

**Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 147 of 2010**

**Dated: 2<sup>nd</sup> September, 2011**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of:**

**Uttar Pradesh Power Corporation Ltd.,  
Shakti Bhawan, 14 Ashoka Marg,  
Lucknow-226 001, U.P.  
Through its Executive Engineer**

**... Appellant**

**Versus**

**1. NTPC Limited,  
NTPC Bhawan, Core '7', Scope Complex,  
7, Institutional Area, Lodhi Road,  
New Delhi-110 003.**

**2. Central Electricity Regularity Commission,  
6<sup>th</sup> Floor, Core-3, Scope Complex,  
Lodhi Road,  
New Delhi-110 003.**

**... Respondents**

Counsel for the Appellant(s):

Mr. Pradeep Mishra,  
Mr. Manoj Kumar Sharma  
Mr. Daleep Kr. Dhyani  
Mr. Shashank Pandit  
Mr. Suraj Singh

Counsel for the Respondent(s):

Mr. M.G. Ramachandran,  
Mr. Anand K. Ganesan  
Ms. Swapna Seshdri, Ms. Sneha,  
Ms. Ranjitha Ramachandran

## **JUDGMENT**

### **HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by U.P. Power Corporation Ltd. against the order dated 9.4.2008 of the Central Electricity Regulatory Commission in Petition no. 8 of 2005, pursuant to the judgment of this Tribunal dated 6.6.2007 in Appeal nos. 205 of 2005 and 09 of 2007.

2. NTPC Ltd., a generating company, is the first respondent. The Central Commission is the second respondent.

3. The facts of the case are as under:

3.1. Tanda Thermal Power Station owned by U.P. Rajya Vidyut Utpadan Nigam Limited, a generating company owned by the State of Uttar Pradesh, was transferred to the first respondent on 14.1.2000 under

the U.P. Electricity Reforms (Transfer of Tanda Thermal Generating Undertaking) Scheme, 2000. Before the transfer of the said undertaking, a power purchase agreement was signed by the U.P. State Electricity Board with the first respondent.

3.2. The Central Commission by its order dated 28.6.2002 approved the tariff of Tanda Thermal Power Station. In the said order the book value of Tanda Thermal Power Station was taken as Rs. 607 Crores.

3.3. In the year 2005, the first respondent filed petition no. 8 of 2005 claiming additional capitalization for the period from 14.1.2000 to 31.3.2004.

3.4. On 24.10.2005, the Central Commission passed an order disposing of the said Petition no. 8 of 2005

whereby it allowed additional capitalization of Rs. 177.47 Crores. Aggrieved by this order, the appellant filed an appeal bearing no. 205 of 2005 against the said order.

3.5. During the pendency of appeal no. 205 of 2005, the appellant filed petition no. 26 of 2005 before the Central Commission for revision of the operational parameters of Tanda Thermal Power Station for the period 2004-2009. While checking the accounts and balance sheets for the period 2002-2004 furnished by the first respondent during the proceedings, the appellant found that the gross block as per the balance sheet is Rs. 751.54 Crores as against the gross block determined by the Central Commission at Rs. 784.47 Crores. It also found several amounts, though claimed, had not been reflected in the audited balance sheet.

3.6. In view of the above, the appellant filed a review petition no. 99 of 2006 before the Central Commission. The Central Commission dismissed the Review Petition by its order dated 26.10.2006 mainly on the ground that the appeal against its order dated 24.10.2005 was pending before the Tribunal.

3.7. The appellant challenged the order dated 26.10.2006 before the Tribunal being appeal no. 9 of 2007.

3.8. Both the appeals i.e. appeal no. 205 of 2005 and appeal no. 9 of 2007 were decided by the Tribunal vide judgment dated 6.6.2007, partly allowing the appeals.

3.9. Consequently, the Central Commission decided the case by its order dated 9.4.2008 giving only partial relief to the appellant. Aggrieved by the order dated

9.4.2008 of the Central Commission, the appellant has filed this appeal.

4. Though the appellant has raised several grounds in the Memorandum of appeal, during the course of arguments and in the written submission the appellant has raised only the following points:

- i) An amount of Rs. 32.72 Crores which forms the part of the original capitalization is not reflected in the balance sheet and hence must be adjusted against the amount of capitalization allowed by the Central Commission in the impugned order.
- ii) As per the balance sheet, fixed assets of Rs. 55.98 Crores and work-in-progress were Rs. 4.49 Crores, totaling to Rs. 61.47 Crores during the period. However,

Rs. 169.05 Crores were claimed towards new work. The same ought not to have been granted.

- iii) Replacement work of Rs.12.9 Crores were done without any decapitalization amount. Hence, the same ought to have been disallowed.

5. Learned counsel for the first respondent argued that the appellant has simply raised the above issues without either referring to any part of the impugned order or pointing out from the pleadings as to how there are any alleged miscalculations. However, he made detailed submissions on merits on each of the above issues.

6. After considering the contentions of both the parties, the following questions would arise for our consideration:

- i) Whether the Central Commission has wrongly admitted the amount of Rs. 32.72 Crores which was not reflected in the balance sheet, in the amount of additional capitalization thus giving double benefit to the first respondent?
- ii) Whether the Central Commission has erred in allowing Rs. 169.05 Crores towards new works whereas the balance sheet showed fixed assets of Rs. 55.98 Crores and work-in-progress of Rs. 4.49 Crores?
- iii) Whether the Central Commission was correct in allowing the replacement work of



Rs. 12.9 Crores without considering any recapitalization amount?

All the above issues are interwoven and, therefore, are being dealt with together.

7. Let us first examine the matters remanded by the Tribunal in its judgment dated 6.6.2007 in appeal nos. 205 of 2005 and 9 of 2007 in the matter of U.P. Power Corpn. Ltd. vs. NTPC Ltd. & Anr. before taking up the specific questions as under:

***“III. Duplicity in recovery of cost:***

*22. The Central Commission, on one hand, argues that normally such expenditure on certain assets which have been replaced is only allowed after corresponding de- capitalization but, on the other hand, allows the said expenditure on the ground that “the circumstances are very different”. It is not tenable. It does not safeguard the interest of the consumers as such avoidable allowance leads to*

*double recovery of components of the capital cost resulting into higher tariff for the consumers.*

***“IV. Interest on loan payment not matching with the petition:***

*23. The Appellant has contended that capitalisation of interest can take place to the extent of actual interest payment by the respondent. It is a very important issue. For the purpose of recovery of the interest for the particular period the aggregate funding is divided on the basis of Debt Equity Ratio of 70:30. Where the actual debt component is less than 70% of the aggregate cost, a special care needs to be taken to arrive at the applicable interest as the developer is not incurring the interest burden in reality. The respondent, NTPC, has claimed rate of interest @ 14.5% through out the period of 2000 to 2004 which appears to be on the higher side keeping in view that the respondent enjoys credit rating which is at par with sovereign rating. We therefore, direct*

*the CERC to take a re-look into the matter to establish the applicable rate of interest”.*

***“XI. Amount of capitalisation not reflected in the balance sheet is not eligible for additional capitalisation for the purpose of determination of tariff and the balance sheet does not contain necessary schedules and report of auditors.***

*31. The Appellant submitted that the additional capital expenditure is to be approved based on the balance sheet and the respondent has been allowed expenditure of those items appearing in the balance sheet. In the instant case before us, the Petition was decided by the Central Commission when the audited balance sheet was available. Thus, the amount of capitalisation as reflected in the books of accounts of the respondent ought to have been taken into consideration.*

*32. We accept the plea of the Appellant on this count and direct the Central Commission to re-look*

*into the matter and restrict the amount of capitalisation to the extent reflected in the balance sheet subject to its prudence check”.*

Thus, the matters remanded by the Tribunal related to double recovery of cost, interest on loan payment and amount of capitalization to the extent reflected in the balance sheet.

8. The Central Commission has considered the matter remanded by the Tribunal and given a reasoned order, impugned in this appeal. By the impugned order, the Central Commission re-determined additional capital expenditure and interest on notional loan in accordance with the observations made by the Tribunal. The Central Commission also reduced the original gross block of capital assets of Rs. 607 Crores by Rs. 32.71 Crores.

9. The appellant has raised a number of issues in this Appeal. The appellant is not entitled to raise issues other than that remanded by this Tribunal to the Central Commission. Thus, we will restrict our findings to the issues remanded by the Tribunal and decided by the Central Commission on the directions of the Tribunal.

10. Aggrieved by the order dated 9.4.2008, the NTPC filed appeal no. 103 of 2008 before the Tribunal claiming that the reduction of capital cost of Rs. 32.71 Crores was outside the scope of remand. NTPC also sought to retain the interest rate of 14.5% on the notional loan.

11. The Tribunal by judgment dated 26.3.2009 partly allowed the appeal no. 103 of 2008 and set aside the order of the Central Commission to the extent it

reduced the gross capital assets of Rs. 607 Crores by Rs. 32.71 Crores.

In view of the judgment of the Tribunal dated 20.3.2009, this issue cannot be raised by the appellant again in the present appeal.

12. Regarding de-capitalization of old assets and capitalization of new assets, the Central Commission in the impugned order has after re-examination has decided the net capitalization to be allowed to NTPC. The relevant paragraphs of the impugned order are reproduced below:

*“12. In the light of the above observation of the Tribunal, the Commission in its order dated 5.9.2007 directed the petitioner to furnish the gross value of assets replaced and de-capitalized during the period up to 31.3.2004. The petitioner vide its affidavit dated 21.9.2007 has submitted the*

*requisite information. The respondent has not disputed the correctness of the information submitted by the petitioner. However, the respondent vide its affidavit dated 20.8.2007 has furnished a list of items required to be de-capitalized.*

*13. The Commission in its order dated 24.10.2005 had allowed additional capitalization with reference to R&M works for Rs.16905.30 lakh which included de-capitalization of the replaced major assets. The petitioner in its affidavit dated 14.9.2007 has furnished the details of de-capitalized assets which were not furnished earlier. The year-wise values of de-capitalized assets as furnished by the petitioner are as under:*

*(Rs. in lakh)*

	2000-01	2001-02	2002-03	2003-04	Total
De-capitalization	86.67	41.49	15.59	12.78	156.53

14. On prudence check, it is found that assets of the above value have been de-capitalised and are accordingly considered for determination of additional capitalization and capital cost.

15. The respondent has also enclosed vide its affidavit dated 20.8.2007 a list of items considered earlier which, as claimed by the respondent, need to be decapitalised. On cross-verification of the details of items submitted by the parties, it is observed that there are some more items (ser no. 127 of the year 2000-01, ser no. 160 of 2001-02, ser no. 132 to 148, 245,257 of the year 2002- 03, and ser. no. 188 and 199 of the year 2003-04) for which de-capitalisation amount has not been indicated. The values of these items are as under:

*(Rs. in lakh)*

	2000-01	2001-02	2002-03	2003-04	Total
<i>Value of items added in the said period without corresponding decapitalisation</i>	21.00	13.25	94.45	23.04	151.74



16. Since the additional capitalization amount of Rs.151.74 lakh is without corresponding decapitalisation, the said amount cannot be allowed to be decapitalised. Accordingly, the following additional capitalization is allowed:

*(Rs. in lakh)*

<i>Sl No.</i>	<i>Particulars</i>	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>	<i>Total</i>
1.	<i>Additional capitalization allowed vide order dated 24.10.2005</i>	4188	4690	6134	2679	17691
2.	<i>Amount not considered without corresponding decapitalisation</i>	21	13	94	23	151
3.	<i>Additional capitalization allowed (1-2)</i>	4167	4677	6040	2656	17540
4.	<i>Decapitalisation allowed</i>	87	41	16	13	157
5.	<i>Net Additional capitalization allowed(3-4)</i>	4080	4636	6024	2643	17383 <sup>o</sup>

Thus, after detailed examination of the matter, the Central Commission has allowed net additional capitalization of Rs. 173.83 Crores. We do not find any fault in the findings of the Central Commission.

The appellant has not given any details in support of its claim of capitalization of Rs. 55.98 Crores and de-capitalization against replacement work of Rs. 12.9 Crores.

13. Thus, we do not find any substance in the appeal and the same is dismissed without any cost.

14. Pronounced in the open court on this **2<sup>nd</sup> day of September, 2011.**

**(Justice P.S. Datta)**  
**Judicial Member**

**( Rakesh Nath)**  
**Technical Member**

REPORTABLE / NON-REPORTABLE

vs