IN THE APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 138 of 2015

Dated: 20th February, 2020

Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member

Hon'ble Mr. Justice R.K. Gauba, Judicial Member

In the matter of:

Damodar Valley Corporation
DVC Towers, VIP Road,
Kolkata 700054 …. Appellant

Versus

1. **Central Electricity Regulatory Commission (CERC)**
   3rd& 4th Floor, Chanderlok Building,
   35, Janpath, New Delhi- 110001 …. Respondent No.1

2. **Delhi Transco Ltd**
   Shakti Sadan, Kotla Road,
   New Delhi-110 002 …. Respondent No.2

3. **BSES Yamuna Power Limited (BYPL)**
   Shakti Kiran Building,
   Karkardooma
   New Delhi – 110 092 …. Respondent No.3

4. **BSES Rajdhani Power Limited (BYPL)**
   BSES Bhawan, Nehru Place,
   New Delhi – 110 019 …. Respondent No.4

5. **Tata Power Delhi Distribution Limited**
   (Formerly known as North Delhi Power Ltd.)
   Grid Substation Building, Hudson Lines,
   Kingsway Camp
   New Delhi- 110 009 …. Respondent No.5

6. **Madhya Pradesh Power Trading Company Ltd.**
Shakthi Bhavan, Vidyut Nagar,
Jabalpur 482008

…. Respondent No.6.

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bardhan

Counsel for the Respondent(s) : Mr. S.K. Chaturvedi for R-2

Mr. Rishabh Donnel Singh
Mr. Ravin Dubey for R-3

J U D G M E N T

PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER

1. The prime issue that has been raised in this appeal involves interpretation of Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2009 (*"Tariff Regulations, 2009",* for short) in relation to the computation of the time-line for establishing and commissioning a thermal power project for purposes of calculation of cost over-run (Interest During Construction). The Central Electricity Regulatory Commission (hereafter referred to variously as *"CERC"* or *"Central Commission"* or "*Commission"*) has calculated the time-line taking the issuance of letter of award (of the contract) which the Appellant contends to be erroneous seeking such calculation to be made

by treating the date of investment approval as the reference point. It is also the grievance of the Appellant that in computing the admissible *Interest During Construction* (IDC), the Central Commission should have taken into account the actual drawal of the loan, proportionate disallowance for the delay being erroneous.

2. The Appellant, Damodar Valley Corporation (DVC), is a statutory body established under the provisions of Damodar Valley Corporation Act, 1948, a special Central legislation dealing with Damodar Valley, an area carved out now covering parts of the States of West Bengal and Jharkhand. DVC is controlled by the Central Government and is engaged in generation, transmission, distribution and sale of electricity for consumers in Damodar Valley. The subject matter of the present proceedings, however, affects the procurers of the electricity who have been impleaded as second to sixth respondents herein, only the sixth respondent having participated (to put in contest).

3. One of the generation stations of DVC is known as Chandrapura Thermal Power Station. The dispute which is subject matter of the present appeal relates to its unit nos. 7 and 8 (with capacity of 250 MW each).

4. From the material that was placed before the Commission in proceedings arising out of petition (No. 196/GT/2013) for approval of

generation tariff of the said two units ("*the generating station*") for the period ending with 31.03.2014, leading to the impugned order being passed on 12.03.2015, certain facts emerge as undisputed or admitted and the same may be noted at the outset.

5. The Board of Directors of Damodar Valley Corporation, in its 544th meeting held on 31.01.2002, had adopted a resolution for capacity addition of 5420 MW during 10th Five Year Plan (2002-2007) which included the commissioning of the generating station. Reference has also come to be made in this context to Board approval dated 31.02.2002. On 30.06.2004, the contract for development, construction and supply of the generating station was awarded to Bharat Heavy Electricals Limited (BHEL), a Government of India undertaking engaged in the business of supply of power equipments, the communication on the subject styled as *"letter of acceptance"* being the *letter of award*. Pertinent to note here that the cost of the project was indicated to be Rs.1219 crore which was agreed to remain *"firm and fixed"* during the entire execution of the contract, the exceptions being on account of statutory revenue variations. Having regard to the terms of payment set out in the Letter of Award (*LoA*) 10% of the total price i.e. Rs. 121.90 crore was passed on by DVC to BHEL, the Engineering, Procurement and Construction (EPC) contractor as interest-free initial advance against submission of indemnity bond/corporate guarantee of equivalent

value. It was explained at the hearing that the money paid as advance to EPC contractor was raised from the equity funds of DVC, the loans which would be added to the financial arrangement (by borrowings which have been described as "*PFC loan*" and "*Syndicate loan*") having been drawn during 2007 – 2009 (as per the submissions of the appellant Rs. 500 crores was drawn as PFC loan on 30.06.2007, followed by Rs. 878 crores as Syndicate loan drawn on 14.03.2008, last instalment of Syndicate loan being taken on 16.03.2009).

6. The Letter of Acceptance (LoA) dated 30.06.2004 specified the date of issuance of LoA to be the "*effective date*" of contract, also referred to as "*zero date*". The delivery schedule was specified in LoA as under:

> *"5. DELIVERY SCHEDULE:*
> *Time is the essence of the contract. BHEL shall supply the materials/plant/equipment for the entire scope to make unit Nos. 7&8 complete in all respect including project specific work involvement due to addition /deletion of scope indicated at Clause – 1(vi) above & interconnection with existing units. The deliveries will commensurate with erection and commissioning schedule as per the agreement so that units Nos. 7&8 are put on commercial operation within 31 months and 33 months respectively from the zero date of the contract. However, Liquidated Damages (LD) shall be deducted from BHEL, if commercial operation is delayed beyond 33 months and 36 months for Unit Nos. 7&8 respectively from the zero date of the contract. All supply under this contract shall be regulated so as to match the completion schedule as mentioned hereinabove in conformity with agreed and approved PERT network."*
>
> *[Emphasis supplied]*

7. It is clear from the terms and conditions of the LoA that the time was considered to be of essence in as much as the EPC contractor was to suffer the liability to pay liquidated damages for delay other than those covered by *force majeure* conditions.

8. The Central Commission found, and there is no challenge to the correctness of such conclusion, that the work at site on the part of the EPC contractor (BHEL) began in April, 2005 (20.04.2005) when excavation was undertaken in certain area. A formal investment approval was granted by the Board of Directors of DVC only on 08.09.2005.

9. The two units of the generating station could not be commissioned within the time stipulated in the LoA. The delay is sought to be explained as attributable to various reasons including delay in handing over site, free from all encumbrances, to BHEL (11 months); delay on account tof unprecedented rise in steel and cement price, the activity of sub contractor/Vendor/Sub-vendor supply temporarily withdrawn (18 months); delay due to adverse working conditions and hindrances by local people/surroundings (5 months); delay on account of erection activity hampered for non-shipment of existing materials for non-completion of proper storage space (6 months), etc.

10. Having regard to the time-line indicated in Letter of Acceptance issued on 30.06.2004, the Scheduled Commercial Operation Date (SCOD) of Unit No. 7 was 31.01.2007 and that of Unit No.8 being 31.03.2007. There was admittedly time over-run. The actual Commercial Operation Date (COD) of Unit No. 8 is stated to be 15.07.2011 and that of Unit No. 7 as 31.10.2011. It may be added here itself that if the time is to be calculated treating the date of investment approval (08.09.2005) as the reference point, there was a delay of 37 months in respect of each unit, SCOD being treated as 08.10.2008 for Unit No. 7 and 08.06.2008 for Unit No. 8. Conversely, if period is to be computed with effect from date of LoA (30.06.2004), there was an admitted delay of 51.5 months and 57 months respectively.

11. The Tariff Regulations, 2009 framed by the Central Commission deal, *inter-alia,* with the subjects of Capital Cost, Return on equity (RoE) and Interest During Construction (IDC). The provisions of the said Tariff Regulations, 2009, to the extent germane to the issues before us, may be taken note of at this stage.

> *"7.* ***Capital Cost.*** *(1) Capital cost for a project shall include:*
>
> *(a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan - (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date*

of commercial operation of the project, as admitted by the Commission, after prudence check;

(b) capitalised initial spares subject to the ceiling rates specified in regulation 8; and (c) additional capital expenditure determined under regulation 9:

Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.

(2) The capital cost admitted by the Commission after prudence check shall form the basis for determination of tariff:

Provided that in case of the thermal generating station and the transmission system, prudence check of capital cost may be carried out based on the benchmark norms to be specified by the Commission from time to time:

Provided further that in cases where benchmark norms have not been specified, prudence check may include scrutiny of the reasonableness of the capital expenditure, financing plan, interest during construction, use of efficient technology, cost over-run and time over-run, and such other matters as may be considered appropriate by the Commission for determination of tariff:

xxx xxx

*15. **Return on Equity**. (1) Return on equity shall be computed in rupee terms, on the equity base determined in accordance with regulation 12.*

(2) Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per clause (3) of this regulation:

*Provided that in case of projects commissioned on or after 1st April, 2009, an additional return of 0.5% shall be allowed if such projects are completed within the timeline specified in **Appendix-II**:*

xxx xxx"

[Emphasis supplied]

12. The time-line for completion of projects as indicated in Appendix-II to the Tariff Regulations, 2009, with particular reference to Regulation 15 quoted above, to the extent relevant, reads thus:

"Appendix-II

...

1. The completion time schedule shall be reckoned from the date of investment approval by the Board (of the generating company or the transmission licensee), or the CCEA clearance as the case may be, up to the date of commercial operation of the units or block or element of transmission project as applicable.

2. The time schedule has been indicated in months in the following paragraphs and tables:

A Thermal Power Projects

Coal/Lignite Power Plant

Unit size 200/210/250/300/330 MW and 125 MW CFBC technology

(a) *33 months for green filed projects. Subsequent units at an interval of 4 months each.*

(b) *31 months for extension projects. Subsequent units at an interval of 4 months each.*

...”

[Emphasis supplied]

13. It may be mentioned here that *"Debt-Equity ratio"* at 70%:30% indicated in the method of calculation of Capital Cost is in *sync* with specific provision in that regard in Regulation No. 12. Also pertinent to note that the Capital Cost includes *"interest during construction" (*IDC) calculated "*up to the date of commercial operation of the project"*, the CoD being subject to determination by the Commission *"after prudence check".* In case the equity deployed exceeds 30%, the excess equity is treated as "*normative loan"*, the loan, otherwise being "*equal to the actual amount of loan*" drawn, and this would include IDC.

14. Having regard to the fact that the generating station (Unit nos. 7 & 8) here was conceived and commissioned to generate 250 MW each, it

being coal based thermal power project, the time-line for completion of project, in terms of Regulation no. 15 (as per Appendix-II) would be 33 months for the first unit followed by subsequent unit coming up at the interval of four months.

15. The appellant (DVC) had earlier approached the Central Commission (D.No. 42/GT/2011) whereupon provisional tariff was determined by Order dated 10.10.2012. It is clear from the record that the decisions were taken only provisionally on the claim of the DVC respecting time over-run, COD, ROE and IDC, the question of "*time over run*" being deferred to the stage of determination of final tariff.

16. It was fairly conceded at the hearing that ordinarily the investment approval for project of such nature as at hand would precede the award of contract (LoA). The logic is simple. A project requiring huge funds cannot be initiated without a conscious decision being taken having regard to the need for additional capacity, its viability at the site chosen, the availability of requisite finance and such other factors. Concededly, in the case at hand, going by the documents made available, for reasons possibly of some urgency, the contract was awarded to EPC without a formal investment approval being shown the light of the day. The investment approval came to be formally issued only on 08.09.2005, after a long gap of letter of acceptance (LoA) that had been issued to

EPC contractor on 30.06.2004. Subject to the justification for delay forthcoming, the benefit on account of time over-run, particularly with reference to claim of RoE in terms of Regulation no. 15 necessitates calculation to be made of the period of delay beyond the specified period of 33/37 months *"from the date of investment approval by the Board of the generating company".* The Central Commission, as we shall note a little later, decided the time line for computing the time over-run with reference to investment approval, placing reliance in this context on decision of this Tribunal in judgment dated 12.01.2012 in Appeal No. 104 of 2011 in the matter of *Power Grid Corporation of India Ltd v CERC & Ors*. (hereinafter referred to as *"APTEL judgment dated 12.01.2012"*). It, however, found it "*prudent*" to examine the claim arising from time over-run by considering the SCOD of the units as per the LoA. The contention of the appellant that time over-run be calculated from the date of investment approval for grant of the benefit of RoE, and IDC, was rejected.

17. The relevant part of the impugned decision dated 12.03.2015 of the Central Commission reads thus:-

> *"12. The matter has been examined. We are not inclined to accept the submissions of the petitioner as regards the computation of scheduled COD as per time line specified by the Commission. It could be observed from para-12 of the Commission's order dated 10.10.2012, that the schedule CoD as per timeline specified by the Commission is considered to examine whether the units of the*

generating station are entitled for additional Return on Equity (RoE) of 0.5% for timely commissioning of plant in terms of 2009 Tariff Regulations, and not for assessing the time overrun. The question of time overrun was left to be decided before the determination of final tariff after hearing of all the parties on merit. It is clarified that the timeline specified by the Commission in Regulation 15 of the 2009 Tariff Regulations is for considering whether any project/unit is entitled for an additional Return on Equity (ROE) of 0.5% on account of timely commissioning of unit/project and shall not be taken as a benchmark norm to assess the actual time over run in the commissioning of different units. In this connection, the observations of the Appellate Tribunal for Electricity (The Tribunal) in its judgment dated 12.1.2012 in Appeal No. 104/2011 is extracted as under:

> *"13. Perusal of Regulation 15 along with Appendix II and Para 13.12.1 of SoR would amply reveal that these deal with Return on Equity and completion time frame provided therein refers only to additional Return on Equity of 0.5%. It does to limit the time frame for calculation of IDC.*
>
> *14. The period of 36 months is the actual construction period allowed. Regulation 7 (1) does not provide for the construction period to commence from the date of the Investment Approval. In fact, such construction period cannot be construed to be commenced immediately from the date of Investment Approval. After the Investment Approval is given, the Appellant has to initiate the process of awarding the contract, select the contractor and then issue the Letter of Award. Thus, the construction can start only after the award of contract and not before."*

13. Accordingly, the time line for the purpose of time overrun shall be reckoned on the basis of the timeline indicated in the Investment approval.

Time Overrun

14. The petitioner vide affidavit dated 1.11.2013 has submitted that the Board of the petitioner corporation in its 544th meeting held on 31.1.2002 had adopted a resolution for capacity addition of 5420 MW during the 10th Five Year Plan (2002-07) which also included the commissioning of this generating station. From the LOA dated 30.6.2004, it is observed that the schedule COD of both the units were envisaged in such a manner so that the units are commissioned within 10th Five Year Plan (2002-07). Accordingly, we consider it prudent to examine the time overrun by

<u>considering the schedule COD of the units as per the LOA</u>. The details of actual COD as against the scheduled COD as per LOA is as under:

Unit Nos.	Date of LOA	Schedule COD as per LOA	Actual Synchronization on Coal	Actual COD	Delay (months)
7	30.06.2004	31.1.2007	15.9.2009	2.11.2011	57
8		31.03.2007	15.7.2011	15.7.2011	51.5

15. Considering the above, we conclude that there is time overrun of 57 months in respect of Unit No.7 and 51.5 months for Unit No.8 of the generating station.
...” *[Emphasis supplied]*

18. It is the argument of the appellant that there is an inherent contradiction of the approach of CERC to the issue of time over-run in that it having been accepted in para 13 that the calculation is to be made from the date of investment approval, a computation was eventually made with reference to the date of LoA. Reliance is placed on Order dated 10.10.2012 whereby provisional tariff was determined in which the calculations of the appellant based on date of investment approval were accepted, it being the argument that it is impermissible for CERC to change the view already taken in the previous order.

19. It is the submission of the appellant that the Tariff Regulations, 2009 do not permit date of letter of acceptance to be the reference point, Regulation 15 only specifying the time-line though with reference to the admissibility of additional Return on Equity (RoE) for timely completion, it being a matter of incentive. It is also the submission of the appellant

that the benefit of IDC cannot be disallowed (by way of penalty) by pegging the calculation to the date of letter of award (LoA) while granting RoE with reference to the date of investment approval, such approach producing contradictory results. It is the argument of the appellant that the minimum time allowed for completion of the project for purposes of RoE in terms of Regulation 15 should be accepted as the time-line *"even for the computation of IDC"*. Reliance is placed on the decision of the Hon'ble Supreme Court reported as *PTC India Limited v Central Electricity Regulatory Commission [(2010) 4 SCC 603]* to the effect that the Commission is bound by its own Regulations. It is the submission of the appellant that the import of the APTEL judgment dated 12.01.2012 has been wrongly construed, read out of context by the Commission.

20. We find no merit in the argument of the appellant with reference to the earlier Order dated 10.10.2012 passed by the Commission. That was the stage of determination of provisional tariff and it is clear upon perusal of the said previous order that the claims in relation to time over-run were not decided. Instead, they were left for the stage of final determination. There is no estoppel against the Commission from exercising its jurisdiction applying the prudence check by the subsequent order.

21. There can be no two views about the fact that the Electricity Regulatory Commission is bound by its own regulations. The regulations framed in exercise of power conferred by the statute are in the realm of subordinate legislation and, thus, have the force of law. Till they are formally amended in accordance with law, every agency including the Commission which framed is expected to abide by it. The reference to the decision of Hon'ble Supreme Court in *PTC India Ltd* (supra) in this context is correct. But, in the present case, as we shall note hereinafter, the relevant Regulations (Tariff Regulations, 2009) have been applied and enforced in their letter and spirit.

22. The quotation of the observations of this Tribunal in the judgment dated 12.01.2012 in the matter of *Power Grid Corporation of India Ltd ("PGCIL")* (supra) in the impugned order of the Central Commission seems to be deficient. Further, the observations in para no. 13 of the impugned order following the said quotation from observations of this Tribunal in the case of *PGCIL* (supra) seem to be a little misleading, prone to create some confusion in the mind of the reader. But, as we shall presently see, the rule in the case of *PGCIL* (supra) has been correctly applied by the Commission to the facts and circumstances of the case.

23. In *PGCIL* (supra), decided by APTEL judgment dated 12.01.2012, the appellant (PGCIL) had claimed the benefit of Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) by reckoning the period of construction from the date of letter of award (LoA) rather than from the date of investment approval. The Board of Directors of PGCIL had accorded the administrative approval and expenditure sanction for the project in question on 31.05.2005. The first letter of award for the project was issued on 23.08.2006. Arguments similar to those raised here came up for consideration. The observations appearing in para nos. 13 & 14 in the said judgment, as quoted by the Commission in the impugned order, came to be recorded against such backdrop. But what needs to be further noted is that the appellant in the case of PGCIL had also claimed IDC on *"notional basis".* This Tribunal ruled, upon analysis of the objects and reasons of the Tariff Regulations, 2009, that Regulation no. 15 permitting additional return on equity could not be treated as a provision stipulating the period of construction for purposes of IDC or IEDC. On that basis, it was held that the period of execution of the project (of PGCIL) should be calculated "*only from the date of letter of award*' for calculating IDC and IEDC and not from the date of investment approval.

24. In the present case, if the documents in question – LoA and investment approval – were to be taken on their face value, the appellant seems to have put the cart before the horse by engaging an EPC contractor, taking on financial obligations even without securing a formal issuance of investment approval from its Board of Directors. On closer scrutiny, however, we are of the view that the actual chronology was not what it is made out to be. Investment in the project by passing on earnest money (to the extent of 10%) to EPC contractor, even by drawing from equity funds would not have been possible without in-house formal approval for such investment being taken from the Board of Directors. The admitted facts that the Board of Directors had approved the capacity addition including by the project in question, in the meeting held on 31.01.2002, reveal that in-principle approval for such investment was already in position and that it is only such investment approval given by the Board in January – February, 2002 which facilitated the LoA to be issued on 30.06.2004. From this perspective, we hold that the issuance of formal communication granting investment approval on 08.09.2005 was an act undertaken to formalize what had already been achieved.

25. We agree with the submissions of the learned counsel for the contesting respondent that following observations of this Tribunal in

judgment dated 28.05.2018 in Appeal No. 153 of 2015 in the case of *Damodar Valley Corporation v Delhi Transco Ltd and Ors*, squarely answer the issue raised by the appellant herein:

> *"8.7 We have considered the submissions of the learned counsel appearing for the Appellant as well as Respondent Nos. 3, 4 & 6 relating to this issue. The main issue for the rival contentions is consideration of the zero date for the start up of project work and the time period considered for completion of the generating units for CoD. While the Appellant has repeatedly argued for zero date as date of final investment sanction i.e. 16.06.2008, the Respondents have contested that the project gets started immediately after the LoA and timeline to be considered for commissioning up of the project as stipulated in the LoA gets reckoned from the date of LoA. In the present case, being a project of National Importance, envisaging power supply to DTL for Commonwealth Games, 2010, the preparatory works for investment approval and placement of LoA was required to be expedited to meet the deadline matching with the commencement of Commonwealth Games. It is significant to note that with this clear objective for the project keeping in mind, the DVC Management approved the implementation of the project with the investment approval on 30.04.2007 stipulating completion period of 36-38 months for both the units in order to complete the project in all respects and to start generation well before the Commonwealth Games. Further, as a general practice, the projects being implemented by CPSUs' or other utilities get similar approvals by their respective Board with specific timelines for completion. The final investment sanction by GOI/CPSU Board in fact, reduces to a mere formality and cannot be considered as zero date as being claimed in the present case. Admittedly, if one considers the date of final investment sanction by MOP/DVC (16.06.2008) as zero date, the project cannot be completed in two years and three months and resultantly, cannot yield in power supply to DTL as envisaged from the project for the Commonwealth Games (October, 2010). Hence, we find no legal infirmity or ambiguity in the impugned order of the Central Commission so far as the issue of computation of completion period of the project considering the zero date from LOA (27.07.2007) is concerned."*
>
> *[Emphasis supplied]*

26. We reiterate the previous decisions of this Tribunal holding that Regulation no. 15 of CERC Tariff Regulations, 2009 in so far as it specifies (with the aid of explanation occurring in Appendix-II) the period of completion of the project relates to the admissibility of additional Return on Equity (RoE) and cannot become the benchmark for calculating the claim of IDC on account of time over-run.

27. In the present case, the contract was awarded by issuance of LoA on 30.06.2004 and even earnest money had been passed on to the EPC contractor contemporaneously. The EPC contractor, as already quoted, commenced the work in April, 2005. The period of construction, to the knowledge of all concerned, had thus actually commenced w.e.f. issuance of LoA which, we may observe again, would not have come without prior investment approval. There is, therefore, no merit in the claim of the Appellant that the period of construction should have been calculated w.e.f. the date of formal issuance of investment approval on 08.09.2005.

28. The Central Commission has examined the justification for delay in computing the time over-run. That was part of its responsibility for applying the prudence check. Given the reasons set out, without any factual error having been shown to us, we are not inclined to interfere in the decision of the Commission in that regard.

29. To understand the grievance of the appellant that the Central Commission has failed to take into account the actual drawl of the loan for purposes of the project, it is necessary to take note of the manner in which the claim of IDC based on deferred drawls has been dealt with by the Commission. For this, we need to quote Para 32 of the impugned order which reads thus:

"32. The claim of the petitioner for IDC, including Notional IDC, as on COD of Unit Nos. 7 is as under:

	COD of Unit No. 8 (15.7.2011)	*COD of Unit No. 7 (2.11.2011)*
IDC & FC including Notional IDC	*61769.30*	*64810.85*

It emerges from the above regulation that if the actual equity deployed is less than 30% of funds deployed (i.e. actual debt is more than 70%), the interest on the actual amount of loan has to be included in capital cost. Also, if the actual equity deployed is more than 30% of the funds deployed (i.e. actual debt is less than 70%), interest on 70% of the funds deployed has to be included in capital cost as Interest During Construction (IDC) by treating equity infusion above 30% as normative loan by the company to itself. Accordingly, <u>IDC has been worked out based on the actual amount of loan deployed as per the details submitted by the petitioner</u> in Form-7 and Form-14 (quarterly cash expenditure) by using average re-payment method. This method has been considered by the Commission in its tariff orders determining tariff in respect of other generating stations for the period 2004-09 which has been upheld by the Appellate Tribunal for Electricity. Accordingly, <u>interest on normative loan</u> has been worked out as per regulations and by considering the following.

- *The <u>fund deployment done by the petitioner periodically till the COD</u> of respective units (i.e. during construction period) has been sourced partly by equity and partly by debt (i.e. debt-equity ratio) which <u>was not uniform</u> during the entire construction period. <u>Therefore, quarter wise debt-equity ratio has been computed as per</u>*

<u>the quarter-wise cash expenditure</u> submitted by the petition in Form 14 and Appendix V of the petition and the <u>infusion of debt has been computed as per the drawl and repayment</u> schedule claimed by the petitioner in Form 7 and Appendix VI of the petition.

- *In case the cumulative equity deployed in any quarter is more than 30% of the cumulative fund deployed, the <u>excess of equity over and above 30% of the cumulative fund deployed has been treated as normative loan.</u>*
- *The <u>interest on normative loan has been allowed based on the quarter-wise rate arrived as per the actual interest</u> and the actual loan balance applicable to the concerned quarter.*
- *It is observed <u>that the debt infusion started only after some period and the initial expenditure for the project has been met entirely through equity. For this period, interest on normative loan has been allowed by considering the Weighted Average Rate of Interest (WAROI) of all corporate loans</u> running during that period. The interest rate allowed in order dated 8.5.2013 in Petition No. 272/2013 has been considered as the WAROI of all corporate loans during that period.*
- *The interest during construction including interest on normative loan has been <u>allowed as per the capitalization ratio</u> arrived from the details of capitalization submitted by the petitioner."*

[Emphasis supplied]

30. It is the submission of the appellant that even if time over run for which some justifications were offered was not fully allowed, the claim of IDC should have been based on deferred draw-down schedule and allowed with all its consequential effects. We agree with the submission of the Respondent that IDC is to be worked out based on actual amount of loan deployed in terms of details of quarterly cash expenditure submitted by the appellant using average repayment method. The Commission has dealt with the issue of IDC and financing charges appropriately calculating the interests on "*normative loan*" correctly on

the basis of Regulations 7(1)(a) of Tariff Regulations, 2009 which have been quoted earlier. The contentions of the Appellant on this issue, therefore, do not impress

31. For the foregoing reasons the instant appeal, being Appeal No. 138 of 2015, and pending applications, if any, are dismissed.

PRONOUNCED IN THE OPEN COURT ON THIS 20TH DAY OF FEBRUARY, 2020.

(Justice R.K. Gauba)
Judicial Member

(Ravindra Kumar Verma)
Technical Member

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