

**JOINT ELECTRICITY REGULATORY COMMISSION FOR
THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Petition No. 89/2012
Date of Order 16.03.2015

In the matter of

Petition for fixation of completed / actual capital cost and Tariff of the project of the petitioner- a Power Generating Company under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with Sections 62(1) (a) and 63 of the Electricity Act, 2003.

And in the matter of

M/s Suryachakra Power Corporation Ltd., Suryachakra House, Plot No. 304-L-III, Road No.78, Film Nagar, Jubilee Hills, Hyderabad- 500096

.....Petitioner

Vs.

1. Electricity Department, Rep. by its Superintending Engineer, Port Blair, Andaman & Nicobar Islands.
2. Chief Secretary, Andaman & Nicobar Administration Secretariat, Port Blair, Andaman & Nicobar Islands.

.....Respondents

Present for petitioner

1. Shri K. Vijay Kumar, Executive Director, SPCL.
2. Shri P. Ramu, Executive, SPCL.

Present for respondents

1. Shri Arvind Tewari, Consultant, ED- Andaman & Nicobar Islands.
2. Ms. Ruchi Sindhvani, Advocate, ED- Andaman & Nicobar Islands.

Order

M/s Suryachakra Power Corporation Ltd. – petitioner filed the present petition no. 89/2012 for fixation of completed / actual capital cost and Tariff of project of the petitioner- a Power Generating Company under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with Sections 62(1) (a) and 63 of the Electricity Act, 2003.

The Commission vide order dated 3.07.2013 approved completed/ actual capital cost of the project of the petitioner under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with Sections 62(1) (a) and 63 of the Electricity Act, 2003.

M/s Suryachakra Power Corporation Ltd. – Petitioner filed appeal no. 200 of 2013 and I.A. Nos. 278&279 of 2013 and Electricity Department- Andaman & Nicobar – Respondents also filed separate appeal no. 268 of 2013 and I.A. No. 359 of 2013 against the order dated 3.07.2013 passed by the Commission in petition no. 89/2012 before Hon'ble APTEL under Section 111 of EA, 2003. The appeals no. 200/2013 & 268/2013 were clubbed by the Hon'ble APTEL.

The Hon'ble APTEL vide common Judgment dated 28.11.2014 dismissed the Appeal no. 200/2013 and partly allowed Appeal no. 268/2013. The Hon'ble APTEL in para no. 36 of the Judgment observed as under:-

Quote

"Thus, the Completed capital cost of the project will be sum of capital cost of Rs. 63.14 Crs. indicated in the PPA and charges on Foreign Exchange Rate Variation on 5.131 MUS\$ incurred on Foreign equipment including their transportation cost, FERV on the customs duty/ taxes on imported equipment applied on equivalent US Dollars, changes necessary for efficient operation of the plant as approved by the Administration or the Joint Commission, additional IDC, Financing cost and Incidental Expenses during

construction for the period of delay in achieving the COD for reasons attributable to the Administration and beyond the reasonable control of Suryachakra Power from the Scheduled COD to the actual COD, change in cost due to change in law and taxes and duties on domestic component as per actuals. The Joint Commission is directed to determine the completed capital cost accordingly. This will be subject to ceiling of actual funds tied up by Suryachakra Power for the project and the actual cost incurred. The Joint Commission will also verify the actual payment of custom duty and remittance of foreign loan."

Unquote

The Hon'ble APTEL in para no. 70 of the Judgment dated 28.11.2014 directed this Commission to pass consequential order within three months of the date of the Judgment.

The Commission in compliance of the order dated 28.11.2014 restored the petition no. 89/2012 on 05.12.2014. The Commission scheduled a hearing on 12.01.2015. The Commission sent hearing notices to the parties and directed them to submit record/ data along with supporting documents on or before 05.01.2015. The petitioner filed data with supporting records and documents on 05.01.2015. The petitioner on 07.01.2015 filed additional documents.

The Commission held a hearing on 12.01.2015 and heard the representatives of the parties. The representatives for respondents requested for three weeks time for filing records/ data along with supporting documents.

The Commission considered the request of the representatives of the respondents and considering the time limit fixed by Hon'ble APTEL, directed the respondents to file records and data along with supporting documents on or before 27.01.2015 positively with advance copy to the petitioner, and scheduled the next hearing on 10.02.2015. The Commission also ordered that no further extension of time will be given in this regard in view of the directives of the Hon'ble APTEL.

The respondents submitted reply, records and data along with supporting documents on 29.01.2015. The petitioner also submitted rejoinder to the reply of the respondents on 09.02.2015.

The representatives of the Respondents on 10.02.2015 submitted that the respondents have filed Civil Appeal No. 1652/2015 in the Hon'ble Supreme Court of India against the Judgment dated 28.11.2014 of the Hon'ble APTEL. The representatives of the Respondents informed the Commission that the Appeal is likely to be heard on 16.02.2015 and prayed for adjournment beyond 16.02.2015 stating that the outcome of the Appeal shall have bearing on the hearings before this Commission.

The Commission after considering the prayer of the representatives of the respondents scheduled the petition for hearing on 23.02.2015. The learned Counsel for the petitioner on 23.02.2015 placed on record a copy of the order dated 20.02.2015 passed by Hon'ble Supreme Court in Civil Appeal No. 1652/2015. The Hon'ble Supreme Court has admitted the Civil Appeal and has directed the respondent in Appeal (M/s Suryachakra Power Corporation Limited) to file reply within two weeks.

The learned Counsel for the respondent (ED- A&N) on 23.02.2015 also submitted before the Commission that as the outcome of the Appeal pending hearing in the Hon'ble Supreme Court shall have bearings on the fixation of the Capital Cost of the project prayed that the petition be adjourned beyond three weeks. Therefore, the Commission adjourned the petition to 16.03.2015.

The Commission heard the representative for the petitioner- M/s SPCL and learned counsel for the respondent (ED- A&N) today on 16.03.2015. The Commission reserved the order.

Sd/-
(S.K.Chaturvedi)
Chairperson

Certified Copy

(Anish Garg)
Director (F&L)