

BEFORE THE JOINT ELECTRICITY REGULATORY
COMMISSION FOR THE STATE OF GOA AND UNION
TERRITORIES AT NEW DELHI

FILE NO:

CASE NO:

In the matter of:

M/s. Suryachakra Power Corporation Limited
Suryachakra House,
Plot No.304–L-III,
Road No.78, Film Nagar,
Jubilee Hills,
HYDERABAD - 500 096

VERSUS

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

RESPONDENT No.1

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

RESPONDENT No.2

AND

In the matter of:

PETITION FOR APPROVAL OF COMPLETED/ACTUAL
CAPITAL COST OF THE PROJECT AND TARIFF 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

MOST RESPECTFULLY SHOWETH:

THE PARTIES

1. The Petitioner is an independent power generator, with its station situated at Bambooflat, Andaman & Nicobar Islands. It generates and supplies 20 MW power to the Electricity Department, Andaman & Nicobar viz. Respondent No. 1. This power is being generated and supplied pursuant to the Power Purchase Agreement (PPA) dated 20.11.1997 entered into between the Petitioner and the Respondent No.1. The Petitioner was awarded the *Project* after a competitive bidding process, in accordance with the extant Central Government of India Guidelines. The PPA is for a period of 15 years and with a mutually agreed extension of the term for three further periods of 5 years each as per Article 2 ('C) of the PPA. Thus the PPA still subsists. A true copy of the PPA is annexed herewith and marked as **Annexure -P1**.
2. The Respondent No.1 is the Electricity Department represented by Superintending Engineer or the Authorized person for all matters relating the instant project as per the PPA and is responsible for distribution of power to the Andaman & Nicobar Islands. It procures power from various power generators as well as from its own power generating stations.

3. The Respondent No.2 is the Chief Secretary, A&N Administration. The Chief Secretary is the administrative head of the Union Territory as well as the Electricity board. The Electricity Department is also part of the A&N Administration.

THE PROJECT BACKGROUND

4. The project is a diesel based power generation project, with generating capacity of 20 MW. Power is generated by using 4 DG set generators of 5 MW capacity, each.
5. Andaman and Nicobar Islands (ANI), popularly known as the “Bay Islands”, lie in the Bay of Bengal and comprise a long narrow broken chain of 572 islands.
6. In the year 1991, the average per capita consumption in A&NI stood at 113 Kwh, which was far below the then national average. Further, the Department of Power, Ministry of Energy anticipated that in the next 10 years demand in South Andaman alone would rise to 43.80 MW. The long term forecasts of peak load and energy requirements of A&NI developed by Central Electricity Authority (CEA), New Delhi, revealed a wide gap between demand and supply. In order to plug this gap, the ANI Administration decided to set up a power project in South Andaman. Accordingly the A&NI Administration obtained approval from the CEA in the year 1995 of

- Rs.66.88 Crores for the installation of 20MW Diesel Generating Station and subsequently opted to establish this project through private sector participation.
7. In February 1995 open tenders were invited, in terms of the extant policies of the Union Government in respect of public bidding. Competitive bids were received from nine private power developers including the Petitioner herein. The Petitioner was declared as the successful lowest bidder to set up the 20MW Power Station at Bambooflat. The IPP was awarded to the Petitioner by the Administration on 24-08-1995 and an MOU was signed on 13.02.1996.
 8. Thereafter, on 20.11.1997, the PPA was entered into between the parties for setting up of a diesel based power production plant. It is pertinent to mention that the PPA was vetted by SCOPPA of CEA at the request of the A&NI Administration.
 9. The salient features of the PPA are given below:
 - A. Tariff Calculation – tariff will be payable in Indian Rupees and shall be the sum of the fixed charge payment, the variable charge payment, incentive payment, foreign exchange adjustment and change in law adjustment.

- B. Annual Fixed Charge – includes interest on debt and working capital, depreciation, operation and maintenance (O&M) expenses, tax on income, return on equity of 16% at the availability PLF of 68.49% and exchange rate variations.
- C. Variable Charges – includes the cost of fuel at a station heat rate of 2010 Kcal/Kwh as per the HSD oil with high Sulphur content (Low Sulphur high flash grade- LSHF Oil) as per Indian Oil Corporation Ltd., specification, Lube Oil at the rate of 1.1 gm/Kwh and auxiliary consumption of maximum 4.5%
- D. Incentive Payment – SPCL will get an additional payment @ 0.65% on equity for every additional 1% of PLF achieved over the normative PLF of 68.49%.
- E. Term – The PPA is effective for a period of 15 years from the date of commencement of commercial operation with an extension of the Term and the Effective Term for three further periods of five (5) years each (3X5).
- F. Deemed Generation – "Deemed Generation" and "DG" shall mean, with respect to the Project during a Deemed Generation Period, the difference, in Kwh, between (x) the product of (i) the lower of (x) Declared Availability of the Project (in MW) in the

Deemed Generation Period (y) Rated Capacity (unless it cannot be determined, for example, due to the occurrence of an event of Force Majeure), and (z) Observed Capacity, (ii) the number of period Hours in the Deemed Generation Period, and (iii) one thousand (1,000) and (y) Gross Actual Energy produced by the project during such Deemed Generation period "DG", shall mean the Deemed Generation for Period Hours; accordingly, $DG_t = (D_t * PH_t * 1,000) - (\text{Gross Actual Energy})$, where D=the lower of (x) Declared Availability of the Project (in MW) in such period, (y) Rated Capacity (unless it cannot be determined, for example, due to the occurrence of an event of Force Majeure); and (z) Observed Capacity; Deemed Generation to the extent required to enable the Company to achieve NPLF in a Tariff year would be taken.

G. Billing & Payment –

(i) (a).Billing & Payment disputes: The Company shall prepare and submit (by facsimile transmission or otherwise) to THE ADMINISTRATION not later than the fifth Business Day after each Metering Date an invoice (a "Tariff Invoice") for the payments due to the Company under this agreement (other than those due

in respect of a Supplementary Invoice but including the billing period ending immediately prior to such Metering Date), along with the corresponding Record of Meter Reading detailing Electricity and Deemed Generation and THE COMPANY'S calculation in accordance with the provisions of Appendix D of such payments due to the Company for such Billing Period. Payments due in respect of a Supplementary Invoice shall be paid in accordance with section 8.6 of the PPA. The aggregate amount of the payments due to the Company for such Billing Period as set forth in the applicable Tariff Invoice ("The Invoice Amount") which term shall also mean, with reference to any Supplementary Invoice, the aggregate amount of the payments due to the Company under such Supplementary Invoice) shall be due and payable by THE ADMINISTRATION.

(b) Payment of Disputed Amounts; Resolution of Disputes. If THE ADMINISTRATION disputes the accuracy of a Tariff Invoice or a Supplementary Invoice, THE ADMINISTRATION shall nevertheless pay the full amount of such Invoice but may serve notice on the Company that an amount submitted under such Invoice is disputed and the Parties shall use

their best efforts to resolve the dispute in accordance with Article 15 within the time limits set forth therein.

(c) Payment upon Resolution of Disputes. If, upon the resolution of a disputed amount, the Company is required to reimburse THE ADMINISTRATION, the Company shall make such payment to THE ADMINISTRATION with interest thereon. Such interest shall be payable at the rate which is one half per cent (0.5%) above the applicable Cash Credit Rate Calculated for the period from date of receipt of such amount is paid to but excluding the date on which THE ADMINISTRATION is reimbursed. To the fullest extent permitted by the law of India THE ADMINISTRATION hereby irrevocably waives the right to dispute any tariff Invoice or Supplementary Invoice after a period of one hundred and twenty days from the date on which THE ADMINISTRATION received such Invoice, unless THE ADMINISTRATION is able to demonstrate that it could not reasonably have been aware of an error in such Invoice during such period.

(ii). Letter of Credit: (a) In this agreement letter of credit amount shall mean during each tariff year in which there is a billing period, an amount equal to two next succeeding monthly tariff payments in

respect of six month period following commission date of first unit and re-calculated after six month period to be twice the average monthly tariff payments for the immediately preceding six months, revised up to the commercial operation dates and then six monthly.

(b) THE ADMINISTRATION, at its own cost and expense, shall establish and maintain one or more transferable, assignable irrevocable and unconditional revolving Letters of Credit in favour of, and for the sole benefit of the Company. The Letters of Credit shall be established in favour of, and issued to, the Company not less than thirty (30) Days prior to Scheduled Commercial Operation Date of the first Unit and shall be maintained consistent herewith by THE ADMINISTRATION at any and all times during the Term. THE ADMINISTRATION shall, at least seven (7) days prior to any increase in the Letter of Credit Amount becoming effective, so establish Letter(s) of credit in aggregate equal to any such increase. Such Letter(s) of Credit shall be in form and substance acceptable to the Company, be issued by a scheduled Bank in Port Blair, (India) acceptable to the Company.

(iii). Rebate: (a) If payment in full of a Tariff Invoice and all other amounts due in respect thereof is made

on or prior to the date which is the fifth Business day after the Date of presentation of the Tariff Invoice to THE ADMINISTRATION pursuant to Article 8.2 (which presentation may be by facsimile transmission) by wire transfer payment or otherwise such that, in any such case, there shall be immediately available funds in an amount equal to the full amount due to the Company in the Company's account on such date which is such fifth Business Day, THE ADMINISTRATION shall be allowed a rebate equal to 2.5% of the amount of the Invoice Amount of such Tariff Invoice paid on such date for payments within a period of one month on presentation of bills by the generating company, a rebate of 1% shall be allowed.

(b) If the Company shall receive all such amounts not later than such fifth Business Day in immediately available funds, such rebate, if any, may be taken by THE ADMINISTRATION as a credit against the Tariff Invoice which is then due (and no overdue) and then being paid.

(c) Notwithstanding the foregoing, THE ADMINISTRATION shall not be allowed a rebate under this Article 8.4, unless the Letter(s) of Credit specified

in Article 8.3 and the Collateral Arrangements are, at the time such rebate is to be allowed, being maintained by THE ADMINISTRATION in accordance with Article 8.3.

(iv) Late Payments: If any amount due hereunder from one Party (the "Payer") to another Party (the "Payee") is not paid when due, there shall be due and payable to the payee interest at the rate which is one half percent (0.5%) above the Cash Credit Rate, from and including the date on which such payment was due to but excluding the date on which such payment is paid in full with interest. All such interest shall accrued from day to day and shall be calculated on the basis of a 365-day year, compounded monthly, and paid on demand as per the Clause No.8.6 of PPA. If no due date is specified under this agreement with respect to any amount due under this Agreement, the due date thereof shall be fifteen (15) days after demand is made therefore by the payee.

FACTS OF THE CASE

10. The project was completed, installed and commissioned as per the terms of the PPA dated 20.11.1997 and Amended on 30.03.2009. The Committee on Non-Plan

Expenditure (CNE) vide their letter dated 25th September 1998 gave their approval to the project with a recommendation to the Ministry of Finance to provide Rs.391.63 Crores in the non-plan budget of the Territory spread over a period of 15 years, during the meeting held on 4th September 1998 on this subject. A true copy of the recommendation dated 25.09.1998 is annexed herewith and marked as **Annexure-P2**.

11. The Project was commissioned on 01.04.2003 and the Commercial Operation Date for the project was 02.04.2003. Towards this, the Respondent department has also issued a completion certificate dated 02.04.2003. Initially the Respondent had issued a provisional COD but later it was declared as final COD from 02.04.2003 by itself as per the Minutes of Meeting dated 29.04.2006 with CEA & others. A true copy of the Completion Certificate dated 02.04.2003 issued by the Respondent No.1 is annexed herewith and marked as **Annexure-P3**.

PROJECT COST EXPLANATION

12. As per Article 1 Sub-Clause (xxii) 'completion cost' means the cost actually incurred by the company in completing the project. Similarly as per Sub-Clause (xvi) 'capital cost' means the actual cost incurred by the company in

completing the project. The PPA further approved a project cost of Rs.63.14 Crores as a provisional project cost.

13. The total project cost was broadly divided into the following while approving the same:

Particulars	Project Cost (Price level 6/95 at the time of bid) (Rs. in Lakhs)	Project Cost (Revised) Price level June 97 (Rs. in Lakhs)	Escalation (Rs. in Lakhs)
Land & Site	60.00	63.00	3.00
Buildings & Civil	499.00	549.00	50.00
Imported components and indigenous equipment	2568.50	3790.80	1222.30
Customs Duty	327.00	450.45	123.45
Indigenous	748.50	389.75	(358.25)
Electricity & Fixed assets	231.00	265.75	34.75
Preliminary and capital issue expenses	145.00	185.25	40.25
Contingencies	275.00	275.00	NIL
Margin Money for Working Capital	66.00	0.00	(66.00)
Startup fuel	0.00	45.00	---

(IDC)	305.00	300.00	(5.00)
Total	5225.00	6314.00	1089.00

- The US Dollar Exchange rate at the time of bid, i.e. June 1995 was Rs.31.50. The US Dollar Exchange rate as on June 1996 was Rs.36.00. The percentage escalation between June 1995 and June 1996 works out to 20.84%.
14. The above table indicates the approved provisional project cost of the project. The actual project cost or the completed project incurred by the Petitioner is Rs.85.10 Crores. On 24.07.2003 the Respondent Administration issued a letter to the Petitioner requesting it to submit the completed cost of the Project. Consequently the Petitioner, on 29.11.2003 submitted the completed project cost to the Respondent administration. Thus there is an increase of Rs.21.96 Crores, over the TEC approval cost of Rs.63.14 Crore which amounts to an increase of 34.8% over the estimated cost at June 1997 price level and exchange rate.
15. The variation in the project cost was due to (a) price escalations / inflation (b) exchange variations (c) additional items (d) change in design parameters based on soil conditions of the site etc. The auditors of the Petitioner after auditing the accounts of the Petitioner have given their report dated 23.12.2004, in which they

have certified the following actual amount as the Project capital cost:

Rs. in lakhs

Particulars	Approved Cost	Revised Cost	Cost Certified by the CA
EPC Cost			
- Foreign			
- Domestic	3312.50	2227.70	
- Sub-Total	1910.38	3661.65	
	5222.88	5889.35	5884.12
Non-EPC Cost			
- Foreign			
- Domestic	40.00	0.00	
- Sub-Total	1051.12	2621.06	
	1091.12	2621.06	2482.65
Total			
- Foreign			
- Domestic	3352.20	2227.70	
- Sub-Total	2961.50	6282.71	
	6314.00	8510.41	8366.77

The Auditors have issued a certificate for an expenditure of Rs.83.67 Crores as against the submitted project cost of Rs.85.10 Crores. The balance expenditure of Rs.1.44 Crores is provided as part of the project cost, which the Auditors have not certified. Hence, the balance expenditure of Rs.1.44 Crores has not been included in the project capital cost. True copies of the letter dated 14.07.2003 of the Respondent and the letter dated 29.11.2003 of the Petitioner including the complete set of documents submitted to the Respondent Administration with the letter dated 29.11.2003 and the subsequent request documents by the Petitioner claiming completed

cost of Rs.85.10 crores, are annexed herewith and marked as **Annexure-P4 (Colly)**.

16. Detailed reasons and analysis of the capital cost variation under specific heads are given here below.

DELAY IN IMPLEMENTATION, CONSTRUCTION AND COMMISSIONING OF THE PROJECT

17. The Committee on Non-Plan Expenditure (CNE) approval for the budgetary support to the Administration was accorded after the CNE meeting held on 4th September 1998. After the CNE approval, the Administration issued letters for transfer of the licenses/ clearance in the name of the Company to the respective Governmental Agencies and Addendum to the PPA was executed in March 1999.
18. The land lease agreement for 4.12 hectares was executed in August 1999 and handing over & taking over of the land took place in October 1999. The above developments, which were pre-requisite conditions of the PPA, took around 2 years period, after excluding the period for transfer of licenses/ clearances for which the Administration issued letters to the concerned authorities.
19. There was a further delay of around 9 months as the Petitioner took that much time to make the Project bankable and convince the financial institutions to invest

- in the said project. The Project has finally achieved Financial Closure on 01.08.2000.
20. While establishing the Plant, the Petitioner had to face certain handicaps on numerous issues, like land measuring 4.12 hectares was given under lease for the IPP instead of 4.67 hectares as per PPA; the Petitioner had to agree for a conditional Letter of Credit from the Administration initially instead of an unconditional letter of credit as promised under the PPA.
 21. After the financial closure of the project on 1st August 2000, the project construction work began to be carried out according to the schedule in the PPA and was ready by April 2002. A meeting was held in the chamber of the Chief Secretary of the Administration on 5th June 2002 and taking an overall view of the plant and the evacuation system, it was agreed for COD of 1st & 2nd Units by the end of August 2002 and 3rd & 4th Units on 15th October 2002 or till the completion of construction of transmission line, whichever earlier, due to the ban imposed by Hon'ble Supreme Court on felling of naturally grown trees in A&N Islands, change in the transmission line and withdrawal of the foreign technicians by their respective governments due to War threat between India and Pakistan. The Statement of chronological events of

the Project in a tabular form are annexed herewith and marked as **Annexure-P5**.

22. Due to the international border dispute between Indian and Pakistan, a war like situation had developed in India during June-July of 2002 and all Foreign Nationals of the equipment suppliers supervising erection were called back to their countries. Thus, experts from other countries, who were working on various aspects of the project including the German Expert, had to leave for their country. Further as per PPA Clause No.3.3 (‘c) (i) & (ii) the Respondent shall develop design, engineer, construct new transmission facilities and shall be commissioned ready for inter connection with the project not later than 120 days before the required commercial operation dated of 1st unit. However the above evacuation lines i.e., new double circuit panther lines were readied by the Respondent only by 10.12.2002 by which time the DG engines of plant were ready for trial runs i.e., by end of November 2002. The trial runs of individual DG set and also the parallel operation of DG sets was completed by 15th December 2002 as per the request of Respondent. During trial runs the Electricity Department’s instructions were also implemented to prove the plant readiness. Acceptance tests for each

- engine for 72 hours operation and also all four engines parallel working as per the PPA was completed in the presence of CEA representatives and officials from Electricity Department by 18th February 2003. As per the request of Electricity Department the plant was run during peak periods in the month of January 2003 to meet the Islands power demand. However the Administration took 6 weeks and declared only Provisional Commercial Operation Date on 01-04-2003 which was not as per the provisions of PPA.
23. As per clause 3.3 (c) (ii) of the PPA, the A&N Administration was obliged to cause the transmission facilities to be commissioned and ready for interconnection with the Project not later than 120 days before the required commercial operation of the Project. The Administration had claimed force majeure for the delay in achieving commissioning of the transmission facilities because of a Supreme Court Order. The permanent transmission line was inspected by Electrical Inspectorate of CEA only on 10.12.2002 for approval.
24. In terms of PPA, to ensure timely payment of tariff, ANI Administration was bound to furnish an irrevocable, unconditional and revolving Letter of Credit in favour of the Petitioner, covering billing of 2 months. The Letters of

Credit ought to have been established in favour of and issued to, the Company not less than thirty (30) days prior to Scheduled Commercial Operation Date of the first Unit and shall be maintained consistent herewith by the Administration at any and all times during the Term of PPA. The Administration opened conditional letter of credits as given below, which were not acceptable to the Petitioner's term lenders:

Date	L.C.No.	Amount
22.01.2003	IND/0156/01	Rs.5,65,19,000
20.02.2003	IND/0156/02	Rs.5,03,46,000

25. Because of lack of letter of credit as per the terms of the PPA, the release of working capital limits got delayed accordingly commercial operation also got delayed. Amendments to the above letters of credit were provided only on 07.04.2003 much after commercial operation date.
26. During the implementation and construction, the Petitioner's ability to complete the timely commercial operations were impeded by number of external factors, which were beyond the control of the Project. The Supervisor from the original equipment supplier MAK-CAT, the entity responsible for commissioning the engines, was withdrawn from the Project site on 8th June

2002 due to the prevailing war-like situation at the Indo-Pak border. All four engines had been run at this point and were partially loaded before the Supervisor left at the urging of the German embassy. This interruption in commissioning activities constituted a force majeure event under the PPA and the Petitioner notified the A&NI Administration of this force majeure event at the time. These events contributed to a delay in commissioning activity, which was beyond the control of the Petitioner. The war-like situation in the country and withdrawal of foreign nationals and the consequent deterioration of LO & DO piping has prolonged the plant commissioning activity. It is pertinent to mention that the delay was mutually acceded to by the parties, as the cause was 'force majeure'.

27. As per Article 3.3 (b) (ii) (d) of the PPA, the A&NI Administration was required to provide support to the company by providing reliable construction power, to allow the Petitioner to effectively carry out the construction activity. Notwithstanding this obligation, power supply interruption occurred very frequently and for long durations, and these interruptions disrupted construction and caused delays in completion activities. The problem in obtaining reliable construction power had

been brought to the notice of the A&NI Administration even by the EPC Contractor viz., Reliance Power Limited formerly known as M/s. BSES Ltd.

28. There was considerable delay in arranging for an Engineer from Central Electricity Authority (CEA) by the A&NI Administration even though the plant was offered for witnessing the acceptance testing from 14/12/2002. As per the request of Electricity Department the tests were conducted for one engine at a time and therefore the process took a long time. During conducting of tests also there was a gap of 15 days in getting replacement from CEA for witnessing the tests. Even under the above circumstances the acceptance tests were completed on 18th February 2003 and recommended by CEA but Provisional COD was declared only on 2nd April 2003.

DETAILS OF THE VARIATIONS/INCREASE IN ACTUAL CAPITAL COST AND ITS REASONS

29. TOWARDS LAND/SITE DEVELOPMENT: In the PPA, a provisional amount of Rs.63.00 lakhs was approved for land and site development cost. In addition to this, there was an approved provision of Rs.275.00 lakhs against contingencies that was made available. As per the actual cost, the Petitioner IPP has incurred an amount of Rs.625.39 Lakhs. Thus there is a variation of Rs.287.39

lakhs. The reason for this variation is that there was an inadequate provision made in the sanctioned TEC/PPA. At the time of drawing up the PPA, there was inadequate information and data of site conditions. It was only when the actual work of land and site development began that the Petitioner had to face conditions that were completely unforeseen viz. before the land could be made fit for installation of the equipment, there was the requirement of removing and dredging slush that formed during the monsoons. This problem of slush had not been pointed out nor taken into account while finalizing the terms of the PPA or its execution. Further, the problem of slush would have been a perennially intermittent phenomenon, had the Petitioner not constructed storm water drainage systems all around the project site. The construction of a storm water drain was also not reckoned at the time of execution of the PPA.

30. After the PPA was executed, the A&NI Administration allotted 4.12 hectares of land, surrounded by mountains on three sides and Sea on the fourth side. The soil was investigated by Central Soil and Materials Research Station, Ministry of Irrigation, Government of India, pursuant to which they submitted their observations. They observed that the soil up to 11ft to 20ft is very soft,

at most of the places. Plate load test to determine bearing pressure could not be performed because of problems of anchorage (strata being soft and high water table). The soil had a very low density of 0.19kg/cm³ up to 10 ft depth and 0.45kg/cm³ between the depth of 10 to 20 ft. In view of the soil condition the company had to replace more than 40,000 cubic meters of soil with hard soil brought from outside and consolidate the same resulting in high cost of land development.

31. Hence there has been a cost escalation for the land/site development of the project. The details of the escalation are as follows:

	(Rs.in Lakhs)		
	Approved	Actuals	Variation
Land and Site Development (IC)	63.00}	625.39	287.39
Contingencies (IC)	275.00}	-----	-----
	-----	-----	-----
Total	338.00	625.39	287.39
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32. BUILDINGS AND CIVIL CONSTRUCTIONS: The cost variation in buildings and Civil Constructions is as follows:

(Rs.in Lakhs)

Approved TEC As per Actuals Variation

Buildings and Civil Constructions (IC)	549.00	1085.71	536.71
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33. The variation of Rs.536.71 Lakhs is due to inadequate provision made in the TEC/PPA, mainly on account of providing pile foundations for all buildings and equipment because of change in design parameters suitable to the site conditions. This cost variation is also due to increased cost inflation over a period of 5 years from the year 1997.

34. WORKS COST: There has been a variation in the cost of works provided under the PPA and the cost of works actually incurred.

The details are as follows:

(Rs.in Lakhs)

	Approved TEC	As per Actuals	Variation
Works Cost			
Works cost excluding Taxes and duties	3157.20(F.C)	2227.70 (F.C)}	
Taxes and duties	1084.05 (633.60 F.C & 450.45 I.C)	2629.99 (I.C) }	
Misc. Project Cost	389.75 (I.C)		
Total	4631.00	4856.68	225.68
Electrical	265.75 (I.C)	654.35	388.60

35. As some of the foreign equipment were indigenously available, the Company decided to procure those equipment, indigenously and executed EPCC contract accordingly. Hence the Company has utilized a part of the foreign component in Indian Rupees for procurement of the said equipment indigenously. The cost variation of Rs.225.68 lakhs is mainly due to increase in rates of foreign exchange and providing additional items of closed circuit cooling system with Cooling Towers instead of approved provision of direct cooling system. Other reasons are due to increased cost of inflation index over a period of 5 years from the year 1997. The details of the equipment procured under foreign currency and the increase in foreign exchange variation is annexed herewith and marked as **Annexure-P6**.
36. The reasons for cost variation of Rs.388.60 Lakhs in Electricals are due to providing PLC based control system instead of conventional systems and providing additional 1 no, power transformer of 10/12.5 MVA which have been recommended by CEA and increase in capacity of power transformers (2 nos.) from 10MVA to 12.5 MVA. Other reasons are due to increased cost of inflation index over a period of 5 years from the year 1997. The details of the procurement of the electrical systems and cost

incurred thereof are annexed herewith and marked as **Annexure-P7**.

37. The following major additional works were carried out to approve at technology equipment for the plant to make it reliable, modern and stable.

A. Engine controls and protection with digital technology, with single point control and displays. Computer programming and displays, PLC controls for acquiring data and processing. Latest models of governing system and voltage regulation system.

B. Increasing the chimney height from the approved 15 meters to 33.5 meters, to reduce the pollution in the dwelling areas of neighborhood and environment friendly and to keep the surrounding greenery intact. Even though the Pollution Control Board of A&NI Administration had approved the chimney of 15 meters' stack height in their consent letter dated 1st March 1994, still the Petitioner has maintained a stack height of 33.5 meters to provide a safe environment, based on recommendation of REIA report.

C. As per the project, seawater was proposed for secondary cooling of the engines because of insufficient availability of sweet water. The Petitioner

engaged the services of environmentalists and marine technologies and consultants from National Institute of Ocean Technology (NIOT) branch of IIT, Chennai who, upon studying and considering various options like ones through cooling, closed circuit cooling using Cooling Towers, etc., did not recommend the cooling system provided for in the project. This was because the discharge of hot water would have raised the temperature of shallow seawater near the project to 5° C to 7° C endangering marine life. Hence and as per the recommendations of the experts, closed circuit cooling with expensive cooling towers and a blow of 10% was adopted, to allow safe and natural marine growth.

D. The sea is shallow near the project site. On an in-depth study of the water measurement during high tide and low tide conditions and different seasons, it was recommended that to ensure uninterrupted and problem-free running of the water cooling system, the requisite availability of water would be at a distance of 135 meters into the Bay of Bengal. It therefore became necessary to provide make-up water pump house at a distance of 135 meters into the Bay of Bengal. This required deep sea piling construction of 135 meter

jetty and pump house in the sea which was not envisaged at the time of project cost estimation and approval. This has also contributed to increase in the capital cost of the project, which was later approved by the Respondent No.1.

E. The project site is surrounded on three sides by mountain slopes. During rains, there is heavy inflow of water from the slopes, which threatened inundation and wash off of the project area during the rains. To protect the project from flooding, a deep and wide concrete drain of adequate capacity on three sides of compound was constructed to collect the water and pass it into to the sea. This also necessitated adequate storage volume at mouth and culvert below the road, so that the drain could be capable of meeting the requirements even during high tide and low tide conditions of sea. This requirement was not considered during project cost estimation but had to be carried out to protect the plant. This project also required high compound wall with deep concrete foundation side protection to ensure its safety during heavy rainwater flooding, which was also not considered at the time of estimating the project cost. This was later approved by the Respondent No.1.

- F. There have been additional jobs that were carried out as per instruction of Electricity Department, which were not a part of the TEC report like, supply of 33KV XLPE cables, providing check metering panel for export, additional 10/125MVA, 11/33KV Transformer and two numbers of 125 KVA Black DG sets.
- G. Certain works, which were not provided in EPCC contract, were implemented as per decisions taken at various meetings with Electricity Department, CEA and the Petitioner like; additional Black start DG of 125 KVA, additional auxiliary transformer of 1250 KVA with corresponding HT & LT switchgear, cables, Civil works etc., class Tri-vector meter for 4 DG sets and auxiliary transformers for accuracy of measurement along with 0.2 class CT and PT system etc.
- H. The HSD supplied by IOCL contained suspended material and was causing frequent chocking of filters and interrupting the smooth operation of the plant in spite of providing initially imported static HSD filter through EPCC in the HSD main line. This was not envisaged during project proposals and all concerned presumed that there would be clean HSD supplies from IOCL. After running the plant for few months it became necessary to provide for a HSD Centrifuge of

sufficient capacity and also standby unit, which the Petitioner had to order and install with extra expenses, which was not originally estimated.

38. The statement of additional expenses borne by the Petitioner towards the above mentioned extra works is annexed herewith and marked **Annexure-P8**.

39. INTEREST DURING CONSTRUCTION: The Petitioner is entitled to IDC as follows:

	(Rs.in Lakhs)		
	Approved TEC	As per Actuals	Variation
IDC	300.00	629.80	329.80

40. The reasons for increase of IDC by Rs.329.80 Lakhs are due to increase of loan component in line with the increased project cost and increase in duration of project completion due to delay in declaring COD by the Administration and delay in opening of letter of credit by the Administration as per the terms of PPA and the force majeure condition claimed by the administration itself. It is respectfully submitted that due to the delays that are directly attributable all the above mentioned factors, which are not related to the Petitioner or its contractors, but which are partly attributable to the Administration, the COD of the project got delayed. The Petitioner is

entitled for IDC on the completed project cost for the whole period of the delay.

41. Shockingly, the Respondent No.1 issued a notice for liquidated damages for delay in achieving COD, when the as per its own stand it had contended existence of force majeure conditions causing delay in providing for evacuation lines. In any event the Petitioner has achieved COD within 120 days of the evacuation lines being ready and opening of LC before 30 days of COD of the first unit which is the obligation of the Respondent as per the requirement of the PPA. As such there is no justification for the claim for liquidated damages. As such, IDC also ought to be considered for the whole gestation period. The correspondence entered with the Respondent and CEA is annexed herewith and marked as **Annexure-P8A**.
42. OTHER CAUSES AND EFFECTS: The cost inflation index during the financial year 1996-97 is 305 and the same during the financial year 2002-2003 is 447. The inflation is 46.5%. A true copy of the cost inflation index is annexed herewith and marked as **Annexure-P9**.
43. In addition to the above, the inflation rate in Andaman Islands was higher because of logistical constraints. All the equipment like handling equipment required for erection, special tools, skilled persons had to be arranged

from main land. Even nuts & bolts needed to be air lifted, as they were not available at Port Blair. All items including food items lodging are costlier by about 3 -5 times as compared to same in main land. The high cost of transportation, where material were to be shifted from Port Blair to Bambooflat by truck ranged between Rs.2,400 to Rs.3,000. Hire rates of bulldozers, tractors and other such machinery are generally 5 times costlier than that in the main land.

44. The cost of living in A&N Islands is also very high as compared to main land. There is no subsidy in air travel fare to Port Blair. The flight charges from Chennai to Port Blair and return were about Rs.15,000/- each at the relevant point in time. For commissioning of each of the equipment, specialists had to be brought and kept at Port Blair. Even after Commissioning many specialists were brought for AVR, Relay coordination, equipment teething troubles corrections etc., environment studies etc. These factors have also contributed to cost escalation. Specialists had to be brought from Germany for executing Governor checking and related necessary checks.

EVENTS SUBSEQUENT TO THE DATE OF SUBMISSION OF
THE COMPLETED COST TO THE RESPONDENT
ADMINISTRATION

45. On 23.02.2004, the Petitioner again wrote to the Respondent No.1 regarding certain typographical errors in the submission dated 29.11.2003. Thereafter, on 04.06.2004, the Respondent No.1 wrote to the Petitioner seeking certain explanations to the completed cost, which the Petitioner vide its letter dated 03.08.2004 submitted. Thereafter, the petitioner submitted the data to the CEA vide its letter dated 22.09.2004. Thereafter, there have been numerous communications between the Petitioner on the one side and the Respondent No.1, the CEA, the Respondent No.2 and the EPC contractors, on the other. True copies of all the communications and the documents submitted therewith between the Petitioner and the A&NI Administration, the Electricity Department, the CEA, the EPC contractors and others concerned are filed along with the instant Petition and marked as **Annexure-P10 (Colly)**. The Petitioner craves the leave of the court to refer to and rely upon the contents thereof, in the instant petition at the time of hearing and/or deliberations.
46. With effect from May 2003, the Petitioner herein started raising bills on the Respondent No.2, for the power generated and supplied to Respondent No.1. However, the Respondent withheld/deducted numerous amounts

from the invoices under various heads, unilaterally and without justification. The Petitioners accepted the reduced payments under protest and without prejudice to its rights. True copies of the statements of the various invoices raised by the Petitioner and the actual payments made by the Respondent, under various heads/items against the said invoices are annexed herewith and marked as **Annexure-P11(colly)**.

47. The Respondent purported to make deductions from every component of the working capital. Numerous meetings were held between the Petitioner and the Respondents. Several representations were sent to the CEA regarding the reduced payments by the Respondent. The Respondent was paying tariff at the TEC approved project cost of Rs.63.14 Cr since April 2003 onwards as against actually incurred project cost of Rs.85.10 Cr. Due to the above, the amount received by the Petitioner in the monthly tariff bill were not sufficient to meet the accrued interest and repayment of term loans etc., to the Petitioner's lenders. In order to meet the above shortfall the Petitioner was forced to repeatedly raise the secured loans & unsecured loans and pay interest on said loans borrowed by the Petitioner. The situation started becoming so desperate that the Petitioner had to also

borrow monies towards purchase of HSD fuel so that it could run the power plant continuously. In a nut shell, the shortfall in capital cost (debt component) amounting to Rs.21.87 Cr been invested as debt and equity borrowed by the Petitioner and the Petitioner has been paying monthly interest on the said loans from the year 2003 to till date.

48. Thus the Petitioner has failed to repay the loan to lenders etc. This amount has gotten accumulated further as debt. It is pertinent to mention here that though the Petitioner has submitted its proposal of completed project documents to the Respondent and CEA in the year 2004, the Respondent was still withholding the communication of approval project cost, due to which, the Petitioner was not getting its full tariff and facing cash shortage. Repeated request/representations made by the Petitioner to Respondent did not yield any result even till end of January 2008.
49. The PPA under Article 15 provides for settlement of any dispute, controversy or claim arising out of or relating to the PPA, through arbitration. Article 15.1 of PPA relates for resolving the disputes by Representatives and Senior Officers. In the event of failure under Article 15.1, the

parties could proceed with arbitration of disputes under clause 15.2 of the PPA.

50. As several years had passed without there being any resolution of the issue above disputes by the Respondent and not finding any alternative, the Petitioner addressed the Respondent to treat its letter dated 31.01.2008 as initiation for Arbitration for settlement of disputes under Clause No 15.2 of PPA. When no reply received from the Respondent the Petitioner intimated to the Respondent the details of the Arbitrator appointed by him vide its letter dated 11.02.2008 and 01.03.2008. In spite of the above the Respondent did not take any action in the matter and therefore, the Petitioner vide its letter dated 10.03.2008 informed the Respondent that if no action taken by 30.03.2008, the Petitioner would approach the Court as per Section 9 of Arbitration & Conciliation Act, 1996. Finally, the Respondent vide his letter dated 31.03.2008 responded only to contend that there is no dispute pending for settlement as on date. The correspondence on the above are annexed is herewith and marked as **Annexure-P12 (Colly)**.

51. In the month of March, 2008, the CEA opined that the Petitioner ought to approach this Hon'ble Commission for the finalization of the completed cost of the project. In

pursuance of the same, the Respondent No.2 submitted an application for finalization of the completed cost before this Hon'ble Commission on 09.01.2009. This Hon'ble Commission, after considering the application passed an order that the finalization of the completed cost of the project, at the first instance, ought to be an exercise at the level of the A&N Administration. A true copy of the letters of Respondent to JERC and CEA is annexed herewith and marked as **Annexure-P13**.

52. Despite this, there was no resolution of any of the disputes between the Petitioner and the Respondent. In these circumstances finally, on 13.10.2009, the Petitioner was constrained to file a petition before this Hon'ble Commission seeking for refund of withheld payments under various heads from the Respondents. The said petition was finally withdrawn in terms of the order dated 12.07.2010, whereby the parties proposed to amicably settle the differences, with liberty to revive the claims if the settlement failed. A true copy of the Petition filed by the Petitioner is annexed herewith and marked as **Annexure-P14**. A true copy of the order dated 12.07.2010 passed by this Hon'ble Commission is annexed herewith and marked as **Annexure-P15**.

53. It is submitted that there has been a partial settlement of the issues raised in the earlier Petition. Two of the issues between the Petitioner and the Electricity Department that have not been settled are the issues of 'HSD' and 'lube oil'. It is submitted that the said issues have a direct bearing on the computation of tariff that the Petitioner is entitled to and therefore, the said issues of HSD and lube oil are included in the instant petition hereunder.
54. The Respondent contends that it is entitled to deduct/withhold charges for consumption of lubricating oils billed by the Petitioner in excess of 1.1gm/Kwh as specified in the PPA or actual consumption whichever is less. The Respondent has withheld such amounts from the Petitioner's bills. However as per Appendix "A" of the PPA between the parties the Petitioner is eligible to claim the lubricating oil consumption @ 1.1gm/Kwh, as there is no requirement mentioned for the Petitioner to submit any details of lube oil consumption. The decision of CEA is clear in their letter dated 3rd April 2004 in this regard. Further with the ageing of the machines the consumption of the lube oil increases and as such the Respondents should in fact pay more than 1.1gm/Kwh of lube oil. It is further submitted that going by the contention of the

Respondent Electricity Department, it is established that the lube oil charges would be as per actuals. With the project now having been in existence for more approximately 10 years, there has indisputably been heavy wear and tear and depreciation of the project machinery, thereby causing more consumption of the lube oil. As such, the only harmonious manner of interpreting the PPA read with ANNEXURE-A therein, would be that the Petitioner is entitled to a minimum of 1.1 gm /Kwh and if consumption is more than that this fixed norm, then it would be as per actuals.

55. It is further submitted that the issue regarding the calculation of the heat rate of the HSD, which is the fuel for generation, has not been settled by the Respondent No.1. This forms a component of the variable cost of the tariff. The dispute revolves around the question as to what is the temperature that has to be reckoned for computing the volume of the HSD received from IOCL. It is submitted that the issue of HSD as well as certain other issues, which forms a part of the earlier Petition No. 07/2009 have not been settled. Claims on such issues still survive and the Petitioner reserves it right to hereinafter raise such issues, in a separate/independent proceeding, before the appropriate authority, including

this Hon'ble Commission, against the Respondents herein as per the Hon'ble Commission order dated 12.07.2010.

56. On 15.04.2010, there was a joint meeting between the Petitioner and the officials of the Respondent No.1, in which the Respondent No.1 broadly agreed for the provisional completed project cost of Rs.76.14 Crores. Thus there was a mutually agreed increase in provisional project cost amounting to Rs.8.82 crores. As regards IDC on this additional amount of Rs.8.82 Crores, the Respondent No.1 took a stand that it would seek the opinion of a commercial expert. A true copy of the Minutes of Meeting dated 15.04.2010 is annexed herewith and marked as **Annexure-P16**.
57. Consequently, the Respondent No.1 sought the opinion of the CEA on the issue of IDC. The CEA, vide its opinion dated 18.10.2010 suggested the completed project cost of Rs.75.60 Crores. It also suggested that The IDC worked out to of Rs.3.83 Crores could be accepted as per the details indicated in the annexure. A true copy of the opinion of the CEA dated 18.10.2010 is annexed herewith and marked as **Annexure-P17**.
58. From the month of April 2011, the Respondent Administration began paying to the Petitioner the

monthly charges, on the provisional project cost of Rs.75.60 Crores. In the month of April 2011 the Respondent No.1 paid to the Petitioner, the difference amount between the agreed provisional project cost of Rs.75.60 crores and the original provisional project cost of Rs.63.14 crores for the period between April 2003 (the date of the COD) and March 2011. It also paid interest on the Working Capital and Term Loan on the additional amount at the rates of 12% and 7.41% respectively. It is pertinent mention here that the actual interest that the Petitioner has paid to the creditors (State Bank of India) for Working Capital and Term Loan is at the rate of 17% and 13.5% respectively. Thus though the Respondent agreed for 75.60 Crores provisional cost, still it has without any reason, not paid the actual interest incurred by the Petitioner on said amount.

59. Later the CEA again in their report dated 16.05.2011 reworked the IDC based on the hard cost of Rs.75.07 Crores and taking the extended gestation period as recommended by the Respondent, revised the IDC to Rs.5.31 Crores. As such the total project cost including IDC for the project works out to Rs.80.38 Crores. A true copy of the opinion of the CEA dated 16.05.2011 is annexed herewith and marked as **Annexure-P18**.

60. It is pertinent to mention that, the Petitioner had availed loan amounts from Citi Bank and other sources amounting to a total of Rs.6.072 Crores, after COD and the project was completed by raising loans with creditors and unsecured loans.
61. The officials of CEA and representatives of the Respondent No.1 again held a meeting on 14.02.2012 and recommended that in view of the 23.04.2011 opinion of the CEA, the completed cost of Rs.80.38 Crores may be treated as final, leaving the funds tied up aspect to be looked in to by the A&N Administration vide their letter dated 15.03.2012. A true copy of the letter dated 15.03.2012 by the CEA is annexed herewith and marked as **Annexure-P19**.
62. In the month of April 2012, the Respondent No.1 agreed for a provisional project cost of Rs.77.595 Crores and began paying the monthly bills at the said provisional project cost. However, again the interest on the additional amount towards working capital and term loan was paid at the rate of 12% and 7.5% respectively, instead of 17% and 13.5%. Thus there is again a shortfall in the amounts paid.
63. The representative of Respondent viz., Executive Engineer (HQ) in his letter dated 25.10.2012 stated that

the Administration has already approved provisional project cost of Rs.77.595 Crores and that for any further enhancement in the project cost and other disputed claims the Petitioner may seek course with this Hon'ble Commission. A true copy of the letter dated 25.10.2012 is annexed herewith as **Annexure-P20**. Accordingly the Petitioner is filing the petition before this Hon'ble Commission for approval of the completed project cost and for determination of tariff on the completed project cost.

64. It is respectfully submitted that the Petitioner has actually incurred an amount of Rs.85.10 Crores for completion of the project. As per the initial certificate issued by the Chartered accountant, the completed cost of the project has been certified at Rs.83.6677 Crores. Thereafter, the Chartered Accountant issued another certificate dated 14.04.2010 for the entire loans, which was submitted to Respondent on 16.04.2010. Here the Citi Bank loan availed by the Petitioner, was also included with the other term loans. Further, the Chartered Account again issued a certificate dated 24.09.2011, which was also submitted to Respondent, wherein he certified that the entire loan amount of Rs.4.02 Crores availed from Citi Bank was utilized for the

project works only. This expenditure was also shown in the audited balance sheet of the 2003-04 of the Petitioner. It is therefore respectfully submitted that the completed project cost excluding IDC as per the Petitioner's claim, is Rs.78.80 Crores. The IDC for the complete gestation period is Rs.6.29 Crores. Thus the completed cost of Rs.85.10 Crores be considered for approval. A True copy of the certificate dated 24.09.2011 is annexed herewith and marked as **Annexure P-21**.

SUBMISSIONS FOR TARIFF FIXATION

65. It is submitted that two major components of the variable cost of tariff are fuel i.e. 'HSD' and 'lube oil'. It is submitted that the said issues have a direct bearing on the computation of tariff, as they are a part of the variable cost component of tariff, therefore the said issues of HSD and lube oil are included in the instant petition hereunder.
66. LUBE OIL: The Respondent contends that it is entitled to deduct/withhold charges for consumption of lubricating oils billed by the Petitioner in excess of 1.1gm/kwh as specified in the PPA or actual consumption whichever is less. The Respondent has withheld such amounts from the Petitioner's bills. However as per Appendix "A" of the PPA between the parties the Petitioner is eligible to claim

the lubricating oil consumption @ 1.1gm/kwh, as there is no requirement mentioned for the Petitioner to submit any details of lube oil consumption. The decision of CEA is clear in their letter dated 3rd April 2004 in this regard. Further with the ageing of the machines the consumption of the lube oil increases and as such the Respondents should in fact pay more than 1.1gm/kwh of lube oil. It is necessary to mention here that in the meeting dated 27-28th of April 2006, the Respondent No.1 agreed that the lube oil consumption would be reviewed after 3 years.

67. It is further submitted that going by the contention of the Respondent Electricity Department, it is established that the lube oil charges would be as per actuals. With the project now having been in existence for more approximately 10 years, there has indisputably been heavy wear and tear and depreciation of the project machinery, thereby causing more consumption of the lube oil. As such, the only harmonious manner of interpreting the PPA read with ANNEXURE-A therein, would be that the Petitioner is entitled to a minimum of 1.1 gm/KwH and if consumption is more than that this fixed norm, then it would be as per actuals. True copies of the correspondence with Respondent No.1 in this regard and the Minutes of meeting dated 29.04.2006, are

annexed herewith and marked as **Annexure-P21A (colly)**.

68. HSD – AMBIENT TEMPERATURE: The Respondent is releasing payment towards the power generated in the Petitioner's power plant based on net plant fuel consumption (heat rate/calorific value). The fuel consumption/cost is calculated taking the heat rate and calorific value of High Speed Diesel (HSD) oil by the Petitioner for the monthly tariff invoice as per the terms of the Agreement. For finding out the quantum of HSD in liters for tariff invoice purpose, the density of HSD oil is most essential. However the density, as per the A&N Gazette (Extraordinary) Notification of September 1991. "The density at 15°C at the dispatch depot of the oil company as indicated in the delivery document". The Petitioner which is supplied HSD Oil by the Indian Oil Company Limited at Port Blair, is bound by this Notification. 15°C is not the ambient temperature at Andaman and Nicobar Islands. It is far higher, usually between 30°C to 34°C. However when the said IOCL used to send HSD Oil to the Petitioner, as per the IOCL's invoice, it could be seen that the density of the HSD oil had been tested at ambient temperature, and then the density is corrected as per scientific formula for 15°C.

The Petitioner would therefore also prepare and submit monthly tariff invoices taking the density recorded on the IOCL invoice for calculation purpose on the basis of weightage. This has resulted in huge loss to the Petitioner towards HSD oil consumption since the density of HSD oil decreases as temperature increases. However since the HSD oil in liter used by the Petitioner and supplied by IOCL is calculated for tariff invoice purpose on the basis of density, and since in reality the Petitioner is receiving far lower density oil (due to the temperature being higher), as such the correct quantity of HSD oil actually required for monthly consumption is to be found out. However in fact, since the Respondents pays to the Petitioner HSD oil costs at the fixed heat rate of 2010 kcl/kWh while the Petitioner is paying to IOCL for fuel in liters (as opposed to energy content) the consumption of HSD oil for tariff invoicing purposes should also be done on the basis of actual density at the actual ambient temperature and not the arbitrary 15°C. However, since this is not being done, the Petitioner has been losing considerable amount since April 2003 till date, approximately Rs.10 lakhs to 12 lakhs per month for HSD oil consumption in its tariff invoice. At one time, the Petitioner had thought that it was the machinery at the

plant which were causing excess fuel consumption and caused replacement of plungers and spares in the engine to control fuel consumption by spending huge amounts, but to no avail until the above actual cause for fuel consumption (to keep to the calorific value/heat rate) was detected. The Petitioner in fact requested the Respondents, by its Letter dated April 30, 2007 and May 30, 2007 to allow the Petitioner to change the variable cost of HSD oil calculations from the month of May 2007 to the basis of density being measured at the ambient temperature and accepting the same. Despite several letters of the Petitioner to the Respondents requesting for acceptance of its request for submitting tariff invoice on the basis of density measured at ambient temperature, however, the Respondents has referred this matter to the CEA, New Delhi for its clarification. The Respondent has not ameliorated the grievances of the Petitioner nor abided by the decision of the Central Electricity Authority issued vide letter dated 16th October 2007 upholding the contention of the Petitioner to whom it had referred for a decision. In spite of the required clarification issued by CEA, New Delhi to the Respondents, the Respondents had once again referred the matter to CEA for more clarification which was also again confirmed by CEA vide

its letter dated 22nd February 2008. As the Respondents did not heed to the request of the Petitioner, in spite of repeated clarifications issued by CEA the Petitioner was forced to approach Ministry of Home Affairs, New Delhi Ministry of Home Affairs in its meeting convened at New Delhi on 17th July 2008 which was recorded in the MOM dated 21st August 2008, has accepted the Petitioner's contention and directed CEA, New Delhi to advise accordingly to A&N Administration duly impressing that the CEA advise shall be final. The CEA in its letter dated 29th September 2008 has advised A&N Administration for taking density of HSD oil at ambient temperature for computing its volume since April 2003 i.e. Commissioning of the Plant and making payment accordingly. Based on the above the Petitioner had submitted Supplementary Invoice Vide Letter dated 07.10.2008 for an amount of Rs.835.71 lakhs with interest up to date for payment towards cost of HSD density difference arrears to the Respondents. True copy of the correspondence with Respondent and others is annexed herewith and marked as **Annexure-P21B**.

69. HSD – HEAT RATE: It is further submitted that the heat-rate for HSD consumption as provided in the PPA was 2000 Kilo Cal/Kwhr. This was thereafter mutually

modified to 2010 Kilo Cal/Kwhr, which was also recommended by the original equipment manufacture M/s Caterpillar, Germany. It is further relevant that as only Low Sulphur High Flash grade of HSD Oil was available in Port Blair, at the time of entering into the MOU/PPA with Respondent, the DG Engine manufacture i.e. M/s. Caterpillar has designed the Engine parameters to suit the above grade of Oil at 2010 Kcal/Kwh. However, from 2007 onwards there have been frequent changes in the grade of HSD Oil, supplied by M/s IOCL at Port Blair. These grades of HSD oil have higher consumption and a higher heat rate. As such the 2010 Kcal/Kwhr is insufficient.

70. The actual Station Heat rate works out to 2090 Kilo Cal/Kwhr. It is respectfully submitted that for other exactly similar government owned power generation projects, the Respondent is paying for HSD consumption at a Heat rate of ranging from 2200 to 3200 Kilo Cal/Kwhr. The Petitioner has on numerous occasions requested the Respondent No.1 to revise the heat rate to 2090 Kilo Cal/Kwhr, but to no avail. It is submitted that because of the lower Kcal value, the Petitioner has been incurring huge losses as the actual consumption of HSD is far higher than the normative rate of consumption that

is considered by the Respondent No.1. It is therefore most respectfully submitted that the heat rate should be calculated at the actual rate of 2090 Kilo Cal/Kwhr. True copy of the correspondence entered with Respondent is annexed herewith and marked as **Annexure-P21C**.

71. OPERATION & MAINTENANCE: It is submitted that the PPA does not provide for any calculation of operation and maintenance cost. Therefore, the O & M expenses are calculated as per the CEA notification No.1-3(3)/97-Secy/DG dated 04.02.1997. The model calculation at Appendix D - Annexure-IV to the PPA provided that the O&M would be calculated at 4%. The O&M is presently calculated at the rate of 6.528% of the project cost.
72. It is respectfully submitted that the inflation rate in Andaman Islands are higher because of logistic constraints. All the equipment like handling equipment required for erection, special tools, skilled persons are to be arranged from main land. Even nuts & bolts need to be air lifted, as they are not available at Port Blair. All items including food items lodging are costlier by about 3 -5 times as compared to same in main land. The high cost of transportation, where material are to be shifted from Port Blair to Bambooflat for transporting various materials by truck an amount of Rs.2,400 to Rs.3,000 charged. Hiring of

- bulldozers, tractors etc., is 5 times costlier than in main land.
73. The cost of living in A&N Islands is very high as compared to main land. Unlike North Eastern states there is no subsidy in air travel fare to Port Blair. The flight charges from Chennai to Port Blair and return is about Rs.25,000/-
74. The notification of the Government of India, Ministry of Planning & Co-ordination, provides 20% higher CFA for special category states and Islands due to special nature of difficult terrain, travel and cost of living and other reasons which require additional expenditure as compared to projects in other areas of India. It is submitted that Andaman & Nicobar Islands and especially the project site at Bambooflat comes under the definition of area of special area and is admittedly a difficult and remote area.
75. In addition to the above the site area being on the sea. Thus there is greater salination and corrosion. Therefore the O&M cost in the project area is far higher. Consequently, the O&M expenses as calculated according to the suggestion of the CEA are insufficient. Therefore there is a need to extend the benefit of additional 20% CFA to the Petitioner.

SUBMISSIONS FOR INTERIM RELIEF

76. It is respectfully submitted that, as had already been contented herein above, the Respondent No.1 has already

agreed on the provisional project cost of Rs.77.595 crores and has even paid the Petitioner on the said provisional cost with effect from April 2003. As the amounts would be due with effect from April 2003 and the payment has been done only with effect from April 2011 and 2012, there has been a delay in payment, for which, the Respondent No.1 has paid interest. It is respectfully submitted that the Respondent has, unilaterally and without any justification, reduced the payment of interest rates in working capital from 18% to 12% and in debt servicing from 12% to 7.4% with effect from January 2010. Thus, while calculating the interest, the Respondent No.1 has made calculations as follows:

A. Interest on Working Capital component was calculated at the rate of 12% per annum with effect from April 2003 till date of payment. The Petitioner had to actually incur interest at the rate of 17% per annum.

B. Interest on debt servicing component was calculated at the rate of 7.41% per annum with effect from April 2003 till the date of payment. The Petitioner had to actually incur interest at the rate of 13.5% per annum.

77. It is respectfully submitted that the Petitioner in fact is entitled to interest at the rate of 17% and 13.5% on the project cost of Rs.85.10 crores. In view of the short

payment of interest, the Petitioner is entitled to an amount of Rs.40.90 Crores towards principal and Rs.54.88 Crores towards interest on the said principal amount of Rs.40.90 crores. A true copy of the Statement of the calculation of the amounts due because of Short payment of interest is annexed herewith and marked as **Annexure-P22.**

78. Therefore as an interim measure, the Petitioner is seeking that it be paid at least the said amount of Rs.95.78 Crores being the short payment of interest and delayed interest thereon.
79. As has already been submitted that the Petitioner is struggling to even run the plant in the current state of affairs. It is incurring huge losses for every unit of electricity it generates. It is submitted that the cost per unit for generating power that is incurred by the Petitioner is Rs.11.79 per unit (KwH), whereas the Respondent No.1 is paying the petitioner Rs.11.42 per unit. A true copy of the statement of the cost incurred by the Petitioner and the amount per unit paid by the Respondent for the month of July 2012, is annexed herewith and marked as **Annexure-P23.**
80. It is respectfully submitted that due to the above alarming state of affairs, the Petitioner is facing

bankruptcy. In fact, one of the unsecured creditors viz. SBI Global Factors Ltd., has filed Petition for winding up before the High Court of Andhra Pradesh in Company Petition No.154 of 2011. A true copy of the Petition is annexed herewith and marked as **Annexure-P 24**. The said Petition is pending.

81. It is submitted that if the Petitioner in the said company petition No.154 of 2011 is not paid, there is very likelihood of an order of winding up being passed against the Petitioner. It is further submitted that if an interim order as prayed for directing payment of the difference in interest component in respect of working capital and terms loans/debt servicing on the provisional cost of Rs.77.595 crores (which has been agreed upon by the Respondent) is not passed, then the Petitioner would not be able to pay the creditor/Petitioner in the winding up petition. It is pertinent to mention here that presently only 3 DG sets are running out of 4 as one of the DG sets are under shut down awaiting overhaul, for which the Petitioner has no funds whatsoever. Further, the Petitioner is running the power plant with lesser PLF resulting loss of incentive for the current year.
82. In the current scenario, there is all likelihood of the Petitioner being forced to close down operations. It is

further humbly submitted that the consequences of the Petitioner closing down the power plant would be disastrous for territory of Andaman & Nicobar as well. It is pertinent to note that the power purchased from the Petitioner forms more than 75% of the total power procurement of the Respondent electricity department. If the Petitioner has to close down or be wound up the whole territory would be thrown into darkness. The Respondent No.1 may have to resort to purchasing more expensive power, thereby burdening the consumers.

83. It is therefore submitted that there is an urgent need for directing the Respondent No.1 to pay the Petitioner an amount of Rs.95.84 Crores/-. This amount is the short payment of interest arising because of the difference in interest component due to the Petitioner and what has been paid by the respondent No.1, in respect of working capital and terms loans/debt servicing on the provisional cost of Rs.77.595 crores (which has been agreed upon by the Respondent). The Petitioner undertakes that if any excess payment found/established to have been made because of the interim order, such excess amounts would be refunded, from the monthly invoices.

84. Prayer:

In view of the facts and circumstances mentioned hereinabove, this Hon'ble Commission may be pleased to:

- A. Pass an order allowing the present Petition;
- B. Pass an order approving the final project cost of Rs.85.10 Crores;
- C. Pass an order determining tariff on the basis of the completed project cost of Rs.85.10 Crores after considering:
 - (i) Gross Station Heat rate at actuals with a cap of 2090 Kcal/Kwhr;
 - (ii) Lube oil charges at a minimum of Rs.1.1/gms/Kwhr or at actuals whichever is higher; and
 - (iii) O&M expenses calculated at the rate of 20% over the CEA suggested calculation, with effect from 2003;
- D. Pass an order directing the Respondent No.1 & 2 to pay the costs of filing and conducting the instant Petition including publication of the petition; and
- E. Pass any other or further order or direction as the Hon'ble Commission deems appropriate in the interest of justice and equity under the facts and circumstances of the case, including the costs of the case.

85. INTERIM PRAYER

- In the interest of justice and equity, it respectfully prayed that this Hon'ble Commission may be pleased to:
- A. Pass an ad-interim order directing the Respondents to pay to the Petitioner an amount of Rs.95.84 Crores

being the short payment of interest for the period April 2003 till October 2012, in respect of working capital and terms loans/debt servicing on the provisional cost of Rs.77.595 crores;

B. Pass an ex-parte ad-interim order in terms of Prayer A above, pending service of notice of the Petition to the Respondents.

C. Pass any other or further order or direction as the Hon'ble Commission deems appropriate in the interest of justice and equity under the facts and circumstances of the case, including the costs of the case.

54. MATTER PENDING: The Petitioner submits that there is no other similar petition is pending before this Commission or any other Court/Tribunal or Commission between the parties.

55. AFFIDAVIT: Affidavit of Mr. K. Vijay Kumar, Executive Director (Technical) authorized to file this Petition on behalf of M/s. Suryachakra Power Corporation Limited is Annexed herewith.

56. FEES: The Petitioner has herewith enclosed a demand draft for an amount of Rs.10,01,000/- (Rupees Ten Lakhs and one Thousand only) drawn in favour of the

Secretary, Joint Electricity Regulatory Commission,
payable at Gurgaon, Haryana.

New Delhi

Date: 29.11.2012

Petitioner

Through

Rohit Rao. N.
Advocate for the petitioner,
G.F.10, Hans Bhawan,
1, Bahadur Shah, Zafar Marg,
(I.T.O.), New Delhi – 110002

BEFORE THE JOINT ELECTRICITY REGULATORY
COMMISSION FOR THE STATE OF GOA AND UNION
TERRITORIES AT NEW DELHI

FILE NO:

CASE NO:

In the matter of:

M/s. Suryachakra Power Corporation Limited
Suryachakra House,
Plot No.304–L-III,
Road No.78, Film Nagar,
Jubilee Hills,
HYDERABAD - 500 096

VERSUS

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

RESPONDENT No.1

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

RESPONDENT No.2

AND

In the matter of:

Petition for approval of completed/actual capital cost of the Project and Tariff 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

Affidavit

I, Sh. Vijay Kr. Koppalkar, S/o late Sh. K.V. Rao, aged 67 years, Occupation: Executive Director, Suryachakra Power Corporation Limited, R/o Plot No.304-III, Road No.78, Jubilee Hills, Hyderabad – 500 096, do hereby solemnly affirm and state on oath as under.

1. That the deponent is the Executive Director (Technical) who is authorized as per the resolution of the company dated 14.09.2012 and is acquainted with the facts deposed to below.

2. I, the deponent named above do hereby verify that the contents of the paragraph Nos.1 of the affidavit and those of the paragraph Nos.1 to 75 of the accompanying petition are true to my personal knowledge and those of the paragraph Nos.76 to 83 of the accompanying petition are based on the perusal of records and those of the paragraph No.84 of the accompanying petition are based on the legal advice which I believe to be true and verify that no part of this affidavit is false and nothing material has been concealed.

(Deponent)

1, Rohit Rao. N, Advocate, do hereby declare that the person making this affidavit is known to me through the perusal of records and I am satisfied that he is the same person alleging to be deponent himself.

Advocate

Solemnly affirmed before me on this 29th day of November 2012 at _____ a.m./p.m. by the deponent who has been identified by the aforesaid Advocate.

I have satisfied myself by examining the deponent that he understood the contents of the affidavit which has been read over and explained to him. He has also been explained about section 193 of Indian Penal Code that whoever intentionally gives false evidence in any of the proceedings of the Commission or fabricates evidence for purpose of being used in any of the proceedings shall be liable for punishment as per law.