M/s Him Urja was to get the work completed by a contractor who was familiar with the power project and in a shorter time period. Therefore, such decision of M/s Him Urja in engaging M/s Ramose Infra Pvt. Ltd. for the repair/restoration work, even though its bid was slightly higher than M/s Bhawana Associates Pvt. Ltd., appears to be prudent and cannot be faulted with. M/s Him Urja cannot be penalized for the delay caused by M/s Ramose Infra Pvt. Ltd. in completion of the work. The delay might have occurred due to some genuine reasons which, intriguingly, has neither been noted nor discussed by the commission in the impugned order.

84. Hence, the order of the Commission on this aspect cannot be sustained. The same is hereby set aside. We hold M/s Him Urja entitled to

Rs.12.24 crores as part of additional capital cost of the power project, which amount was actually paid by it to the contractor M/s Ramose Infra Pvt. Ltd. for the repair/restoration of the power project.

Conclusion: -

85. In the light of above discussion, appeal no.359 of 2018 filed by UPCL stands dismissed whereas appeal nos.115 of 2019 and 203 of 2019 filed by M/s Him Urja Pvt. Ltd. stand allowed to the extent indicated hereinabove.

86. The Commission is, hereby, directed to pass consequential orders bearing in mind the conclusions made hereinabove in strict compliance for the determination of tariff along with carrying cost.

87. The impugned order of the Commission stands modified accordingly.

Pronounced in the open court on this the 15th day of September, 2025.

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

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REPORTABLE / ~~NON-REPORTABLE~~

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