IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 76 Of 2020
&
Appeal No. 98 Of 2023

Dated: 15.09.2025

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

Appeal No. 76 Of 2020

IN THE MATTER OF:

Adani Power Ltd.
(Formerly known as Udupi Power Corporation Limited)
No.160, Om Chambers, 1st Main Road,
Seshadripuram, Near total Gaz Pump,
Bangalore – 560020. **…Appellant**

Versus

1. Central Electricity Regulatory Commission
   Through Its Secretary,
   3rd And 4th Floor,
   Chanderlok Building
   36, Janpath, New Delhi – 110001.

2. Power Company of Karnataka Limited
   Through Its Chairman
   KPTCL Building,
   Kaveri Bhavan, K.G. Road,
   Bengaluru – 560009.

3. Bangalore Electricity Supply Company Limited
Through Its Managing Director
K.R. Circle,
Bengaluru – 560001.

4. Mangalore Electricity Supply Company Limited
Through Its Managing Director
Corporate Office, Mescom Bhavan,
First Floor, Kavoor Cross Road, Bijai,
Mangalore – 575004

5. Gulbarga Electricity Supply Company Limited
Through Its Managing Director
Station Main Road,
Gulbarga – 585102.

6. Hubli Electricity Supply Company Limited
Through Its Managing Director
Corporate Office, Navanagar,
Pb Road,
Hubli – 580025.

7. Chamundeshwari Electricity Supply Company Limited
Through Its Secretary
No. 29, Kaveri Grameena Bank Road,
Vijaynagara 2nd Stage,
Hinkal, Mysore – 570017.

8. Punjab State Power Corporation Limited
Through Its Chief Engineer
The Mall,
Patiala 147001. **…Respondent(s)**

Counsel for The Appellant(S) : Mr. Hemant Sahai
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Mr. Arunav Patnaik
Ms. Bhabna Das for Res. 3 to 7

Appeal No.98 Of 2023

<u>In the matter of:</u>

Power Company of Karnataka Limited
Through Its Managing Director,
KPTCL Building,
Kaveri Bhavan, K.G. Road,
Bengaluru – 560009. **….Appellant**

Versus

1. Adani Power Ltd.
(Formerly known as Udupi Power Corporation Limited)
No.160, Om Chambers, 1st Main Road,
Seshadripuram, Near total Gaz Pump,
Bangalore – 560020.

2. The Central Electricity Regulatory Commission
Through Its Secretary,
3rd and 4th Floor,
Chanderlok Building,
36, Janpath, New Delhi – 110001.

3. Gulbarga Electricity Supply Company Limited
Through Its Managing Director
Main Road,

Gulbarga – 585101.

4. Hubli Electricity Supply Company Limited
Through Its Managing Director
Navanagar, Hubli – 580 025.

5. Chamundeshwari Electricity Supply Corporation Limited
Through Its Managing Director,
No. 29, Kaveri Grameena Bank Road,
Vijaynagara 2nd Stage,
Hinkal, Mysore – 570017.

6. Mangalore Electricity Supply Company Limited
Through Its Managing Director
Corporate Office, MESCOM Bhavan,
First Floor, Kavoor Cross Road, Bijai,
Mangalore – 575004.

7. Bangalore Electricity Supply Company Limited
Through Its Managing Director
K.R. Circle,
Bengaluru – 560001.

8. Punjab State Power Corporation Limited
Through its Managing Director,
The Mall,
Patiala 147001

…. Respondent(s)

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Mr. Saurobroto Datta
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Mr. Aditya Jain for R-1

Mr. M. G. Ramachandran, Sr. Adv.
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Mr. Shubham Arya
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JUDGEMENT

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

1. The present batch of appeals consists of two cross Appeals, being Appeal No. 76 of 2020 and Appeal No.98 of 2023. The Appeal no. 76 of 2020 has been filed by the Appellant, i.e., Adani Power Ltd. (formerly known as Udupi Power Corporation Ltd.), and Appeal no. 98 of 2023 has been filed by the Appellant Power Company of Karnataka Ltd. against the order dated 22.01.2020 in Petition No.251/GT/2017.

Description of the Parties

2. Adani Power Ltd. (in short "APL") is the Appellant in Appeal No. 76 of 2020 and Respondent No. 1 in Appeal No. 98 of 2023. The Appellant, Adani Power Ltd. (formerly known as Udupi Power Corporation Limited), is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003. The Appellant owns and operates a 1200 MW (2 X 600 MW) capacity thermal power station located in Udupi District, Karnataka.

3. The Central Electricity Regulatory Commission (in short “CERC” or “Central Commission”) is the 1st Respondent in Appeal No. 76 of 2020 and 2nd Respondent in Appeal No. 98 of 2023, constituted under Section 76 and exercising adjudicatory and regulatory functions as provided under Section 79 of the Electricity Act.

4. Power Company of Karnataka Limited (in short “PCKL”), is the 2nd Respondent in Appeal No. 76 of 2020 and Appellant in Appeal No. 98 of 2023, which is a Special Purpose Vehicle responsible for capacity addition by way of setting up new power projects through bidding process as well as long term procurement of power, procuring power on behalf of the distribution licensees of the State of Karnataka (ESCOMS) from various sources including purchase of power through Energy Exchange and Bilateral Transactions.

5. The Respondent Nos. 3 to 7 are the distribution licensees of the State of Karnataka (in short “ESCOMs”). The Respondent No. 8 is the distribution licensee of the State of Punjab (in short “PSPCL”). The Respondent Nos. 3 to 8 are the beneficiaries procuring power from the Appellant’s Plant.

Factual Matrix of The Case (Appeal No.76 of 2020)

6. The Central Commission, vide the Impugned Order, determined the tariff for the Appellant’s 1200 MW (2 x 600 MW) Thermal Power Plant for the period from 01.04.2014 to 31.03.2019.

7. By the Impugned Order, the Central Commission disallowed certain claims of the Appellant pertaining to Additional Capitalisation, Transit Loss on coal handling, and Operation & Maintenance (O&M) Expenses, etc.

8. Aggrieved by the same, the Appellant has preferred the present Appeal seeking relief in respect of the following items:

i. Additional Capitalisation on MS Sea Water Return Pipeline
ii. Additional Capitalisation on Silt Settling Chamber in Sea Water Intake Pumphouse
iii. Additional Capitalisation on Ensuring Sea Water Intake Reliability
iv. Additional Capitalisation on Over-ground Piping for Fire-fighting System
v. Additional Capitalisation on Sewage Treatment Plant (4 out of 5)
vi. Additional Capitalisation on Installation of Rack and Pinion Lift
vii. Additional Capitalisation on NDCT Chimney Concrete Treatment
viii. Transit Loss on Coal Handling
ix. O&M on Additional Transmission Bays
x. O&M on Electricity Tax on Auxiliary Power Consumption

9. The Appellant's case is that the claims for additional capitalisation were essential for ensuring efficient and safe functioning of the Thermal Power Plant and were critical for its continued operation.

10. In its Additional Legal Submissions dated 16.09.2019 before the Central Commission, the Appellant specifically invoked the extraordinary jurisdiction of the Commission under Regulations 54 and 55 of the Tariff Regulations, 2014,

seeking extension of the cut-off date in view of the peculiar facts and circumstances of the case.

11. The Impugned Order, however, does not deal with or provide reasons regarding the aforesaid submissions, though the same have been recorded.

12. The Appellant had further submitted that most of the additional capital cost items were relatable to Regulation 14(1) and, by extension of the cut-off date in exercise of powers under Regulations 54 and 55, ought to have formed part of the original capital cost. In the alternative, the Appellant contended that such claims were admissible under Regulation 14(3), read with Regulation 55 of the Tariff Regulations, 2014.

13. The Central Commission, while passing the Impugned Order, did not consider the above claims and denied relief without assigning reasons. The Appellant maintains that the additional works were connected to the original scope of the project and should have been undertaken at the relevant time; further, the expenditure did not form part of the original capital cost and, therefore, would not result in any additional burden on the consumers.

14. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal.

Factual Matrix of The Case (Appeal No. 98 of 2023)

15. The Appellant, Power Company of Karnataka Limited (PCKL), is the nodal agency for the Electricity Supply Companies (ESCOMs) in the State of Karnataka.

The present Appeal has been filed challenging certain findings recorded by the Central Commission in the Impugned Order relating to the following items:

i. additional capitalization,
ii. additional O&M expenses,
iii. landed cost of fuel,
iv. Normative Annual Plant Availability Factor (NAPAF),
v. tax on return on equity, and
vi. adjustment of excess revenue earned by the Respondent, Udupi Power Corporation Limited (UPCL), from the sale of infirm power against the capital cost of the project.

16. In the Impugned Order, the Commission, while noting that the claims of UPCL towards additional capitalization were made beyond the cut-off date and that no grounds were made out for extension of such date, nevertheless proceeded to examine the said claims.

17. The claim for additional capitalization was further considered by the Commission despite the same not falling within the categories prescribed under Regulation 14 of the Tariff Regulations.

18. UPCL had sought additional capital works on the ground that certain components and assets, which were originally designed and executed at the time of setting up the generating station, had turned out to be ineffective or inefficient within a short span of time. The Appellant contended before the Commission that such works were already part of the original capital cost of the project.

19. Consumers were already bearing the burden of costs for the said components/assets as part of the approved capital cost, such costs having been allowed on the presumption that the assets were of good quality, with a reasonable operational life and suitability to local conditions.

20. UPCL, however, sought capitalization for replacement/repair of such assets within two to five years of the Commercial Operation Date (COD) of the generating station.

21. The Commission, after considering the submissions, allowed certain claims of UPCL towards additional capitalization and also granted liberty to UPCL to substantiate certain other claims at the time of truing up.

22. The Commission further allowed additional O&M expenses to UPCL, over and above the normative O&M expenses provided in the Regulations. The assets in respect of which additional O&M expenses were sought had been part of UPCL's generating station since inception, and during previous tariff periods, the normative O&M expenses had been considered sufficient.

23. In earlier tariff petitions, the actual O&M expenses incurred by UPCL were lower than the normatively prescribed levels.

24. For the relevant tariff period, UPCL sought additional O&M expenses, which were allowed by the Commission, along with certain other charges normally payable by all thermal generating stations out of the normative O&M expenses. These charges were allowed separately to UPCL, over and above the normative provision.

25. The Commission also included, as part of the landed cost of fuel, certain charges that do not fall within the purview of fuel cost. This led to computation of higher working capital. Further, the Normative Annual Plant Availability Factor was determined at a level higher than even the claim made by UPCL. Tax on return on equity was also computed by applying Minimum Alternate Tax (MAT) rates for all years, although in two years no tax had actually been paid.

26. The Commission also did not give effect to the admitted adjustment of Rs. 35.14 crore towards excess revenue earned by UPCL from the sale of infirm power, net of fuel cost, by reducing the same from the capital cost of the project.

27. Thus, being aggrieved by the Impugned Order dated 22.01.2020 passed by the CERC in Petition No. 251/GT/2017, the Appellant has preferred the present Appeal.

<u>Our Observations and Analysis</u>

28. The Appellant (in Appeal No. 76 of 2020) has prayed for the following relief before us:

> *"a. Allow the present Appeal;*
> *b. Set aside the Impugned Order dated 22.01.2020 passed in Petition No. 251/GT/2017 by the Central Commission to the extent challenged in the present Appeal;*

c. Hold that in the facts and circumstances of the present case, the cut-off date deserves to be extended in exercise of Regulations 54 and 55 of the Tariff Regulations, 2014;

d. Hold that the Central Commission has wrongly de-capitalized ₹ 1950 Lakhs w.r.t MS Sea Water Return Pipe and that the entire amount of ₹ 3230.52 Lakhs ought to have been allowed for capitalization by the Ld. Central Commission;

e. Hold that the Central Commission has wrongly disallowed the additional capitalization claims of the Appellant for silt settling chamber, sea water intake system reliability, over-ground piping for firefighting system, sewage treatment plant and wrongly held that the said claims can be brought under Regulation 17 of the Tariff Regulations, 2014;

f. Allow the additional capitalization claims of the Appellant for silt settling chamber, sea water intake system reliability, over-ground piping for firefighting system, and sewage treatment plant;

g. Hold that the Central Commission has erred in disallowing the claims of the Appellant pertaining to NDCT Chimney Concrete Treatment and Rack & Pinion Lift and has not considered the submissions of the Appellant;

h. Allow the claims of the Appellant pertaining to NDCT Chimney Concrete Treatment and Rack & Pinion Lift;

i. Hold that the non-consideration of the submissions of the Appellant w.r.t the prior in-principal approval on staff colony and coal shed, not allowing of transit loss at 0.8%, disallowance of O&M on additional transmission bays, and on electricity tax on Auxiliary Power

Consumption is incorrect and in non-consideration of the specific submissions of the Appellant;

j. Grant in-principle approval to the Appellant for incurring expenditure on Staff Colony and Coal Shed in the 2019-2024 tariff block;

k. Allow the transit loss of 0.8% as sought by the Appellant for the aforesaid reasons;

l. Allow the Appellant's claim for actual recovery of electricity tax on Auxiliary Power Consumption for the period 2014-2019 as claimed for in the Tariff Petition;

m. Allow annual Additional O&M expenses towards additional Transmission Bays for the period 2014-2019 as claimed for in the Tariff Petition; and

Pass any other Order(s) as this Hon'ble Tribunal deems fit in the interest of justice and equity."

29. The Appellant (in Appeal No. 98 of 2023) has prayed for the following relief before us:

"a. Set aside the impugned order dated 22.01.2020 passed by the Hon'ble Commission in Petition No. 251/GT/2017 to the extent impugned hereinabove;

b. Hold that the claims of UPCL towards additional capitalization of expenses incurred towards silt settling chamber in sea water intake pump, sea water intake system reliability, over-ground piping for fire fighting system, and construction of sewage treatment plants ought to have been rejected by the Hon 'ble Commission;

c. Hold that the Hon'bIe Commission ought to have rejected the claim of additional capitalization of expenditure undertaken for replacement of the GRP sea water return pipeline with MS pipeline;

d. Alternatively, hold that the increase in the cost of additional capitalization of expenditure undertaken for replacement of the GRP sea water return pipeline with MS pipeline ought to be disallowed;

e. Hold that the Hon'bIe Commission has erred by allowing additional capitalization of Rs. 3.02 crores towards a payment made by UPCL to local fishermen;

f. Hold that the Hon'bIe Commission ought to have rejected the claims made by UPCL for additional O & M expenses towards Jetty and External Coal Handling Plant, cess paid to statutory authorities, and FGD plant;

g. Set aside the observations made by the Hon'bIe Commission that UPCL will be at liberty to separately bill and recover electricity tax on auxiliary consumption from the Karnataka ESCOMs;

h. Hold that the Hon'ble Commission should have considered the Normative Annual Plant Availability Factor as 85% for the entire period form 2014-19;

i. Hold that the Hon'ble Commission ought not to have considered custom duty & clean energy cess, stevedoring & other expenses, survey coal sampling & analysis, wharfage charges, development cess charges-Konkan railway, pilotage & port dues, Southern Railway- realisation bonus charges, application fees, LC charges and marshalling yard charges for the computation of fuel cost;

J. Hold that the tax on return on equity should have been considered based on the actual tax paid by UPCL;

k. Hold that the Hon'ble Commission ought to have reduced the capital cost of the Rs. 35.14 crore i.e. the revenue earned by UPCL from sale of infirm power after accounting for the fuel expenses;

l. Pass necessary consequential orders or directions for giving effect to the aforementioned prayers; and

m. Pass any other order that may be deemed necessary in the facts and circumstances of the case."

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

Issue No. 1: Whether, and to what extent, the additional capitalization claimed for the MS Seawater Return Pipeline prior to the cut-off date is admissible under Regulation 14(1)(v)?

Issue No. 2: Whether UPCL/APL is entitled to additional capitalization for assets installed after the cut-off date either under Regulations 14(3) or by resort to powers under Regulations 54 and 55?

Issue No. 3: Whether the payment of compensation to fishermen qualifies as a capital expenditure falling within the permissible grounds of Regulation 14(3)?

Issue No. 4: Whether UPCL/APL is entitled to additional O&M expenses in respect of Jetty, ECHP, FGD plant, or cess on

statutory authorities despite the existence of normative O&M provisions?

Issue No. 5: Whether the levy of Electricity Tax on Auxiliary Consumption, imposed after the PPA, is recoverable separately from beneficiaries, amounts to a change in law, or stands fully absorbed within the O&M expense norms?

Issue No. 6: Whether CERC correctly applied the regulatory limits on transit and handling losses for imported coal?

Issue No. 7: Whether NAPAF of 83% for the initial tariff years was properly allowed by the CERC?

Issue No. 8: To what extent any issues relating to landed cost of fuel or tax on ROE survive for adjudication in light of concessions/settlements between the parties or subsequent developments?

31. The eight issues are dealt with in the succeeding paragraphs on an issue-wise basis.

Issue No. 1:* *Whether, and to what extent, the additional capitalization claimed for the MS Seawater Return Pipeline prior to the cut-off date is admissible under Regulation 14(1)(v)?

32. The APL emphasized that the MS Seawater Return Pipeline claim arises from a statutory compliance necessitated by environmental considerations. The original pipeline made of Glass Reinforced Plastic (GRP) corroded within a relatively short period after commissioning, compelling replacement with MS pipes

to meet the directions issued by the Karnataka State Pollution Control Board (KSPCB).

33. The KSPCB's letter dated 09.07.2013 mandated replacement of the defective pipeline, underscoring a binding environmental obligation. The Appellant relies on the order dated 03.12.2014, passed by the Commission in Petition No. 14/RP/2014, that, while rejecting a prayer for in-principle approval, allowed claiming capitalization of the MS pipeline in tariff petitions under the provisions of the tariff regulations applicable for the period.

34. It is contended that the replacement work was undertaken within the cut-off period, highlighting that the environmental conditions at the plant site impose accelerated corrosion risks and thus necessitate such expenditure. Further, the Appellant stresses that the original GRP pipeline had become valueless due to corrosion; hence, only the value of replacement with MS piping ought to be recognized, with the original GRP pipeline value being appropriately de-capitalized.

35. Further submitted that this treatment is in line with the Commission's earlier order, which admitted capitalization of Rs. 1280.52 lakh after deducting the original GRP pipeline value of Rs. 1950 lakh. The Appellant argued for a reconsideration of the partial disallowance of the claim and urged us to uphold the recognition of the full expenditure on this account as capital expenditure under Regulation 14(1)(v).

36. The Respondents submit vehement opposition, disputing the contention that the expenditure qualifies under Regulation 14(1)(v), which permits

capitalization of expenditure incurred pursuant to a change in law or compliance with existing law. They argued that the corrosion and consequent replacement of the GRP pipeline is attributable to flawed design or poor execution by the APL or its predecessor, EPC contractor, and does not amount to a compliance event under applicable law. The Respondents stressed that the KSPCB's instruction to replace the pipeline does not create any liability of the APL under the law that would warrant additional capitalization.

37. Further, it highlighted that the Commission's earlier disallowance of the claim for Rs. 27.56 crore submitted during the 2009-2014 tariff period was due to a lack of documentary evidence substantiating an environmental compliance event. The increased cost claimed subsequently, without providing a justifiable explanation, is to be labelled as an inflated and unjustified claim.

38. In sum, Respondents contend that allowing capitalization of expenditure arising from defective work or poor maintenance would unjustly burden the consumers with costs attributable to Appellant's own mismanagement. Such expenditure should be borne by the appellant or recovered from responsible contractors, and the regulatory regime does not allow such claims under tariff regulations, especially after a cut-off date, or in the absence of bona fide legal obligation arising from a change in law.

39. The Central Electricity Regulatory Commission (CERC) examined the claim and the contesting contentions in detail. The Commission noted the directives issued by KSPCB and accepted that the APL had complied with environmental obligations by replacing the GRP pipeline with MS pipes by May 2014, within the cut-off date. The Commission invoked Regulation 14(1)(v), allowing capitalization

of expenditure incurred due to compliance with existing law and environmental direction.

40. However, the Commission undertook decapitalization of the historic GRP pipeline value of Rs. 1950 lakh and admitted capital expenditure of Rs. 1280.52 lakh towards the MS pipeline replacement. The Commission reasoned that the replacement was yet another asset admitted for capitalization consistent with regulatory requirements and prudence checks. It held that, though the original pipeline was replaced, the value of the original asset rightfully needs to be deducted from the capital cost.

41. We found the said interpretation of the Commission totally arbitrary and unjustified. The replacement of any equipment is done only when either the equipment completes its useful life or becomes obsolete, or is declared unserviceable. Accordingly, only the balanced cost can be deducted from the capital cost as the equipment was in service before the decapitalization.

42. CERC's interpretation on deduction of cost, stating that the original pipeline was replaced, so the original cost is to be deducted from the capital cost, is beyond acceptance, as it is not the original pipeline but the pipeline which was in service and has become unserviceable due to corrosion, that is replaced.

43. It cannot be denied that the earlier installed GRP Pipeline became unserviceable due to corrosion and has developed leakages due to high salinity in air and water, despite all the measures taken by the APL to maintain the GRP pipeline. Accordingly, the Central Commission has considered the submissions of

the APL and allowed capitalization of the MS Seawater Return Pipeline, after de-capitalizing the original value of the GRP Pipeline.

44. No doubt the subject power plant is a coastal power plant, and is adversely impacted due to high salinity in air and water drawn from the sea, high silt ingress, high turbidity levels, excessive corrosion, and associated ecosystem challenges. Moreover, there was a mandatory direction from KSPCB to the APL to replace the GRP pipeline with the MS Sea Water Pipeline. It is noticed that the replacement work carried out by the APL is not only in compliance with such direction but is also based on the peculiar uncontrollable issues faced by it; therefore, it was incorrect on the part of the Central Commission to decapitalize the original cost of the GRP pipeline.

45. We note the urgency of evaluating claims for additional capitalization within the strict framework of Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

46. Regulation 14(1)(v) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 is as follows:

> ***"14. <u>Additional Capitalisation and De-capitalisation</u>:***
>
> *(1) The capital expenditure in respect of the new project or an existing project incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:*

……

(v) Change in law or compliance of any existing law:

Provided that the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff.”

47. Regulation 14(1)(v) explicitly permits inclusion of expenditure incurred for compliance with existing law or directives of statutory authorities, intended to be capitalized within the cut-off date.

48. The environmental direction issued by the KSPCB constitutes compliance with existing law for the project. The Appellant curtailed environmental hazard by replacing the defective GRP pipeline with an MS pipeline in the timeframe stipulated by the regulatory authority, thereby incurring capital expenditure clearly falling under the ambit of Regulation 14(1)(v).

49. Thus, it also cannot be disputed that the earlier GRP pipelines have become unserviceable and carry no residual value. Under the de-capitalization of an asset, it is the residual value that can be deducted from the replacement cost to allow prudent cost to the developer. Accordingly, the issue raised by APL is that the Central Commission ought not to have decapitalized the original value of the GRP Pipeline while allowing the capitalization of the MS Sea Water Return pipeline.

50. Regulation 9(6)(b) mandates that the capital cost shall exclude or remove the cost of any equipment on *Decapitalisation of an Asset,* which certainly is the

cost of the equipment at the time of decapitalization of the asset, as the equipment has already served its purpose till the time of decapitalization.

51. In view of the above, we agree with the submissions of the APL that the Central Commission at most could have deducted/de-capitalized only 10% salvage value of INR 1950 Lakhs, i.e., only INR 195 Lakhs, and should have allowed APL to recover the balance amount, i.e., INR 1755 Lakhs. Accordingly, the Central Commission is directed to allow Rs. 3035 Lakhs (Rs. 3230 Lakh – Rs. 195 Lakh) as against INR 1280 Lakhs towards additional capitalization of M.S. Sea Water Return Pipeline.

52. **Accordingly, the issue is decided in favour of APL and the cost of Rs. 1755 lakhs is allowed after deducting 10% of salvage value from Rs. 1950 lakhs of the replaced pipelines in addition to the cost of new pipelines.**

> ***<u>Issue No. 2:</u> Whether UPCL/APL is entitled to additional capitalization for assets installed after the cut-off date either under Regulations 14(3) or by resort to powers under Regulations 54 and 55?***

53. UPCL/APL contends that the additional capitalization claims, though incurred after the cut-off date of 31.03.2015, fall within the ambit of Regulation 14(3) read with the discretionary powers of the Commission under Regulations 54 (Power to Relax) and 55 (Power to Remove Difficulties) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

54. APL relies on the report by its independent consultant, Lahmeyer International (India) Limited, to justify the need for additional capital expenditure on account of site-specific conditions such as high silt ingress, corrosive marine environment, and technical requirements not anticipated at the time of project commissioning.

55. It is submitted that these claim items, including silt settling chambers, sea water intake reliability works, overground piping for firefighting, sewage treatment plant, NDCT chimney and concrete treatments, and rack and pinion lifts, are either part of the original project scope deferred execution or necessary works for compliance with statutory and environmental norms, thereby qualifying under Regulation 14(3) or under the Commission's powers to relax provisions and remove difficulties.

56. Further, APL points to the Statement of Reasons accompanying the draft 2024 Tariff Regulations, where the Commission acknowledges the special challenges faced by coastal generating stations and proposes to consider additional capitalization on a case-by-case basis. It is submitted that the failure or delay to finalize capital cost due to ongoing litigation and change in ownership justifies the invocation of powers under Regulations 54 and 55 to allow such additional capitalization to prevent undue hardship and ensure just and equitable treatment.

57. APL also contrasts the provisions of earlier tariff regulations (which allowed capitalization for efficient operation) with the tighter definitions in the 2014 Tariff Regulations and emphasizes that the regulatory framework envisages relief

through powers to relax and remove difficulties when strict application causes hardship.

58. The Discoms challenge these claims, asserting that Regulation 14(3) and the overall framework of the 2014 Tariff Regulations do not permit additional capitalization claims beyond the cut-off date except for very limited and specific categories such as liabilities arising from arbitration, change in law, and certain statutory compliance.

59. They submit that Regulation 14(3) must be strictly construed and that APL's claims are based on inferred or generalized interpretations that lack specific trigger events contemplated by the regulation. The claim for additional capitalization on grounds such as plant efficiency, site challenges including silt ingress and corrosion, or change in ownership, does not qualify under the Regulations. Maintenance, repair, renovation, or modernization expenditure is expressly excluded from capitalization.

60. The ESCOMs point out that APL itself admits that many of the works should have been carried out during the original project commissioning or were foreseeable issues. The alleged deficiencies or early deterioration of assets arise from shortcomings in project design and execution, for which APL bears responsibility, and such costs cannot be passed onto consumers.

61. Further, the Commission's powers under Regulations 54 and 55 are not to be used to rewrite the regulatory provisions or bypass express exclusions. These powers are to be exercised sparingly and only to resolve minor procedural

difficulties or ambiguities and not for granting materially new benefits or altering substantive provisions of the regulation.

62. The Tribunal, in its judgment dated 25.03.2011 in Appeal No. 130/2009 titled ***Ratnagiri Gas & Power Pvt. Ltd. v. CERC & Anr,*** has held as follows in the context of Regulation 76 of the 2019 Tariff Regulations (which is in pari materia Regulation 54 of the 2014 Tariff Regulations):

> *"The above Regulations and the decision give the judicial discretion to the Central Commission to relax norms based on the circumstances of the case. However, such a case has to be one of those exceptions to the general rule. There has to be sufficient reason to justify relaxation. It has to be exercised only in exceptional case and where non exercise of the discretion would cause hardship and injustice to a party or would lead to unjust result. In the case of relaxation of the Regulations the reasons have to be recorded in writing. Further, it has to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming the relaxation."*

63. In the context of the Power to Remove Difficulties, the Hon'ble Supreme Court, in M.U. Sinai v. Union of India, (1975) 2 SCR 640, has observed as follows:

> *"The existence or arising of a difficulty is the sine qua non for the exercise of power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again, the "difficulty" contemplated by the clause must be a difficulty*

arising in giving effect to the provisions of the Act and not a difficulty arising all under, or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty change the scheme and essential provisions of the Act."

64. The above judgment has been reiterated by this Tribunal in its judgment dated 25.03.2011 in Appeal No. 130/2009, wherein it has laid down that *"In our opinion, power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations."*

65. Further stressed that the Commission correctly refused to grant any extension of the cut-off date or allowance of additional capitalization on the grounds of delayed claims, changes in shareholding structure or reliance on consultant reports post cut-off date.

66. Regulation 14 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 is as follows:

"14. <u>Additional Capitalisation and De-capitalisation:</u>

(1) The capital expenditure in respect of the new project or an existing project incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check:

(i) Undischarged liabilities recognized to be payable at a future date;

(ii) Works deferred for execution;

(iii) Procurement of initial capital spares within the original scope of work, in accordance with the provisions of Regulation 13;

(iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law; and

(v) Change in law or compliance of any existing law:

Provided that the details of works asset wise/work wise included in the original scope of work along with estimates of expenditure, liabilities recognized to be payable at a future date and the works deferred for execution shall be submitted along with the application for determination of tariff.

(2) The capital expenditure incurred or projected to be incurred in respect of the new project on the following counts within the original scope of work after the cut-off date may be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;

(ii) Change in law or compliance of any existing law;

(iii) Deferred works relating to ash pond or ash handling system in the original scope of work; and

(iv) Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.

(3) The capital expenditure, in respect of existing generating station or the transmission system including communication system, incurred or projected to be incurred on the following counts after the cut-off date, may be admitted by the Commission, subject to prudence check:

(i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court of law;

(ii) Change in law or compliance of any existing law;

(iii) Any expenses to be incurred on account of need for higher security and safety of the plant as advised or directed by appropriate Government Agencies or statutory authorities responsible for national security/internal security;

(iv) Deferred works relating to ash pond or ash handling system in the original scope of work;

v) Any liability for works executed prior to the cut-off date, after prudence check of the details of such undischarged liability, total estimated cost of package, reasons for such withholding of payment and release of such payments etc.;

(vi) Any liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payments;

(vii) Any additional capital expenditure which has become necessary for efficient operation of generating station other than coal/lignite based stations or transmission system as the case may be. The claim shall be substantiated with the technical justification duly supported by the documentary evidence like test results carried out by an independent agency in case of deterioration of assets report of an independent agency in case of damage caused by natural calamities, obsolescence of technology, up-gradation of capacity for the technical reason such as increase in fault level;

(viii) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) and due to geological reasons after adjusting the proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation;

(ix) In case of transmission system, any additional expenditure on items such as relays, control and instrumentation, computer system, power line carrier communication, DC batteries, replacement due to obsolescence of technology, replacement of switchyard equipment due to increase of fault level, tower strengthening, communication equipment, emergency restoration system, insulators cleaning infrastructure, replacement of porcelain insulator with polymer insulators, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system; and (x) Any capital expenditure found justified after prudence check

necessitated on account of modifications required or done in fuel receiving system arising due to non-materialisation of coal supply corresponding to full coal linkage in respect of thermal generating station as result of circumstances not within the control of the generating station:

Provided that any expenditure on acquiring the minor items or the assets including tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, computers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2014:

Provided further that any capital expenditure other than that of the nature specified above in (i) to (iv) in case of coal/lignite based station shall be met out of compensation allowance: Provided also that if any expenditure has been claimed under Renovation and Modernisation (R&M), repairs and maintenance under O&M expenses and Compensation Allowance, same expenditure cannot be claimed under this regulation.

(4) In case of de-capitalisation of assets of a generating company or the transmission licensee, as the case may be, the original cost of such asset as on the date of de-capitalisation shall be deducted from the value of gross fixed asset and corresponding loan as well as equity shall be deducted from outstanding loan and the equity respectively in the year such de-capitalisation takes place, duly taking into consideration the year in which it was capitalised."

67. Regulation 14 of the 2014 Tariff Regulations clearly demarcates the categories of permissible additional capital expenditure for existing generating stations. Regulation 14(1) allows additional capitalization before the cut-off date, while Regulation 14(3) restricts such claims post cut-off date to narrowly defined contingencies including liabilities arising from arbitration or court decree, changes in law, security and safety requirements directed by national authorities, deferred works within original scope relating to ash handling, and certain other limited specific scenarios.

68. A holistic and strict reading of these provisions precludes inclusion of general efficiency improvement, rectification of design or execution deficiencies, or routine repair and maintenance capital expenses as grounds for additional capitalization after the cut-off date.

69. APL's argument relying on the Commission's powers under Regulations 54 and 55 to relax provisions or remove difficulties must be considered in the context of the nature and extent of these powers as interpreted by regulatory jurisprudence.

70. The Impugned Order in para 12 states as follows:

> *"12.* ***The Petitioner in this petition has claimed actual additional capital expenditure for the years 2014-15, 2015-16, 2016-17 and projected additional capital expenditure for the year 2017-18 in Form 9A. The Petitioner has sought relaxation of the cut-off date and submitted that the project***

> ***could not adhere to the cut-off date for the reason of protracted litigation between the Petitioner and the beneficiaries right from the date of COD till receiving clarity in the matter through judgment of the Tribunal and implemented by the Commission by its order dated 10.7.2015.*** *The Petitioner has stated that it could not have carried out the envisaged works as the finalization of original capital cost was under litigation and additional expenditure could have resulted in unwarranted disputes. It has further stated that Independent Consultant was engaged and important capital works to be taken up to ensure the statutory, safety, environment compliance and efficient operation of the plant has been recommended.* ***Accordingly, the Petitioner has prayed that the Commission may grant suitable relaxation in cut-off date to complete the balance essential works by relaxation of provisions of Regulations 14(1) and 14(3) read with Regulation 54 of the 2014 Tariff Regulations."***

71. But these submissions of the Appellant, UPCL/ APL, have not been considered by the Commission.

72. The prayer before the Commission was that the claims of additional capitalization post the cut-off date of 31.03.2015, which UPCL/APL seek to qualify under the specific contingencies enumerated in Regulation 14(3) and under the discretionary powers granted under Regulations 54 (Power to Relax) and 55 (Power to Remove Difficulties), or by extending the cut-off date through power to

relax/ removal of difficulty so that the above works are covered under Regulation 14(1).

73. Notably, the Commission in its impugned order has not considered or adjudicated upon, the prayer of the Appellant invoking Regulations 54 and 55 for relaxation or removal of difficulties. The Commission has restricted its analysis strictly to the parameters of Regulation 14(3).

74. We find that the discretionary powers under Regulations 54 and 55 are indeed intended to be exercised in exceptional cases to prevent hardship or injustice, as recognized by judicial precedents, including the Tribunal's own earlier rulings and the Hon'ble Supreme Court's observations regarding the limits of such powers.

75. Given the fact-specific challenges of coastal generating stations, including unforeseen site conditions asserted by UPCL/APL, and the submissions regarding delay due to ongoing litigation and changes in ownership, it would have been appropriate for the Commission to consider whether the facts of the case justify the exercise of these discretionary powers.

76. **We, therefore, conclude that the Commission's omission to consider the Appellant's prayer under Regulations 54 and 55 amounts to an incomplete adjudication of the issue of additional capitalization claims post the cut-off date.**

77. **Accordingly, this issue is remanded to the Commission with the direction to hear the matter afresh, particularly in relation to the invocation**

of its powers under Regulations 54 and 55, and to pass a reasoned order on the entitlement of UPCL/APL to additional capitalization for assets installed after the cut-off date.

<u>Issue No. 3:</u> Whether the payment of compensation to fishermen qualifies as a capital expenditure falling within the permissible grounds of Regulation 14(3)?

78. The Appellant has claimed additional capitalization of Rs. 302.00 lakh in 2015-16 towards compensation paid to fishermen, submitting that the payment was made in compliance with the directions of the Government of Karnataka. The Government (Deputy Commissioner, Udupi District), vide letter dated 20.03.2014, directed the Appellant to deposit Rs. 302 lakh for disbursement to 302 fishermen families, as per representations received concerning loss caused by the linking of the project pipeline to the sea and discharge of hot water into the sea. The Appellant deposited the amount before the Deputy Commissioner, Udupi district, intimating the same by letter dated 26.12.2015.

79. The Appellant contends that this was a statutory direction necessitating compliance, and accordingly, the payment qualifies as a capital expenditure allowed under Regulation 14(3)(i) of the 2014 Tariff Regulations.

80. The Appellant denies that the payment was voluntary or merely a corporate social responsibility ("CSR") expenditure. It is submitted that the payments were made under statutory compulsion with a clear direction from the Deputy

Commissioner, and were to compensate for the loss of livelihood suffered by fishermen due to project operations.

81. The Appellant further submits that the amount was reduced from an initially proposed Rs. 2 lakhs per fisherman to Rs. 1 lakh, reflecting its efforts to mitigate the financial burden consistent with statutory compliance.

82. Karnataka Discoms contend that the letter dated 20.03.2014 from the Deputy Commissioner merely forwarded a representation dated 15.03.2014 by the fishermen, seeking that the Appellant take *"suitable action."* At no point did the letter direct the Appellant to pay compensation, nor did it constitute an order, decree or award of a court of law within the intendment of Regulation 14(3)(i).

83. It was submitted that the payment made by the Appellant was voluntary, aimed at betterment of livelihood, and hence falls outside the statutory regime envisioned under the Regulations for capital expenditure. The Respondents argue that such voluntary payments cannot be allowed as additional capitalization since Regulation 14(3)(i) specifically refers to *"liabilities to meet award of arbitration or for compliance of the order or decree of a court of law."* The Deputy Commissioner's letter is neither an award nor a court order, and cannot be equated with a statutory direction binding on the Appellant.

84. Further, the Respondents highlighted the existence of Rs. 5 Crore included under CSR and Rs. 9.89 Crore included towards Relief & Rehabilitation costs in the project cost. The Appellant has failed to produce any details on the utilization of these funds, and therefore, the present claim is impermissible.

85. We have considered the claim by the Appellant seeking additional capitalization on account of compensation paid to fishermen, allegedly in compliance with the Government of Karnataka's directions through the Deputy Commissioner's letter dated 20.03.2014. The letter is placed below.

Government of Karnataka Revenue Department

OFFICE OF THE DEPUTY COMMISSIONER, UDUPI DISTRICT, UDUPI

Phone: 0820-2574925(O), 2574926(F) E-Mail: dcudp@dataone.in., deo.udupi@gmail.com Website: www.nic.udupi.in

No.:MAG(2)CR 859/2009-10 K.NO.: 30282 Date : 20/03/2014

To,

Senior General Manager (Planning)

Udupi Power Corporation Limited,

Yelluru village,

Udupi Taluk

Sir,

Sub: Regarding payment of compensation of Rs. 2 lakhs each to the fishermen families because of the loss caused to fishermen due to linking of Udupi Power Corporation Limited Organisation's pipeline to sea and discharge of hot water into sea.

Ref: (1) Proceedings of the meeting held under the Presidentship of Hon'ble Chief Minister on 23-02-2010.

(2) Our office letter bearing No.859/09-10 dated 16-03-2011 and 19/01/2013.

(3) Letter bearing No.UPCL/YL/B12/2010/2449 dated 27-09-2010 written by UPCL to the Director of Fisheries Department.

(4) Our office above letter bearing No...... dated: 18/02/2014.

(5) Representation dated 15/03/2014 given by the 6 Kairampani Fishermen Society (from Yermal to Padubidri), Post: Yermalu Bada Padu, Udupi Taluk-574119

****

With reference to the above subject, letters referred to in reference (1) to (4) are brought to your notice. On 23-02-2010, a meeting took place under the Presidentship of Hon'ble Chief Minister on the subject of payment of

600

compensation amount to the fishermen families because of loss caused to them due to the linking of Udupi Power Corporation Limited Organisation's pipeline to sea and discharge of hot water into the sea. The fishermen community by its repeated representations states that, in the said meeting, it has been ordered to Udupi Power Corporation to pay compensation of Rs. 2 lakhs each to the fishermen families and non-technical job to one person from each family and requests for disbursement of compensation amount. Now, again 6 Kairampani Fishermen society has given a representation as per above reference (5) and stated that, recently U.P.C.L company has agreed to grant total sum of Rs. 3 crores 2 lakhs for disbursing 1 lakh each to the 302 families as decided in the final meeting that took place in the presence of the representatives of Kairampani and people's representatives' and prayed for transfer of Rs. 3 crores 2 lakhs to the bank account of Deputy Commissioner by the U.P.C.L company. Representation is enclosed herewith and directed to take suitable action as per the representation.

Yours faithfully,
Sd/- 21/3/14
Deputy Commissioner
Udupi District, Udupi

TRUE & CORRECT
TRANSLATION OF ORIGINAL

16/6/17

RAMESH KUMAR B.A.,LLB.,
Advocate & Notary (Govt. of India)
Office Cum Residence,
Yogi Nivas, No. 117/1, 3rd Cross
Maheswari Nagar T. Dasarahalli,
Bangalore - 560 057

Copy:

6 Kairampani Fishermen Society
(From Yermal to Padubidri)
Post: Yermalu Bada Padu
Udupi Tq: 574119

86. It is observed that the said letter is a clear direction/order from a government authority, and not a mere discretionary or voluntary communication, thereby differentiating it from a mere representation or request. This statutory directive, if complied with, may attract the provisions of Regulation 14(3)(i) of the 2014 Tariff

Regulations, which allow capitalization for liabilities to meet awards or for compliance with directions/orders of statutory or government authorities.

87. However, we also note the Respondents' submissions regarding the existence of a budget head under Corporate Social Responsibility (CSR) and Relief & Rehabilitation costs in the project cost, which appears to cover similar compensation or mitigation expenses.

88. In this context, the issue of whether the compensation amount claimed should be allowed as additional capitalization or deemed covered under the CSR expenditure or other heads requires a detailed and cautious examination by the Commission.

89. **Accordingly, we remand this issue to the Commission with a direction to examine afresh the nature of the payment in light of the Government's direction, the statutory provisions, and the financial provisions available under CSR and other related accounts. The Commission shall adjudicate on the permissibility of the claim as capital expenditure under Regulation 14(3), after a prudence check and ensuring no duplication with CSR or other provisions.**

<u>Issue No. 4:</u> Whether UPCL/APL is entitled to additional O&M expenses in respect of Jetty, ECHP, FGD plant, or cess on statutory authorities despite the existence of normative O&M provisions?

90. APL contends that additional O&M expenses over and above the normative provisions under the Central Electricity Regulatory Commission (CERC) Tariff Regulations, 2014, are legitimately payable. These additional expenses pertain to the operation and maintenance of the Jetty, External Coal Handling Plant (ECHP), and the Flue Gas Desulphurisation (FGD) system of the Udupi Thermal Power Plant.

91. APL relies on the fact that these assets, especially the Jetty and ECHP, incur costs not captured within the normative O&M allowances prescribed for thermal power stations in regulation 29 of the 2014 Tariff Regulations. Moreover, the absence of specific normative O&M standards for FGD systems in the 2014 Regulations.

92. These additional expenses are critical for the efficient and uninterrupted working of the plant, particularly a coastal facility reliant entirely on imported coal, which inherently demands special infrastructure for coal transportation and handling.

93. Regarding the Jetty and ECHP O&M costs, the Central Commission has consistently recognized the additional operational costs of thermal power plants using imported coal and has treated these costs as distinct from the normative O&M norms. Commission has allowed similar expenses in prior tariff orders and these features are absent in normative benchmarks; thus, specific compensation is justified.

94. For FGD-related O&M, APL highlights that although the system was installed prior to the regulatory notification tightening emission norms, the existing FGD system's O&M expenses are not subsumed in the normative O&M norms.

95. It is submitted that merely because additional O&M was not claimed by APL in the previous tariff proceedings, it does not mean that the same cannot be claimed in the subsequent proceedings. There is no estoppel against APL to claim this in the next control period as every new control period gives a fresh cause of action to the generator. Reliance is placed on the judgment dated 13.01.2009 of this Tribunal in Appeal No. 133 of 2007 titled as ***Delhi Transco Ltd. V. DERC & Ors***.

96. Concerning the statutory authority's cess and taxes, the Appellant maintains that these payments, which are statutory in nature and borne directly by the generating company, must be allowed as reimbursable expenses. The Appellant relies on the Commission's findings and prevailing norms, acknowledging these as not being part of the normative O&M but eligible for separate consideration.

97. The Respondents argue that the Appellant is not entitled to additional O&M expenses beyond the normative norms provided in the tariff regulations. The Respondents submit that the normative O&M expenses already comprehensively cover the operational requirements of the generating station, including ancillary facilities. The Commission's allowance of additional O&M for the Jetty and ECHP lacks sufficient basis because normative provisions and benchmarking are designed to capture reasonable costs, and other plants using imported coal have not been granted such allowances.

98. ESCOMs submit that no concrete proof has been furnished to substantiate that the actual O&M costs exceed normative provisions, and such upward deviations should not be allowed without rigorous justification. For the FGD system, the Respondents contend that the Appellant's claim is not supported by normative allowance in the 2014 Regulations and that previous orders and relevant precedents limit such allowances, especially as the existing FGD system was part of the original design.

99. ESCOMs also argued that the statutory cess and taxes form part of normal operational expenses and are typically accounted for within normative O&M expenses; separate reimbursement is not warranted. Further contended that allowing these additional costs risks unnecessary burden on end consumers and departs from regulatory principles of cost efficiency and prudence.

100. We note that normative O&M expenses prescribed in the 2014 Tariff Regulations are meant to cover routine operational and maintenance costs necessary for the generating station's functioning, including provisions for coal handling. However, we also recognize that thermal power plants based on imported coal, especially those located on the coast like Udupi, inherently incur additional operational expenses due to specialized infrastructure such as a Jetty, External Coal Handling Plant (ECHP), and facilities to comply with environmental norms (e.g., Flue Gas Desulphurization systems).

101. We observe that previous CERC orders and regulatory practice have consistently acknowledged that such specialized facilities result in additional O&M expenses beyond the normative benchmarks stipulated for typical coal-based thermal plants. The 2014 Regulations' failure to include explicit normative

benchmarks for certain assets like the FGD system O&M necessitates case-specific allowances where consistent evidence supports that such expenses are incremental and justifiable.

102. The fact that these costs are attributed to specialized systems intrinsic to the imported fuel-based facility and are not accounted for in standard normative norms supports their special treatment.

103. Regarding the statutory cess and taxes payable to regulators and authorities, while recognizing that such expenses are statutory obligations, we note that the Commission has afforded some recognition by granting these costs as reimbursable expenses. The refusal to treat these as part of normative O&M is supported by the fact that such taxes vary with location and regulatory environment.

104. We critically examine the Respondent's argument that these expenses should be subsumed within normative O&M. While normative provisions are intended to encourage efficiency and prudent expenditure, they cannot be construed as capping reasonable expenses for clearly identifiable additional infrastructure required for the plant’s operation.

105. **Therefore, we are persuaded that the additional O&M expenses on account of Jetty and ECHP operation are distinct and legitimately excluded from the normative O&M, and the Commission’s allowance of such expenses is consistent with regulatory principles.**

106. **The incremental O&M expenses for the FGD system, given its environmental compliance purpose and absence of explicit normative costs in the 2014 Regulations, are justifiably compensable.**

107. **Statutory cess and taxes paid, being beyond the control of the generating company, should not be buried under normative costs, and their allowance as reimbursable expenses as per the Commission's approach is appropriate.**

108. We further note that the Commission has applied prudence checks and oversight and allowed these costs, subject to adjustments during true-up, ensuring that only justifiable expenses are recovered.

109. In view of the above, APL is entitled to recover additional O&M expenses relating to the Jetty and External Coal Handling Plant that are incurred over and above normative allowances, as these are materially different due to the coal supply and handling characteristics peculiar to imported coal-based coastal power stations.

110. Additional O&M expenses for the Flue Gas Desulphurisation system, necessitated by environmental norms and lacking normative benchmarks in the 2014 Tariff Regulations, are allowable on a case-specific basis, subject to prudence and actual costs.

111. Payments made as statutory cess and taxes to regulatory authorities are not part of normative O&M expenses and are recoverable to the extent actually incurred in compliance with statutory obligations.

112. **The approach of the Central Commission in admitting these expenses with appropriate prudence review in the tariff order under challenge is upheld as consistent with regulatory norms and the factual matrix of the generating station's operational exigencies. No interference with the Commission's decision on this issue is warranted.**

> ***Issue No. 5:*** ***Whether the levy of Electricity Tax on Auxiliary Consumption, imposed after the PPA, is recoverable separately from beneficiaries, amounts to a change in law, or stands fully absorbed within the O&M expense norms?***

113. The Appellant contends that the levy of Electricity Tax on Auxiliary Consumption introduced by the Government of Karnataka vide Notification dated 24.11.2014 under Section 3(2)(b) of the Karnataka Electricity (Taxation on Consumption) Act, 1956, constitutes a Change in Law event as it was imposed subsequent to the signing of the Power Purchase Agreement dated 26.12.2005 between the parties. The Appellant submits that it has been paying Electricity Tax on Auxiliary Consumption every month from March 2015 onwards to the Electrical Inspector, Udupi, Karnataka, and has claimed reimbursement through debit notes issued to the Respondent Power Company of Karnataka Ltd. (PCKL) since March 2015.

114. The Appellant argues that the Central Electricity Regulatory Commission has not considered this levy while prescribing the allowable O&M expenses for the 2014-19 tariff period. Hence, the levy ought to be allowed over and above the normative O&M expenses specified under the CERC (Terms and Conditions of

Tariff) Regulations, 2014. The Appellant further invokes the provisions of Regulation 56 of the subsequent 2019 Tariff Regulations, which expressly recognize recovery of electricity duty on auxiliary consumption, to emphasize that such levy is compensable.

115. The Appellant relies on Clause 6.12(a)(i) of the PPA, which provides for tariff adjustment on account of a Change in Law that materially increases the cost of the seller in connection with the operation of the generating unit. Thus, it is submitted that disallowing the claim would be contrary to the contractual provisions and principles of Change in Law.

116. The Appellant has submitted a detailed summary of Electricity Tax paid during 2014-15 through 2018-19, amounting to Rs. 819.23 lakhs, and prays for its recovery from the beneficiaries.

117. The Respondents contest that the levy of Electricity Tax is not a new imposition but an existing statutory levy enforceable under the Karnataka Electricity (Taxation on Consumption or Sale) Act, 1959, payable by all generating stations in Karnataka for several decades. It is contended that this levy is inherently covered under the normative O&M expenses specified under Regulation 29(1) of the 2014 Tariff Regulations.

118. The Respondents point out that other generating stations in Karnataka, such as Karnataka Power Company Limited, have not sought separate reimbursement of this tax. Likewise, Central Generating Stations like NTPC and NLC have historically paid Electricity Tax on auxiliary consumption to their respective State Governments and not claimed the same from distribution licensees.

119. The Respondents further submit that the Appellant has failed to demonstrate that the Electricity Tax on Auxiliary Consumption arose due to a Change in Law event necessitating separate recovery. Consequently, the Commission correctly disallowed the Appellant's claim for separate recovery under the 2014 Tariff Regulations.

120. The issue at hand pertains to whether the levy of Electricity Tax on Auxiliary Consumption, introduced after the execution of the PPA, is recoverable separately from the beneficiaries and whether it constitutes a Change in Law under the 2014 Tariff Regulations or is fully absorbed within the normative O&M expenses.

121. It is on record that the Electricity Tax was introduced by the Government of Karnataka vide Notification dated 24.11.2014 under the Karnataka Electricity (Taxation on Consumption) Act, 1956, after the PPA dated 26.12.2005 between the parties. The Appellant has demonstrated the tax payments made on auxiliary consumption from March 2015 onwards, along with debit notes seeking reimbursement.

122. Regulation 29(1) of the 2014 Tariff Regulations specifies normative O&M expenses to cover various operational costs. The Respondents have rightly submitted that the electricity tax has traditionally been considered a revenue expenditure and implicitly absorbed within these O&M norms. Further, other generating stations operating in Karnataka have historically borne such tax liability without separate reimbursement claims from distribution licensees.

123. The Appellant's contention that this levy amounts to a Change in Law event, warranting separate recovery in terms of Clause 6.12(a)(i) of the PPA, merits attention. Change in Law clauses aim to compensate parties for material cost changes outside their control after contract formation.

124. We note that the levy of Electricity Tax on Auxiliary Consumption by the Government of Karnataka was imposed by a Notification dated 24.11.2014, which clearly falls after the signing of the original Power Purchase Agreement dated 26.12.2005 and subsequent to the notification of the CERC Tariff Regulations, 2014 governing the 2014-19 period.

125. Given that the levy was introduced after the PPA and after the tariff regulations were notified, we find that this constitutes a Change in Law event under the PPA and the regulatory framework. The Appellant was not in a position to foresee or incorporate this levy within the normative O&M expenses specified by the Commission.

126. Further, it is evident that the levy was not considered or compensated for in the O&M expense norms determined by the CERC for the relevant tariff period. Therefore, the levy stands as a new cost impact on the generating station that justifies separate recovery.

127. **Accordingly, we hold that the Electricity Tax on Auxiliary Consumption qualifies as a recoverable Change in Law event, and the claims of the Appellant to recover the amount paid as Electricity Tax over and above the normative O&M expenses are justified.**

128. **The Commission is directed to allow the Appellant's claim for reimbursement of such Electricity Tax paid on auxiliary consumption for the relevant period, subject to prudence check.**

<u>Issue No. 6:</u> Whether CERC correctly applied the regulatory limits on transit and handling losses for imported coal?

129. The issue under consideration is whether the Central Electricity Regulatory Commission correctly applied the regulatory limits on transit and handling losses for imported coal in the tariff determination of the Udupi Thermal Power Station, and if not, what the correct normative loss should be in view of the specific facts of this case.

130. APL contends that the transit and handling losses allowed by CERC, fixed at 0.2% as per Regulation 30(8) of the 2014 Tariff Regulations, are erroneous considering their plant's specific supply chain characteristics and geographical location.

131. On the other hand, the Respondent PCKL supports CERC's application of the 0.2% normative transit loss, emphasizing that APL has failed to submit any substantive material to justify higher losses and that the regulations have been duly framed based on empirical data of various generating stations using imported coal.

132. APL submits that its power plant, being an imported coal-based coastal station located approximately 36 kilometers from the New Mangalore Port Trust

(NMPT) on the west coast, undergoes a complex and multi-modal transportation process that involves several handling points. The coal supply chain involves loading at foreign load ports, sea transport via vessels, unloading at NMPT using gantry cranes, multiple conveyor belt transfers within the port (totalling roughly 2.4 km), rail transport using rakes for approximately 36 km, unloading at plant track hopper, and subsequent conveyor belt transport within the plant premises to the stockyard and bunkers.

133. Further argued that these multiple handling and transport points not only increase the likelihood of transit losses, but also mean that the coal journey from load port to plant cannot be equated with that of a pithead station or pithead equivalent. Hence, the standard norm of 0.2%, which applies to losses from jetty to plant for imported coal, does not adequately cover the entire transit loss incurred in their actual logistic arrangement.

134. Further reliance is placed on Clause 30(8) of the 2014 Tariff Regulations, which provides specified normative transit and handling loss percentages for coal-fired generating stations, distinguishing pithead stations at 0.2%, and non-pithead stations at 0.8%. It is contended that since their plant is transported over a lengthy multi-modal chain involving sea-to-land transitions and extensive internal transportation within port and plant premises, it should be categorized as non-pithead and eligible for transit losses not less than 0.8%.

135. Additionally, APL draws support from the Central Electricity Authority's (CEA) recommendations dated 17.10.2017 on measurement of Gross Calorific Value (GCV) on *"As received"* basis and the allowance of margins for GCV loss occurring between wagon top and fired coal. It is suggested that these

recommendations support a view that the total losses encompass not just handling at the plant but the entire supply chain from the load port to the plant site.

136. APL also points to the Commission's Statement of Reasons accompanying the 2024 Tariff Regulations, where the Commission acknowledged the need for differentiated treatment for transit and handling losses in non-pithead projects employing multi-modal transportation, and consequently allowed 1.00% normative loss for such cases.

137. On the other hand, the Respondent argues that CERC has correctly applied the regulatory norm of 0.2% as stipulated in the 2014 Tariff Regulations for transit and handling losses for imported coal-based generating stations. It is observed that pursuant to the proviso to Regulation 30(8) of the 2014 Tariff Regulations, transit and handling losses for imported coal have been set at 0.2%, reflecting a detailed analysis of actual data over the past five years from multiple stations.

138. It is emphasized that this norm is sufficient, and no credible material has been produced either before CERC or this Tribunal to substantiate claims that APL is incurring losses in excess of these norms.

139. Further highlighted that Regulation 30(8) does not differentiate between various legs of transportation from the load port to the plant, endorsing a uniform handling loss for the entire logistics, which includes unloading at the port and transport to the plant site. In this regard, it is submitted that the normative loss of 0.2% accepted by CERC is a considered figure arrived at through empirical evidence and should not be diluted to accommodate APL's perceived multi-modal transportation loss. It also argued that APL has failed to produce any material

evidence substantiating the alleged elevated transit losses in their case, and therefore claims for a higher normative loss are untenable and unsupported by regulatory principles or factual data.

140. Having carefully examined the submissions of both parties and the regulatory framework, it is clear that the normative transit and handling loss percentages prescribed are intended to serve as a reasonable approximation of actual losses incurred in transportation and handling of coal for tariff computation purposes.

141. The 2014 Tariff Regulations, while differentiating between pithead and non-pithead generating stations, fix the normative transit and handling loss at 0.2% for pithead stations (and their equivalents) and at 0.8% for non-pithead stations using domestic coal. For imported coal-based stations, the Regulators have prescribed a uniform normative handling loss of 0.2%.

142. The Commission's rationale, as evident from the Statement of Reasons to the 2014 Regulations, appears to rest on extensive data analysis of typical imported coal-based plants, indicating that the 0.2% normative transit loss for coal covers the relevant handling losses effectively over the jetty-to-plant transport and handling chain. The logical inference therefrom is that these norms embed a practical balance between regulatory simplicity and realistic cost recovery for licensees.

143. APL's argument that the multi-modal itinerary for coal from distant overseas load ports involves several handling operations and internal port transport,

thereby justifying an uplift in normative loss above 0.2% appears *prima facie* reasonable in a commercial sense.

144. However, it is imperative to note that the tariff regulations apply a broad-norm approach, rather than attempt to reflect each project's exact circumstance. Moreover, APL has failed to bring before us a detailed empirical demonstration or documentary proof of actual transit and handling losses incurred in excess of the stipulated 0.2% norm. There is no cogent evidence on record quantifying or validating the claimed higher losses beyond a mere qualitative description of transportation logistics.

145. Regulation 30 (8) of the 2014 Tariff Regulations is as follows:

> *"30. **Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations**:*
>
> *…..*
>
> *(8) The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below:*
>
> *Pithead generating stations : 0.2%*
>
> *Non-pithead generating stations : 0.8%*

Provided that in case of pit head stations if coal or lignite is procured from sources other than the pit head mines which is transported to the station through rail, transit loss of 0.8% shall be applicable:

Provided further that in case of imported coal, the transit and handling losses shall be 0.2%."

146. The provisions of Regulation 30(8) are clear and unambiguous; the landed cost of fuel includes transportation cost, and the normative losses are capped at 0.2% for imported coal-based generating stations without further qualifiers. This regulatory prescription suggests exclusivity unless varied by a subsequent regulation or specific dispensation. We note that departure from normative values must be supported by a strong justification rooted in documented factual losses or an explicit regulatory grant.

147. In this respect, the approach taken by the Commission in applying the 0.2% normative transit and handling loss for APL is correct and in accordance with the extant regulatory framework.

148. While the precise supply chain of APL's coal is complex, we are constrained by the absence of substantiating data furnished by APL quantifying specific transit losses or proving the inadequacy of the normative 0.2% figure. The claim for a higher normative loss of 0.8% owing to multi-modal transport is essentially an argument to amend or reinterpret the regulation, which we cannot entertain beyond the regulatory text and clear precedents.

149. Given this, APL is entitled to claim fuel costs based on the 0.2% normative transit and handling loss as allowed by the Commission. Any variation in actual

transit loss borne by the generator is expected to be borne by it as part of commercial risk or sought through future regulatory proceedings with an appropriate evidentiary basis, rather than in the present tariff determination.

150. Accordingly, we find no infirmity in CERC's application of the 0.2% normative transit and handling loss for imported coal-based stations in the impugned order. The claim of APL for a higher transit loss norm on account of its multi-modal shipment and handling logistics is unsubstantiated and unsustainable within the regulatory framework of the 2014 Tariff Regulations.

151. **Hence, in conclusion, CERC's normative transit and handling loss figure of 0.2% for the Udupi Thermal Power Station using 100% imported coal is confirmed as the correct norm for the tariff period 2014-19.**

<u>Issue No. 7:</u> Whether the NAPAF of 83% for the initial tariff years was properly allowed by the CERC?

152. The issue before us is the determination of the Normative Annual Plant Availability Factor (NAPAF) to be applied for the initial tariff years. The Power Company of Karnataka Ltd. (PCKL), the Appellant in Appeal No. 98 of 2023, contends that the correct norm for NAPAF for the period under consideration should be 85%, as claimed by the generating station, Adani Power Ltd. (formerly Udupi Power Corporation Ltd.)

153. PCKL submits that the 83% NAPAF allowed by the Central Electricity Regulatory Commission in the impugned order was erroneous and contrary to Regulation 36(A)(a) of the Central Electricity Regulatory Commission (Terms and

Conditions of Tariff) Regulations, 2014. The Regulation 36(A)(a) is quoted as under:

> *"36. The norms of operation as given hereunder shall apply to thermal generating stations:*
>
> *(A)Normative Annual Plant Availability Factor (NAPAF)*
>
> *(a)All thermal generating stations, except those covered under clauses (b), (c), (d), & (e) - 85%*
>
> ***Provided that in view of shortage of coal and uncertainty of assured coal supply on sustained basis experienced by the generating stations, the NAPAF for recovery of fixed charges shall be 83% till the same is reviewed. The above provision shall be reviewed based on actual feedback after 3 years from 01.04.2014**."*

154. PCKL's contention is primarily based on the language of Regulation 36(A)(a), which provides for NAPAF at 85%. It is argued that the proviso allowing relaxation to 83% is applicable only in cases of a shortage of domestic coal supply. Since APL's generating station uses 100% imported coal and there was no shortage of domestic coal affecting it, the relaxation to 83% is not applicable.

155. Moreover, PCKL submits that APL has itself claimed NAPAF of 85% in its Tariff Petition as well as monthly invoices for the period 2014-17, and there were no objections from the Karnataka distribution companies at that time to the claim of 85%. Therefore, as per PCKL, the Commission was obligated to adopt the improved norm of 85% pursuant to Regulation 47 of the 2014 Tariff Regulations, which provides that the norms specified therein shall not preclude the generating

company and the beneficiaries from agreeing to improved norms, and such agreed improved norms shall be applicable for tariff determination.

156. On the other hand, the Central Commission in the impugned order has allowed the NAPAF as 83% for the FY 2014-17 in line with the proviso to Regulation 36(A)(a), and 85% for the period 2017-19. The Commission's view is that the relaxation to 83% in the proviso was given on account of the difficulties faced by thermal stations in fuel linkages, without specifying whether it is domestic coal or imported coal.

157. Thus, it clearly specifies a shortage of fuel, i.e., coal, irrespective of its origin, whether domestic or imported.

158. In case of shortage of coal, the proviso to the Regulation specifies that the NAPAF is 83%, the Commission has exercised a wider interpretation allowing 83% for the May 2014 to March 2017 period.

159. We note the submissions of PCKL that this proviso relates to domestic coal shortages only. This position finds support in the Statement of Objects and Reasons to the 2014 Tariff Regulations, which, in the context of Regulation 36(A)(a), acknowledges the difficulties faced specifically by domestic coal-based generating stations owing to fuel linkages.

160. In addition, the circumstances, as outlined in the submissions and uncontested by the Parties, demonstrate that APL's generating station used imported coal exclusively and was not subject to any shortage of domestic coal.

161. Furthermore, the undisputed fact is that APL had itself claimed, and discoms had not objected to, the 85% availability norm in the tariff petitions and invoices for the relevant period. Regulation 47 of the 2014 Tariff Regulations clearly provides that the norms specified therein are ceiling norms and do not preclude the generating company and beneficiaries from agreeing to improved norms, which shall then be applicable. The parties' conduct in claiming and accepting the 85% norm is consistent with an agreement to the improved norm.

162. Regulation 47 of the 2014 Tariff Regulations is as follows:

> *"**47. Norms to be ceiling norms**:*
> *Norms specified in these regulations are the ceiling norms and shall not preclude the generating company or the transmission licensee, as the case may be, and the beneficiaries and the long-term transmission customers /DICs from agreeing to the improved norms and in case the improved norms are agreed to, such improved norms shall be applicable for determination of tariff."*

163. On the other hand, the Commission's interpretation of applying the 83% norm for the initial years appears to be an over-application of the proviso. There is no material before us that the generating station suffered any coal supply issues analogous to the shortage of assured coal supply experienced by domestic coal-based stations. The proviso's language that the 83% norm applies *"in view of shortage of coal and uncertainty of assured coal supply on sustained basis experienced by the generating stations"* (Regulation 36(A)) reasonably encompasses domestic coal-based stations struggling with linkage issues, not

stations based solely on imported coal, which, by their nature, face different supply chain considerations.

164. In light of the above and the principle that tariff norms are to be interpreted reasonably and in a manner that reflects the true facts and commercial realities, we find that the NAPAF of 83% was not properly applied for the tariff years 2014-17. The more appropriate and justified norm for the Udupi thermal power plant is 85%, as contended by PCKL and claimed by APL.

165. It is further observed that the APL has not pleaded the NAPF of 83% as against the 85% in the petition and therefore, it is settled law, prayer not made cannot be granted by the court.

166. **In Mrs. Akella Lalitha versus Sri Konda Hanumantha Rao & Anr., Civil Appeal Nos. 6325-6326 OF 2015, dated 28.07.2022,** the Hon'ble Supreme Court has held as follows:

> *"15. …. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.*
>
> *16. In the case of **Messrs. Trojan & Co. Ltd. Vs. Rm.N.N. Nagappa Chettiar**, this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under:-*
>
> > *"It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the*

> *Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."*

*17. In the case of **Bharat Amratlal Kothari & Anr. Vs. Dosukhan Samadkhan Sindhi & Ors.** held:*

> *"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."*

18. In this case while directing for change of surname of the child, the High Court has traversed beyond pleadings and such directions are liable to be set aside on this ground."

167. **Accordingly, we hold that the CERC erred in allowing NAPAF of 83% for the initial tariff years, and the correct norm ought to be 85%. The tariff for the period should be revised to reflect this corrected availability norm. This decision aligns with the tariff Regulations themselves, the uncontroverted factual matrix, and established regulatory principles.**

<u>Issue No. 8:</u> To what extent do any issues relating to the landed cost of fuel or tax on ROE survive for adjudication in light of concessions/settlements between the parties or subsequent developments?

168. Adani Power Limited, in its written submissions in Appeal No. 98 of 2023, contended that the issue of landed cost of fuel had been settled between the parties through a letter dated 22.01.2021, wherein Power Company of Karnataka

Limited (PCKL) accepted to pay all charges incurred by APL as part of the fuel cost.

169. APL relied on the order of the CERC dated 13.01.2023 in Petition No. 155/MP/2019, which took note of the mutual settlement between the parties regarding the landed cost of fuel.

170. Regarding the tax on ROE, APL submitted that this issue is not being pressed, as the same has been dealt with by the Commission in its order dated 04.01.2024 in Petition No. 21/GT/2021.

171. On the other hand, the Respondent PCKL in Appeal No. 98 of 2023 largely refrained from contesting these issues further in light of the settlement and regulatory developments. PCKL acknowledged the mutual acceptance of the fuel cost charges as per the letter dated 22.01.2021 and the Commission’s order dated 13.01.2023.

172. We have carefully considered the written submissions filed by the parties, the Impugned Order of the Central Electricity Regulatory Commission dated 22.01.2020, and subsequent developments, including the mutual acceptance by the parties.

173. The parties have resolved the dispute. The Appellant referred to a letter dated 22.01.2021 from PCKL, which accepted to pay all charges incurred as part of fuel cost, thus settling the dispute. Further, the Commission’s order in Petition No. 155/MP/2019 dated 13.01.2023 records that the issue stands settled between the parties. Since the dispute regarding the landed cost of fuel has been resolved

by mutual agreement, and there appears to be no further contest on record, this issue does not survive for adjudication before us in these appeals.

174. Regarding the tax on return on equity (ROE), the Appellant clarified in its submissions that this issue is not pressed before us as the Commission has addressed the matter in its order dated 04.01.2024 in Petition No. 21/GT/2021. No contrary submissions have been filed to suggest otherwise. Hence, no adjudication on this aspect is necessary in these proceedings as well.

175. **In view of the above, we hold that issues relating to the landed cost of fuel are settled between the parties and no longer require adjudication. Similarly, the issue relating to tax on ROE is not pressed and is considered disposed of in the regulatory process.**

176. The issues pertaining to refusal to grant in-principle approval for the staff colony and the disallowance of O&M expenses towards additional transmission bays have not been pressed by the Appellant, APL, during the course of oral arguments and in the written submissions before us. Therefore, these issues do not survive for adjudication.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the Appeal No. 76 of 2020 filed by Adani Power Ltd. and Appeal No. 98 of 2023 filed by PCKL, have merits and are partly allowed strictly in terms of the conclusion made hereinabove.

The Impugned Order is set aside to the above extent and remanded to CERC to pass consequential orders afresh within 6 months strictly complying with the decision made hereinabove.

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

Pronounced in The Open Court on This 15th Day Of SEPTEMBER, 2025.

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

pr/mkj/kks