

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

Quorum
Shri S.K.Chaturvedi, Chairperson
Petition No. 89/2012
Date of Order 12.01.2015

In the matter of

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

And in the matter of

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

.....Petitioner

Vs.

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

.....Respondents

Present for petitioner

1. Shri K. Vijay Kumar, Executive Director, SPCL.
2. Shri K.J. Joseph, Liaison Officer, SPCL.
3. Shri C. Jagadeesh, SPCL.
4. Shri Rohit Rao. N, Advocate, SPCL.

Present for respondents

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

Order

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

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

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

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

Quote

"Thus, the Completed capital cost of the project will be sum of capital cost of Rs. 63.14 Crs. indicated in the PPA and charges on Foreign Exchange Rate Variation on 5.131 MUSD incurred on Foreign equipment including their transportation cost, FERV on the customs duty/ taxes on imported equipment applied on equivalent US Dollars, changes necessary for efficient operation of the plant as approved by the Administration or the Joint Commission, additional IDC, Financing cost and Incidental Expenses during construction for the period of delay in achieving the COD for reasons attributable to the Administration and beyond the reasonable control of Suryachakra Power from the Scheduled COD to the actual COD, change in cost due to change in law and taxes and duties on domestic component as per actuals. The Joint Commission is directed to determine the completed capital cost accordingly. This will be subject to ceiling of actual funds tied up by Suryachakra Power for the project and the actual cost incurred. The Joint Commission will also verify the actual payment of custom duty and remittance of foreign loan."

Unquote

The Hon'ble APTEL summarized its findings in para no. 69 of the Judgment dated 28.11.2014 as under:-

Quote

- i. The capital cost has not been determined by the Joint Commission as per the terms of the PPA. Accordingly, the capital cost has to be determined as directed under paragraph 36 of this Judgment.*
- ii. We do not find any infirmity in the Joint Commission's finding regarding deemed generation.*
- iii. We do not find any infirmity in the findings of the Joint Commission regarding rebate deducted by the Administration on the invoices where part payment was made.*
- iv. The Joint Commission has correctly decided that LDs are not to be levied on Suryachakra Power as the delay in COD of the project was due to delay in commissioning of the transmission line by the Administration.*
- v. Interest is payable to Suryachakra Power by the Administration due to the delay in payment as per the terms of the PPA. If the Administration has settled all amounts due to Suryachakra Power on account of conversion of HSD density from weight to volume after signing of the Addendum to PPA on 18.08.2011 within the stipulated time then no delayed payment interest will be payable on that amount. Suryachakra Power shall also submit necessary supporting documents to the Administration for its claim relating to interest and repayment of loan.*
- vi. Suryachakra Power cannot be allowed additional payment on account of computation of cost of HSD on volume instead of weight prior to April 2007 in terms of the Addendum-II to the PPA signed on 18.08.2011.*

Unquote

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

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

The Commission considered the request of the representatives of the respondents; however, the Commission noted that Hon'ble APTEL under para no. 70 of their Judgment dated 28.11.2014 directed the Commission to pass the consequential order within three months of the date of the Judgment. The Commission, considering the time limit fixed by Hon'ble APTEL, directed the respondents to file records and data along with supporting documents on or before 27.01.2015 positively with advance copy to the petitioner, and scheduled the next hearing on 10.02.2015 at 11:00 AM. The Commission also ordered that no further extension of time will be given in this regard in view of directives of the Hon'ble APTEL.

Sd/-
(S.K.Chaturvedi)
Chairperson

Certified Copy



(Keerti Tewari)
Secretary