

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

Coram

Dr. V.K. Garg, Chairperson

Sh. S.K.Chaturvedi, Member

Petition No. 89/2012

In the matter of

Petition for fixation of completed / actual capital cost of project 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 section 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

Vs.

1. Electricity Department,
Rep. by its Superintending Engineer,
Port Blair, Andaman & Nicobar Islands.

2. Chief Secretary,
Andaman & Nicobar Administration Secretariat, Port Blair,
Port Blair, Andaman & Nicobar Islands.

Order

Date 18.02.2013

In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining

of the state of Goa, the Commission came to be known as “Joint Electricity Regulatory Commission for the State of Goa and Union Territories” as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 in the district town of Gurgaon, Haryana.

The Commission noted the letter from CEA dated 04th March, 2008 addressed to A&N Administration citing Hon’ble High Court of Delhi Order that the State Electricity Regulatory Authority is to compute the completed capital cost and while fixing the tariff it must take the said completed cost into consideration. Hence, CEA proposed to return the Completed Cost document to A&N Administration for further necessary action. Subsequently, there was a letter from A&N Administration to Secretary, JERC dated 07.01.2009 forwarding a brief note on completed cost of 20 MW IPP Power house with the submission for perusal, scrutiny and approval of the completed cost submitted by SPCL. A petition under Section 86(f) of the Electricity Act, 2003 was filed by SPCL on 13.10.2009 before the Commission for direction to A&N Administration and ED-A&N to pay the long standing dues/for settlement of long pending issues/payments. The A&N Administration in their response filed a counter claim on 22.01.2010.

The Commission gave a final order on 12.07.2010 as under:

“Quote

- 1. The petitioner have filed affidavit dated 09.06.2010 for withdrawal of the petition on the premise that there is likelihood of favourable consideration of the claim by the respondent. Permission is also sought to renew the petition if negotiations fail.*
- 2. The respondents have filed affidavit dated 12.07.10 by way of reply stating that the respondent withdraws the reply to all documents including counter claims that they have made in the reply to the petition by the petitioner. However, they also want to reserve their right for filing the petition in the event of failure of negotiations.*
- 3. Since the parties are proposing to amicably resolve their long pending disputes through negotiations. The Commission feels there is sufficient ground to grant permission to the parties to withdraw their respective petition and counter claim with liberty to institute fresh petition and counter claim/petition in respect of the same subject matter.*
- 4. Before parting, the Commission hopes that the parties shall ensure proper and adequate supply of electricity to the consumer of the Union Territory irrespective of the progress or Outcome of the negotiations between the parties as the interest of the consumer is paramount which needs to be protected.*

5. *The petition as well as the counter claim are dismissed as withdrawn. No orders as to costs.*
6. *File be consigned”.*

Unquote

M/s Suryachakra Power Corporation Ltd. herein the petitioner filed the present petition on 29.11.2012 for fixation of completed/ actual capital cost of project 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 section 62(1) (a) and 63 of the Electricity Act, 2003.

The Commission sent notice of the petition to Electricity Department- Andaman & Nicobar Islands herein the respondents for 17.12.2012. The respondents filed reply on 11.01.2013 to the petition contesting the petition on various grounds and prayed for dismissal of the petition.

The petitioner filed rejoinder to the reply of the respondent on 14.01.2013 and once again prayed for fixation of completed/ actual capital cost of project 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 section 62(1) (a) and 63 of the Electricity Act, 2003.

The Commission held hearing at Commission’s headquarters on 17.12.2012 and passed the following order:

Quote

“1. The Counsel for the petitioner described about total claim, counter claims, withdrawal of earlier claims and counter claims by mutual consent and the numerous meetings taken place between the two sides without any conclusion of the problem. The Petitioner also brought to the notice of the Commission about the precarious position of all the four generating units for want of statutory maintenance which culminated in breakdown of generators and severe decline in supply of power resulting in power cuts imposed on the island, causing inconvenience and hardship to the consumers, which is caused due to non-settlement of the long pending issues and non-payments of arrears.

2. The petitioner was asked about overhauling of different units and what is their state of preparedness for the same. The petitioner replied that overhaul is likely to cost about Rs. 12 Crores for all the four units and would be completed in 60 days time from the date of release of payment. The quotations were already submitted to the department. The Commission inquired whether the quotes are valid? The petitioner replied that quotes as of now are expired as the quotations are two years old and vendors have been extending validity from time to time and now vendors will agree, only after the money is deposited in advance with the State Bank of India. The Respondent was asked to confirm whether the quotes have been submitted to them, to which they replied in affirmative. The respondent was asked as to how are they going to manage power supply to the island during the period of overhaul of the units of IPP. The A&N Administration stated that they have alternative arrangement for supplementing the existing power supply arrangements.

3. The Petition is for determination of tariff of generator under Section 62(1) whereby the generator is generating and selling the entire power generated to the distribution licensee. It was asked from the respondent whether the generator is generating and selling entire power generated by it to the distribution licensee? This was confirmed by the respondent, who further stated that total requirement of main island is about 33 MW and M/s. Suryachakra is providing major part of the requirements, the rest is by own arrangements of the A&N Administration.

4. A&N Administration has already filed its ARR for 2013-14, which is to be decided before 31st March, 2013. Therefore, the tariff of M/sSuryachakra, the IPP supplying power to the distribution licensee M/s A&N Power Department, which constitutes a major part of the total ARR needs to be determined before the public hearings on such ARR of Power Department of A&N Administration taken up by the Commission. The Petitioner is directed to take further requisite action for determination of tariff under Section 62 and publish a summary of the petition and load the full petition on its website in public domain for the comments of stakeholders - within 21 days from the date of such uploading/publication.

5. The Commission asked both the parties to give their own Due and Drawn statement of arrears showing the balance outstanding, and the reasons for non-settlement of the outstanding item-wise keeping in view the original PPA, authorized/forced variations, if any, financial impact of the various technical issues

resolved by the CEA including capital cost operational parameter and treatment of city Bank loan and unsecured loans taken subsequent to the COD, etc.

6. The Commission asked about the Court case filed by a subsidiary of the State Bank of India as stated in the petition. Petitioner stated that the financial constraints caused to them due to non-payment of their tariff dues by the licensee i.e. the Power Department of A&N Administration, resulted in their inability to service the debts taken from the banks for the project and its operation from the Banks. This resulted - in a Court case Petition No.154/2011 admitted by the Hon'ble AP High Court filed by SBI Global Factors Ltd.

7. The petitioner also submitted interim applications dated 29/11/2012 and 14.12.2012 requesting the Commission for direction on arrears of tariff difference between Rs. 11.79 per unit claimed by the petitioner and Rs. 11.42 paid by the respondent and other arrears amounting to Rs.40.90 Crores as principal and an interest of Rs. 54.88 Crores thereon i.e. a total of Rs. 95.78 Crores to give him financial relief to facilitate overhaul of the units and running of the power station properly.

8. The respondent and the petitioner prayed for four weeks time to submit the due-drawn statement as para 5 above. The Commission considered the request, acceded the same and directed the petitioner to submit the computation on or before 10.1.2013.

9. The petitioner is directed to proceed, take further necessary action as per requirements of Section 62(1) and publish the brief summary of the petition as per para 4 above. Licensee and Secretariat of the Commission to take appropriate action accordingly.

10. The Commission observed that the matter is pending for settlement for almost 10 years since the operation of the plant and the ARR of the Respondent for the FY 2013-14 is to be finalised before 31.03.2013, hence the parties will not be allowed any time extension, which may result in adversely affecting the power supply to the consumers”.

Unquote

The Commission again held hearing at Commission’s headquarters on 15.01.2013 and passed following order:

Quote

“Heard.Admitted.

M/s Suryachakra Power Corporation Ltd. filed data & information on 10.01.2013 as directed in the Commission order dated 17.12.2012. ED- Andaman & Nicobar – Respondent filed reply dated 11.1.2013 received in the Commission on 11.01.2013 in regard to the petition. The petitioner filed rejoinder to the reply dated 14.01.2013 received in the Commission on 14.01.2013.

The Commission looked at the process of determination of the cost of completed project for generation of 20 MW power through 4 DG sets of 5 MW capacity each by various agencies as ascertained from various documents submitted before the Commission. It is relevant to refer to the Minutes of the Joint Meeting of the Respondent and the Petitioner held on 17.04.2012 where both parties were present, took a cumulative stock of the development of the process, outcome of determination of cost of completed project and operational issues and the Minutes of the same have been duly approved by the licensee as well as the appropriate Government. As per the minutes, the CEA conveyed the completed cost of Rs. 80.38 Cr. in their letter dated 15.03.2012.

The Commission observed that the highest technical authority for the development of electricity sector in India i.e. Central Electricity Authority set up under Section 70 of Electricity Act, 2003, examined the cost over a period of 3 to 4 years. CEA in their first report referred to a Joint exercise done by a committee of A&N officers of Electricity Department and representative of the petitioner for computing completed cost of the project, based on the observations of M/s Karnataka Power Corporation Ltd. (KPCL), consultants appointed by the respondent. The completed cost of the joint exercise worked out to Rs. 76.14 Cr. It was further stated in the report on joint exercise that the increased expenditure on account of Audit & Accounts, IDC and preliminarily and capital issue expenses totaling of Rs. 8.82 Cr. needed commercial experts opinion to arrive at the extent of admissibility for inclusion in the completed cost over and above Rs. 76.14 Cr. CEA after due verification of records produced to them they arrived at the total cost of Rs. 75.60 Cr as communicated to A&N Administration on 03/11/2010 without considering increase in the cost of establishment and IDC due to delays on account of force majeure and delays on account of A&N Administration as claimed by SPCL, pending comments of A&N Administration.

The Commission observed that subsequently CEA revised the total expenditure, taking into account extended gestation period, as recommended by A&N Administration,

to Rs. 80.38 Cr. including IDC. However considering that the total amount of funds tied up for the project as worked out by CEA, to be Rs. 77.595 Cr. the completed cost was also limited to Rs. 77.595 Cr.(U.O. No. 1/AN/SS/Diesel/TPI/2011/1534 dated 16.05.2011).

The Commission also noted from the Minutes of the meeting held on 17.04.2012 referred above that CEA has conveyed the complete cost of Rs. 80.38 Cr. through their letter dated 15.03.2012. The said minutes also referred to a request made by the petitioner to the A&N Administration to consider the completed cost of Rs. 82.11 Cr. as final cost as per TANGEDCO (Second consultants to A&N Administration) recommendation dated 11.11.2011.

Thus, the Commission noted that the different figures of cost of the completed project were arrived at by the highest technical authority, namely, CEA and other agencies at different points of time ranging from 63.14 Cr. (at the time of signing of PPA), 75.60 Cr, 76.14 Cr., 77.595 Cr., 80.38 Cr. and 82.11 Cr.

The respondent was asked to explain how does a project gets COD and gets completed. The respondent replied that on the date of COD the generator generates and transmits power from the bus bar to the transmission line as per the contract but there are still a number of items called "bunch list" items which do not have a direct bearing on the COD of the project but a part of the project and need completion. Such works were completed after the date of COD and the expenditure was incurred on the same. The expenditure was to be incurred by the implementing agency because the first bill payment for the generation of the project becomes due after completion of one month or more and the realization may still take some time whereas all operational expenditures are to be incurred and the pending works need to be completed and paid for. The respondent accepted that this is the ground reality in the project execution and agreed to examine the different components of expenditure spent on the project works after the date of COD. For this, the petitioner will provide the requisite details as asked by the respondent. Petitioner agreed to do the same.

The petitioner informed the Commission that all the necessary details and documents were provided to A&N Administration on various occasions earlier. The Commission directed the respondent to give a comprehensive list of documents required by them within 3 days namely by 18 Jan., 2013 to be furnished by the petitioner within 7 days

namely by 25th Jan., 2013. The respondent are to submit the statement of cost of the completed project in the form of affidavit by 30th Jan., 2013 to enable the Commission to determine the final project cost and tariff thereon.

The Commission once again emphasized the guiding objective of maintaining uninterrupted power supply in the island in the interest of the consumers especially beginning February, keeping in mind the ensuing examination period. The Commission made it evidently clear that it is the joint obligation of both the petitioner and the respondent.

The Commission had strictly directed the parties to do their homework properly and not to ask for time extension as they have been corresponding for the last ten years. This is the last and final time being given. If they fail to reach any conclusion, Commission may issue necessary directions to both the parties as it may deem fit”.

Unquote

The Commission heard the parties at length on 31.01.2013 and has gone through the petition, reply, rejoinder and documents placed on record carefully and thoroughly.

In response to the Commission’s order dated 15.1.2013, the respondent provided a list of information to be furnished by the petitioner i.e. M/s. Suryachakra Power Corporation Limited (SPCL) within three days of the hearing. M/s. SPCL provided all the information asked for by the respondent in the said list in the communication dated 18.1.2013 within 7 days of the receipt of ED-A&N’s letter i.e. by 26.1.2013. Thereafter, the respondent submitted reply on affidavit on 30.1.2013.

The abstract of project cost submitted by the respondent is the outcome of a five members’ committee appointed by the Chief Secretary, A&N Administration vide Order No. 217 dated 21.1.2013 which is said to have examined the legal framework of all claims with reference to PPA, Techno Economic Clearance (TEC), Report of the Karnataka Power Corporation (KPCL), Advice tendered by Central Electricity Authority (CEA), report of the Tamil Nadu Electricity Generation and Distribution Corporation Ltd. (TANGEDCO) etc. and submitted their report to A&N Administration on 25.01.2013

Description of items		Quantum of Expenditure Rs.Crores	Para Ref. of Committee report
Approved Cost		63.14	15, 17, 29 & 30
IDC	(-)	3.00	
Cost excluding IDC	(+)	60.14	
Increase in cost of Establishment due to extended gestation period	(+)	3.30	17
Increase due to Exchange Rate variation considering only 5.13 MUS\$ Rs.11.0445 per dollar.	(+)	5.67	Allowed as per actual utilization
Additional Transformer and Black Start DG Set – Work done after COD	(+)	0.31	22
Hard Cost excl.IDC		69.42	
Proportionate IDC on the hard cost of Rs.69.11 cr.	(+)	4.91	Revised on hard cost
Completed cost including IDC/Project Cost		74.33	
Liquidated damage @5% on Rs.74.33 crores.	(-)	3.72	
Project Completed Cost.		70.61	

The said report indicated the financial deviation in approved items/works against TEC in a tabular form as under:

Sl. No.	Description	TEC Cost (Rs. Crs)	As SPCL (Rs. Crs)	Deviations (Rs. Crs)	M/s. Auditor Certified only (Rs. Crs)	SPCL only
1.	2	3	4	5	6	
1	Land & Site Development	0.630	6.253	5.62	6.250	
2	Building & civil Cons.	5.490	10.860	5.37	10.860	
3	Works cost including Taxes & duties	45.070	48.567	3.49	47.982	
5.	(b) Electricals	3.900	6.543	2.64	6.281	
	Misc. Project Cost					
6.	IDC	3.000	6.300	3.30	5.841	
7.	Preliminary & Capital issue expenses	1.850	6.210	4.36	6.200	
4.	Contingencies					
7.	Start up fuel for testing & commissioning	3.200	0.375	(-)22.82	0.253	
Total cost		63.14	85.10	21.96	83.667	

Techno Economic Clearance cost	Rs. 63.14 crores
SPCL	Rs. 85.10 crores
Difference	Rs. 21.96 crores

The respondent prayed that the Hon'ble Commission may determine the project cost and tariff thereon in accordance with the provisions of PPA/Techno Economic Clearance issued by A&N Administration and the report of the five members committee constituted by the A&N Administration for the purpose of determination of the cost of the project which is appended with the affidavit as Annexure-I. The respondent vide para 7, 8(a) and 8(b) has submitted a comparative table of TEC cost claimed by SPCL, deviations, audit certificate of M/s. SPCL.

The respondent had engaged M/s Karnataka Power Corporation Limited (KPCL) Bangalore, a State power utility, in 2006. The consultant, M/s. KPCL concluded:

“The total increase in the project cost as furnished by the agency is at Rs.2196.41 lakhs. However, considering the above facts the increase in project cost amount to Rs.1169.79 is not justifiable. The balance amount of Rs.1026.62 lakhs could be considered subject to review and approval by CEA, New Delhi.”

Thus, M/s. KPCL arrived at a total cost of Rs. 63.14 crores + Rs.10.26 crores = Rs. 73.40 crores subject to approval by Central Electricity Authority (CEA) and competent authority (Para 12 of the respondent's reply dated 30.1.2013).

A joint exercise was done by the officials of Electricity Department, A&N Administration and SPCL for arriving at a reasonable cost in April, 2010 whereby it was jointly agreed as under:

Quote

- a. *The works cost of Rs.76.14 crores is broadly acceptable to both the parties and can be considered and recommended to the competent authority for further scrutiny and acceptance.*
- b. *As regards, increased expenditure on account of Audit and Accounts, IDC and Preliminary and Capital issue expenses, totaling to Rs.8.82 crores needs commercial expert opinion to arrive at the extent of admissibility for inclusion in the Completed Cost over and above Rs.76.14 crores.*

- c. However, the completion cost should not exceed more than the expenditure certified by the Auditor of SPCL.
- d. M/s. SPCL in their completed Cost increased the equity component to 31.09% as against the approved TEC provision of 30%. M/s. SPCL to restrict ROE on 30% of the investment and the balance to be treated as term loan for the tariff calculation.
- e. The foreign currency i.e. 9472653 DEM (equivalent US\$ 51,31,020.38 equivalent INR Rs.2227.70 lakhs which is utilized is frozen).

Unquote

Thereafter, the report/findings of M/s KPCL and the Report of Joint exercise were submitted to CEA for further scrutiny and advice. The CEA vide their letter dated 03.11.2010 after perusing the above documents arrived at the Completed Cost of Rs.75.60 crores. The relevant observations of **CEA as quoted from the Respondent’s affidavit dated 30.1.2013** are as follows:

Para 15 Quote

“From the details as brought out above, the factor that can be considered to allow excess cost over approved cost is the exchange rate variation. In the approved cost of Rs.63.14 crores foreign component of US\$10.53 million was considered at the exchange rate of Rs.36 per US\$. The weighted average exchange rate during implementation of the project based on loan disbursement has been indicated as Rs.47.0445 per US\$. It is stated in the report of the Committee on Joint Exercise that the IPP has utilized less foreign currency i.e. 9472653 DEM (equivalent Rs.22.277 crores) and utilized more domestic currency compared to the approved estimates. Increase in cost to the extent of exchange rate variation over the original approved foreign currency i.e. US\$ 10.53 million may be considered even if the actual foreign currency utilized by the IPP is less considering that the actual expenditure is more than the approved cost as certified by the Chartered Accountants. This increase in cost works out to Rs.11.63 crores. Thus the completed cost of the project excluding IDC would work out to Rs.71.77 crores as follows:

Approved cost	Rs.63.14 crores
IDC	Rs.3.00 crores
Cost Excld IDC	Rs.60.14 crores
Increase due to Exchange Rate variation (10.53xMn US\$ x Rs.11.0445 per \$)	Rs.11.63 crores
Completed cost excl IDC	Rs. 71.77 crores

The IDC has been worked out based on above mentioned cost of Rs. 71.77 crores and taking the construction period as given in the PPA. The loan amount has been taken as Rs. 51.1374 crores based on the term loan as indicated in para 8 above(of CEA report). The pro-rata deployment of loan and equity has been considered. IDC works out to Rs. 3.83 crores as per details indicated at Annexure-2(of CEA report). Thus, the total completed cost works out to be Rs.75.60 crores. The completed cost has been arrived at without considering increase in cost of establishment and IDC due to delays on account of force majeure and delays on account of A&N Administration as claimed by the IPP, which may be considered after obtaining comments of A&N Administration,”

Unquote

16. In view of the above said advice of CEA the Administration carried out an exercise to ascertain the extent of delay on the part of each party i.e. delay attributable to A&N Administration and that attributable to M/s. SPCL. As per the said exercise the events attributable to the Administration had caused delay to the extent of 226 days for first two units and 174 days for the rest two units. Further events attributable to M/s. SPCL had caused delay to the extent of 146 days for first two units and 71 days for rest two units. This was communicated to CEA vide A&N Administration letter dated 01.04.2011.

17. The CEA after perusing the delayed gestation period as submitted by A&N Administration arrived at the Completed Cost as Rs. 77.595 crores **vide their letter (CEA) dated 23.05.2011**. The relevant observations of CEA are reproduced as follows”

Quote

“ as per the break-up details of the approved cost given in various documents, it is noticed that approved cost of preliminary and capital issue expenses was Rs.1.8525 crores which included a cost provision of about Rs.1.10 crores for the establishment. As per the completed cost certified by the Chartered Accountant, an expenditure of Rs.5.8137 crores has been incurred on preliminary and capital issue expenses which include Rs.4.7464 crores for establishment. Considering the extended gestation period as recommended by A&N Administration, the cost of establishment worked out to Rs. 4.40 crores on proportionate basis. Thus, the additional expenditure due to extended gestation period works out to Rs.3.30 crores. The completed hard cost of the project excluding IDC would work out to Rs.75.07 crores as per details given below:

<i>Approved Cost</i>	<i>Rs.63.14 crores</i>
<i>IDC</i>	<i>Rs.3.00 crores</i>
<i>Cost excld IDC</i>	<i>Rs.60.14 crores</i>
<i>Increase due to Exchange Rate variation (10.53 Mn.US\$ X Rs.11.0445 per \$)</i>	<i>Rs. 11.63 crores</i>
<i>Increase in cost of Establishment</i>	<i>Rs.3.30 crores</i>
<i>Completed Hard cost excld IDC</i>	<i>Rs.75.07 crores</i>
<i>IDC</i>	<i>Rs. 5.31 crores</i>

The IDC has been re-worked out based on the above mentioned hard cost of Rs.75.07 crores and taking extended gestation period as recommended by A&N Administration and the revised IDC works out to Rs. 5.31 crores as given in Annexure-I(of CEA report). Thus, the total expenditure including IDC works out to Rs. 80.38 crores. However, considering that the total amount of funds tied up for the project worked out to be Rs. 77.595 crores as per details given in our earlier comments, the completed cost could be limited to Rs. 77.595 crores.

Unquote

18. Even the aforesaid project cost of Rs. 77.595 crores was not agreed to by the company. Accordingly, the Member, CEA held a meeting on 14.02.2012 which was attended by Principal Secretary and SE (Ele.) A&N Administration at New Delhi. On the basis of the said meeting, CEA issued a letter dated 15.03.2012, with the remarks that the CEA's advice on Completed Project Cost amounting to Rs.80.38 crores may be treated as final, which has already been communicated to A&N Administration vide their letter dated 23.05.2011 and the fund tied-up aspects may be looked into by A&N Administration.

19. The A&N Administration also appointed a second consultant namely Tamil Nadu Electricity Generation and Distribution Corporation (TANGEDCO) to examine and provide expert comments vide letter dated 08.07.2011 on the following:

Examination by TANGEDCO with following terms of reference :

- (a) Rs.4.02 crores loan said to have been availed from CITI Bank and Rs.2.052 crores loan said to have been availed from other sources and credits by M/s SPCL for the 20 MW project.

(b) To offer specific comments on the extended gestation period including the delay caused by the both the parties as recorded in the Admn's letter dated 01.04.2011.

TANGEDCO vide their recommendations dated 11.11.2011 concluded :

- (i) M/s. SPCL though deviated from achieving the milestone schedule (Appendix-C of the Power Purchase Agreement) had finally achieved COD on 18.02.2003 as per the recommendations of the Independent Engineer i.e. CEA vide their letter dated 18.02.2003.
- (ii) The Administration achieved compliance of the provisions of the Power Purchase Agreement (PPA) under clause 3.3(c)(i),(ii) and (v) (pageNo.23) and Clause 8.3 (page No.41) only on 10.12.2002 and 01.04.2003 respectively. Hence, achieving of COD by M/s SPCL on 02.04.2003 was well before the provision of 120 days and 30 days schedule given in above clauses of Power Purchase Agreement (PPA). Thus, imposition of liquidated damages as per clause 3.10 (page No.28) of Power Purchase Agreement (PPA) on M/s. SPCL for delay in achieving COD is not justifiable.
- (iii) The recommended cost of Rs. 3.865 crores against Rs. 4.02 crores availed by SPCL from CITI Bank in June, 2003 after COD, is reasonable and could be considered for inclusion in the completed cost.
- (iv) Out of Rs. 2.052 crores (other sources) the IPP has claimed a sum of Rs. 0.65 crore which was included and paid to M/s. BSES towards outstanding to their EPC Contractor and also given undertaking to capping in the final capital cost at Rs. 82.110 crores. Considering the above position, Rs. 0.65 crores could be considered for inclusion in the Capital cost.
- (v) There may not be any IDC Component on Rs. 3.865 crore and Rs. 0.65 crore recommended as this expenditure was incurred after COD.
- (vi) The completed cost now works out to be Rs. 82.110 crores (Rs.77.595 crores +Rs. 3.865 crores + Rs. 0.65 crores) which protects the full IDC Cost of Rs. 5.31 crores on the base cost of Rs. 75.07 crores.

The Respondent has analyzed in their reply quoted above the project completed cost analysis at different point of time conducted by different agencies.

CEA considered this report on 19.12.2011 and directed TANGEDCO to further examination of their earlier recommendations dated 11.11.2011:

Quote

“During the discussion it came out that certain documents relating to actual expenditure as originally certified by the statutory auditor in 2004 was not seen by TANGEDCO. Further, it came out that various orders for purchase of equipment placed in the document submitted to TANGEDCO in their report have not been verified by them, although these have been relied upon by them for giving their recommendations. Some other issues were pointed out for their verification before CEA could give their comments on their findings. TANGEDCO agreed to review the recommendations based on the discussion in the meeting.”

Unquote

TANGEDCO after review revised its earlier recommendations dated 5.9.2012 as under:

Sl. No.	Description	Amount (Rs. In lakhs)	Recommendation of TANGEDCO
(a)	Additional transformer and black start DG Set	30.97	Allowed as per MOM dated 19.8.2003
(b)	Centrifugal separator	39.85	To consider under natural justice
(c)	Road culverts jetty bldg. and Civil cont.	88.54	Subject to approval from APWD
	Total	159.27	

According to respondent, petitioner’s claim at (b) and (c) above cannot be agreed as PPA does not have provision to consider expenditure on natural justice and certification by APWD for inclusion in the project cost.

The Respondent in their reply dated 30.01.2013 also indicated that a meeting was convened in the A&N Administration Secretariat on 17.04.2012 by the Principal Secretary (Power) wherein ED-A&C and SPCL participated and cost of Rs.77.595 crores was considered as provisional cost of the project for which both the parties agreed. Accordingly the Administration communicated the provisional project cost of Rs. 77.595 crores to M/s. SPCL vide their letter dated 18.05.2012.

The Commission has taken into account the following:

- i. PPA and Addendum I (dated 30.3.2009) & II (dated 18.08.2011) to PPA
- ii. Report dt. 24.4.2006 of KPCL

- iii. Advice of CEA regarding completed cost of Rs.75.60 crores excluding cost towards extended gestation period.
- iv. Advice of CEA for completed cost of Rs. 77.595 crores including cost towards extended gestation period.
- v. Report dated 11.11.2011 of TANGEDCO for assessing the quantum of the works done after COD and their cost.
- vi. Report dated 05.09.2012 of TANGEDCO for assessing the quantum of works done after COD and their cost submitted in pursuance of the CEA's directive dated 19.12.2011 to review their earlier proposal
- vii. The A&N Admn. Constituted a committee vide order No.3807 dt. 06.11.2012 for looking into the advice of CEA as communicated vide letter dated 15.03.2012 regarding completed cost of the project. This Committee after careful consideration of the provisions of PPA had, inter-alia, opined in their report dated 09.11.2012 that "Assessment/Computation of the final cost of construction of Bamboo Flat Power project is intrinsically and inalienably linked with the sources and quantum of fund arranged by the Company for carrying out the construction of the project."
- viii. The recommendation of TANGEDCO dated 11.11.2011 and subsequent revision on 05.09.2012 related to CITI Bank loan amounting to Rs. 4.02 crores. TANGEDCO allowed only Rs. 1.59 crores in the capital cost, whereas the Administration included only Rs.0.31 crore and did not include Rs.1.28 crore.

The Commission has further perused :

1. Minutes of the Meeting held by A&N Administration dated 5th June, 2002, 15-17th April, 2010, 12th November, 2010, 17th April, 2012 and Report vide Order No. 3807 dated 6.11.2012.
2. Minutes of the Meeting with CEA dated 19th August, 2003 and 27-28th April, 2006
3. Minutes of the Meeting with Ministry of Home Affairs dated 17th July, 2008
4. The Report of Karnataka Power Corporation Ltd.
5. The Report dated 11th November, 2011 of Tamil Nadu Electricity Generation and Distribution Corporation Ltd. along with their Review Report dated 5th September, 2012.

The Commission feels that the present analysis drawn and put up by the Respondent rather appears to be an after thought because the Table given in Page no. 9 of this order forwarded by their respondent is now not visible or available in

any of the documents exchanged between the two parties over a period of last 15 years. It is also pertinent to mention that some of the Members of the Committee constituted by the Chief Secretary, A&N Administration vide Order No. 217 dated 21st January, 2013 and participants in joint meetings were also Members and participants in many of the meetings between the A&N Administration and M/s. SPCL for which formal Minutes of the Meetings were issued by the A&N Administration.

It is seen from the above that technically the most competent agency to give authentic view on the capital cost of the generation plants including thermal/diesel etc. is the Central Electricity Authority. The Authority under the Act is the most competent Authority on this subject, as also admitted by the Chief Secretary, A&N Administration in his letter dated 18th May, 2010 addressed to the Ministry of Power, Government of India.

Secretary (Power) A&N Administration in his letter addressed to Chairman, CEA dated 03rd May, 2010 and Chief Secretary, A&N Administration in his letter addressed to Secretary (Power), MOP, GOI dated 18th May, 2010, acknowledged as under :

Quote

This being a technical matter, which is beyond the competence of A&N Administration, needs to be examined by CEA to decide what should be the acceptable Completed Cost. In fact, in the absence of powers delegated to A&N Administration by Govt. of India, there is no other option in this matter.

Unquote

CEA concluded its comments and the completed cost of this project vide its letter dated 18/10/2010 as follows :

Quote:

Thus the total completed cost works out to Rs. 75.60 crores. The completed cost has been arrived at without considering increase in cost of establishment and IDC due to delay on account of force majeure and delays on account of A&N Administration as claimed by IPP which may be considered after obtaining comments of A&N Administration.

Unquote

Subsequently, CEA after perusing the delayed gestation period as submitted by A&N Administration arrived at the completed cost as Rs. 77.595 crores vide CEA letter dated 23.5.2011. Though the CEA concluded that the total expenditure including IDC worked out to Rs. 80.38 crores, the completed cost was restricted to Rs. 77.595 crores based on CEA approved tied up funds.

Quote

The IDC has been reworked out based on the above mentioned hard cost of Rs.75.07 crores and taking extended gestation period as recommended by A&N Administration and the revised IDC works out to Rs.5.31 crores as given in Annexure-1. Thus the total expenditure including IDC works out to Rs. 80.38 crores. However, considering that the total amount of funds tied up for the project worked out to be Rs.77.595 crores as per details given in our earlier comments, the completed cost could be limited to Rs.77.595 crores.

Unquote

Moreover, CEA issued a letter dated 15.3.2012 with the remarks that the CEA's advice on completed project cost amounting to Rs. 80.38 crores may be treated as final, which has already been communicated to A&N Administration vide their letter dated 23.5.2011 and the funds tied up aspects may be looked into by A&N Administration.

The Commission has examined various correspondence of the A&N Administration with CEA and the Minutes of the Meeting with CEA/MHA pertaining to approval of the Completed cost and other issues raised by IPP (SPCL) on various occasions, - to mention a few – 19th August 2003, 27th& 28th April, 2006, 4th March, 2008, 17th July, 2008, 04th January, 2009, 3rd November, 2010, 16th May, 2011, 15th March, 2011 and 09th November 2012.

The total power availability in the A&N Islands is 83.71 MW of which 63.71 MW is owned by ED-A&N and 20 MW is purchased from the IPP (SPCL). 63 MW generated 105.36 million units including hydro capacity whereas 20 MW IPP generated 136.96 million units in 2011-12.

The Commission also noted that SPCL maintained a good level of PLF much above the PLF mentioned in the PPA (viz. 68.49%) consistently in the recent years.

The PLF year-wise achieved by SPCL as taken from the records submitted by them to the Commission is given in the table below:-

Year	PLF%
2003-04	65.88
2004-05	64.71
2005-06	60.37
2006-07	62.18
2007-08	64.09
2008-09	74.25
2009-10	76.49
2010-11	81.13
2011-12	80.23

The petitioner as well as respondent emphasized the immediate need for overhauling the three engines of the 20 MW Diesel generating Plant of the petitioner (SPCL) in quick rotation to ensure uninterrupted power supply during the examination period of the educational institutions commencing from February, 2013.

The Commission in their hearing of the petition on 17.12.2012 asked the petitioner about the case filed by a subsidiary of State Bank of India (viz. SBI Global Factors Ltd.) in the A.P. High Court, as stated in their petition. The petitioner stated that the financial constraints caused to them by non-payment of their tariff dues by the licensee viz. Electricity Department, A&N resulted in their inability to service the debts taken from the Banks for the project. This had resulted in a Court case. The petition of the subsidiary of State Bank of India was to wind up the petitioner Company (SPCL) for non-payment of dues was admitted by Hon'ble A.P. High Court.

The Commission in their orders dated 17th December, 2012 and 15th January 2013 observed that it attached utmost importance for maintenance of uninterrupted power supply in the Island in general and the examination period in particular. There cannot be any compromise on the maintenance of uninterrupted power supply. The Commission in its order dated 17.12.2012 asked the petitioner about overhauling of different units and what was their state of preparedness for the same. The petitioner replied that overhaul is likely to cost about Rs. 12 crores for all the four units and would be completed in 60 days time from the date of release of payment. The quotations were already submitted to the Department. To a query by the Commission regarding validity of the quotes, the petitioner

replied that quotes as of now expired as the quotations are two years old and vendors will agree only after the money is deposited in advance with State Bank of India. The Respondent also confirmed that the petitioner had submitted them the quotes from their vendors.

The Commission observed that there are different options available before them :

- 1) One option is to allow status quo to continue and it may take months or in exceptional circumstances some years to resolve the dispute and arrive at a conclusion for fixation of completed cost and the tariff.
- 2) The other option available to the Commission is that the matter pertaining to fixation of completed cost of the project be examined by a third party expert agency including examination of issues of foreign exchange rate variation, liquidated damages etc., say, within a period of two months.

The Commission has already noted the precarious financial position of the petitioner, particularly with an impending High Court case for its winding up as well as the immediate need for overhauling of engines for the assured power supply. In both the above options, the Commission is of the view that there will be further deterioration of the power situation leading to misery and hardship to the residents of the Island.

The Commission further observed the fact that PPA does not have any remedial measures to deal with such a situation. This compels the Commission to think beyond the PPA to alleviate and avoid total breakdown of power supply in the Island. The Commission considered all the aspects of the impending situation and after full application of mind comes to the conclusion that a via media needs to be evolved to overcome the situation and create an even platform for both the parties to ensure the required uninterrupted power supply.

- 3) Pending the appointment of the expert and submission of report by him, the Commission may direct the Respondent to release an advance to the petitioner to undertake overhauling of the engines immediately to ensure uninterrupted power supply. The said advance can be adjusted against monthly tariff in a reasonable instalment basis.

Accordingly, the Commission feels that the third option appears to be the most appropriate in the circumstances described above.

The Commission considers that prima facie, the cost of Rs. 77.595 crores as decided by CEA till now and be used for providing provisional tariff (Annexure A). It is also pertinent to note here that the ED- A&N is also considering the same project cost as completed cost for the purpose of regulating the monthly tariff of the petitioner as at present.

The Commission asked the Department the details of monthly tariff as per invoice being paid to the petitioner and asked them to work out what is the amount left out of the O&M charges included in the invoice after following “**waterfallprinciple**” of payment for committed essential payments like salaries, material, statutory payments, etc.

It was stated by the Respondent that approximately Rs. 20 lacs would be available over a period of next five years for recovery in case any amount is given as advance/loan to M/s. SPCL. The Commission examined the arguments of both the petitioner and respondent at length on the issue of maintenance of uninterrupted power supply, viz

- i) Time taken for overhaul;
- ii) Uninterrupted power supply in the absence of overhaul of IPP units by quick rotation;
- iii) The alternative of giving advance for overhaul; and
- iv) Feasibility of the recovery of such an advance through the components of tariff.

Thus the Commission concluded that :

The matter pertaining to fixation of completed cost of the project w.r.t. PPA, the various documents and the various recommendations done by CEA, KPCL, TANGEDCO, etc. be examined by a third party expert agency within a period of next two months.

Pending the appointment of expert and submission of report by him,

(A) The Commission directs the petitioner as under:-

1. Petitioner will maintain uninterrupted power supply
2. The petitioner will make an application to the respondent for releasing an advance of Rs. 10 crores in three instalments. First instalment being placed in a special account and Letter of Credit (LC) be opened on the contractor M/s. Caterpillar to initiate the work immediately and furnish a work schedule, completion date for each of the 4 generators. The revolving LC can be divided into three parts – first part i.e. 50% or Rs. 5 crores to be released at the placement of order – second part 25% or Rs. 2.5

crores to be released after the overhaul of the 2 engines and the balance 25% after the overhaul of the last 2 engines.

(B) The Commission directs the respondent as under:-

1. To obtain the approval of competent authority within one week from the application of the petitioner.
2. To open the LC on the contractor M/s. Caterpillar through a special account.
3. 50% payable on the placement of order, 25% payable on completion of overhaul of 2 engines and the balance 25% payable after the overhaul of the last 2 engines.

To release various payments flowing from capital cost w.r.t. to CEA recommended completed cost of Rs. 77.595 crores. Wherever CEA has given recommendation for release of payments w.e.f. a specific date, the payments will be released from the specified date. All other payments once recommended by CEA in principle are payable from the date of COD because what is payable today was payable yesterday as well. So there is no rational/logic to deny the generator these payments which are linked & will flow from the capital cost as provisionally recommended by CEA.

The delayed payments, outstanding payments, withheld payments and interest of term loan/ working capital are payable on the same interest rates and terms on which the Electricity Department, A&N has recovered from M/s SPCL in compliance with the provisions contained in PPA.

Both parties to report compliance by 11th March, 2013.

The matter is scheduled for hearing on 12th March, 2013.

Sd/-
(S.K. Chaturvedi)
Member

Sd/-
(Dr. V.K. Garg)
Chairman