

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 118 OF 2014

Dated: 25th February, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

IN THE MATTER OF

Power Grid Corporation of India Ltd.

Registered Office:

B-9, Qutab Institutional Area,
Katwaria Sarai,

New Delhi-110016 and

Corporate Office:

"Saudamini", Plot No.2, Sector-29,
Gurgaon-122001 (Haryana).

...Appellant/Petitioner

VERSUS

1. Central Electricity Regulatory Commission,
4th Floor, Chanderlok Building,
36, Janpath,
New Delhi-110001,
Through its Secretary.
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Vidyut Marg,
Jaipur-302 005,
Represented by its
Managing Director & Others.
3. Ajmer Vidyut Vitran Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur-302024,
Represented by its

- Managing Director & Others.
4. Jaipur Vidyut Vitran Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur-302024,
Represented by its
Managing Director & Others.
 5. Jodhpur Vidyut Vitran Nigam Ltd.,
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur-302024,
Represented by its
Managing Director & others.
 6. Himachal Pradesh State Electricity Board,
Vidyut Bhawan,
Kumar House Complex Building II,
Shimla-171004,
Represented by its Chairman.
 7. Punjab State Electricity Board,
The Mall, Patiala-147001,
Represented by its Chairman.
 8. Haryana Power Purchase Centre,
Shakti Bhawan,
Sector-6, Panchkula
(Haryana)-134109,
Represented by its S.E./C & R-1.
 9. Power Development Department,
Govt. of Jammu & Kashmir,
Mini Secretariat,
Jammu-180001,
Represented by its Commissioner.
 10. Uttar Pradesh Power Corporation Ltd.,
(formerly Uttar Pradesh State Electricity Board),
Shakti Bhawan,
14, Ashok Marg,
Lucknow-226001
Represented by its Chairman.
 11. Delhi Transco Ltd.,
Shakti Sadan, Kotla Road,
New Delhi-110002,
Represented by its Chairman.
 12. BSES Yamuna Power Ltd.,
BSES Bhawan,

Nehru Place,
New Delhi-110019,
Represented by its CEO.

13. BSES Rajdhani Power Ltd.,
BSES Bhawan,
Nehru Place,
New Delhi-110019,
Represented by its CEO.
14. North Delhi Power Ltd.,
Power Trading & Load Dispatch Group,
Cennet Building,
Adjacent to 66/1 kV Pitampura-3,
Grid Building, Near PP Jewellers,
Pitampura,
New Delhi-110034,
Represented by its CEO.
15. Chandigarh Administration,
Sector-9, Chandigarh-160009,
Represented by its Chief Engineer.
16. Uttarakhand Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun-248001,
Represented by its Managing Director.
17. North Central Railway,
Allahabad-211033,
Represented by Chief Electrical
Distribution Engineer.
18. New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110002,
Represented by its Chairman. ...Respondents

Counsel for the Appellant ... Ms. Suparna Srivastava
Ms. Nishtha Sikroria

Counsel for the Respondent(s)... Mr. K.S. Dhingra for R-1

Mr. Bipin Gupta
Mr. S.K. Bansal for R-3 to R-5

Mr. Rajiv Srivastava for R-10
Mr. S.K. Chaturvedi for R-11
Mr. R.B. Sharma for R-13

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The instant Appeal under Section 111 of the Electricity Act, 2003, has been preferred by Power Grid Corporation of India Ltd. (PGCIL) (in short, the '**Appellant**'), challenging the Tariff Order, dated 9.5.2013, passed by the Central Electricity Regulatory Commission (in short, **Central Commission**)/Respondent No.1 herein, in Petition Nos.2/TT/2011 and 57/TT/2011 whereby, the Central Commission has determined the tariff for Koldam-Nalagarh (Quad) line along with bays at 400/220 kV Nalagarh sub-station (Extension) (Asset-I) and 400/220 kV Ludhiana (Extension) (Asset-II) under transmission system associated with Koldam Hydro-electric Project for the period 2009-14.

2. The Appellant/petitioner (PGCIL) is aggrieved by the impugned order that while determining such tariff and adjudicating upon the time over run of 18 months in commissioning assets, the Central Commission has condoned the time over run of only 12 months and has declined to condone the time over run of balance six months with a direction to the Appellant/petitioner to claim Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) for the said six months from NTPC in terms of the Indemnification Agreement entered into between the Appellant/petitioner and NTPC, even though, said Indemnification Agreement contains a provision of indemnification with respect to IDC only and not with respect to IEDC. According to the said Indemnification Agreement, only IDC for six months was to be payable/recoverable. According to the Appellant, the Appellant has wrongly been denied of recovery of IEDC for the said six months as part of the capital cost.

3. The Appellant herein is a Government of India Company within the meaning of the Companies Act, 1956. The Government of India has declared the Appellant as the Central Transmission Utility (CTU) and being

the CTU is deemed to be a transmission licensee under Section 14 of the Electricity Act, 2003, and is required to, inter-alia, build, maintain and operate an efficient, coordinated and economical inter-State transmission system (ISTS) for smooth flow of electricity from generating stations to the load centers.

4. The Respondent No.1 is the Regulatory Commission and is authorized to determine the tariff for the said transmission system in accordance with the CERC (Terms & Conditions of Tariff) Regulations, 2009 (in short, **Tariff Regulations, 2009**), issued vide notification, dated 19.1.2009, to remain in force for a period of 5 years w.e.f. 1.4.2009 unless reviewed earlier or extended by the Central Commission.

5. Respondent Nos.2 to 18 are the beneficiaries in the Northern Region who receive power supply from various generating stations by means of the lines built, maintained and operated by the Appellant/petitioner as the CTU.

6. The relevant facts giving rise to the instant Appeal are as under:

- (a) that the Appellant had been entrusted with the implementation of part of “Associated Transmission System” of Koldam Hydro-electric Project in the Northern Region. The said transmission system was a part of the composite transmission system planned for Koldam Hydro-electric Project, Parbati-II Hydro-electric Project and Parbati-III Hydro-electric project for commissioning in the Northern Region. The administrative approval and expenditure sanctioned for the transmission project was accorded by the Ministry of Power, Government of India on 7.9.2005 for Rs.464.91 crores, which included an IDC (Interest During Construction) of Rs.31.02 crores (based on 2nd quarter, 2005 price level). The said approval includes the Appellant’s portion of work at a cost of Rs.162.96 crores

including an IDC of Rs.10.54 crores. The scope of work comprised in the project for execution by the Appellant consists of Koldam-Nalagarh 400 kV D/C (Quad) and 400/220 kV Nalagarh sub-station (Extension) (Asset-I) and 400/220 kV Ludhiana (Extension) (Asset-II).

- (b) that as per the Investment Approval, the Associated Transmission System of Koldam Hydro-electric Project was scheduled for completion in the time frame of 36 months from the date of Investment Approval to match the commissioning schedule of the Koldam Generation Project.
- (c) that in the 16th Standing Committee Meeting on Transmission System Planning in Northern Region, held on 24.3.2004, it was recorded that Koldam generation is expected around 2008-09 time-frame. There is a keen emphasis on matching the commissioning of transmission system with that of the generation units, more so when the lines forming part of the transmission system are evacuation lines and the intent is to make available the service while optimizing the investments.
- (d) that in the Director level co-ordination meeting held on 15.7.2005, between the Appellant and NTPC with respect to power projects and Associated Transmission Systems, NTPC informed that the project activities were progressing satisfactorily and Unit-1 of the Koldam Hydro-electric Project is to be commissioned by November, 2008, Unit-II by January, 2009, Unit-III by March, 2009 and Unit-IV by April, 2009.
- (e) that the Appellant in December, 2006, accordingly, placed awards on agencies to meet the above completion schedule. The main package (Tower Package) was awarded with a completion schedule of 36 months i.e. October, 2008.
- (f) that in the review meeting held by the Secretary, Ministry of Power, Government of India on 14.11.2006, NTPC informed that

all the packages for the Koldam generation project had been awarded. When the representatives of the Central Electricity Authority expressed apprehension regarding likely delay in filling up of project dam, NTPC mentioned that all efforts were being made to bring the Units within schedule. In a further meeting of the Secretary, Ministry of Power, Government of India on 10.9.2007, the representatives of Central Electricity Authority informed that there was going to be a delay of 9 months in the Koldam generation project. NTPC informed that due to hills slide, the implementation has been delayed and assured that all necessary steps would be taken to ensure to avoid slippages. Thus, for evacuation of power from the Koldam Hydro-electric Project, the 400 kV D/C line from Koldam to Nalagarh was under execution by the Appellant and was to be made available matching with commissioning of the generation project. However, there were problems with respect to the execution of the Koldam generation project.

- (g) that NTPC indicated in the 10th Meeting of Northern Region Power Committee held on 30.9.2008, that the first Unit of the project was expected to be commissioned by July, 2010. Subsequently, in the 26th Meeting of Standing Committee on Transmission System Planning in the Northern Region held on 13.10.2008, it was indicated that Koldam generation project was getting further delayed and was expected to be commissioned by March, 2011, so that the Koldam-Ludhiana 400 kV D/C line could be programmed for commissioning after commissioning of the generation project. Accordingly, it was agreed that the commercial operation date of 400 kV D/C Koldam-Ludhiana line should be nine (9) months after the EARLIER commissioning schedule of the Koldam generation project.

- (h) that the Appellant had commenced the work of transmission line keeping in view the parallel time lines of generation. With the subsequent shift/delay in the generation project, the Appellant had to slow down the work; however, it was not feasible to delay the Appellant's project to the extent corresponding to the delay in generation project as such time extension was necessarily to have implications for the Appellant having a bearing on the project cost. The Appellant is, accordingly, constrained to complete construction activities of the Koldam-Nalagarh 400 kV D/C (Quad) line alongwith bays at Nalagarh sub-station (Asset-I) on 31.3.2010.
- (i) Though, the line was ready for its intended use, the Appellant was unable to charge the same because of non-readiness of generation which was not attributable to the Appellant. The Appellant was, therefore, not able to provide the service for reasons not attributable to itself, its suppliers or contractors. In the circumstances, the provisions of Regulation 3(12)(c) of the Tariff Regulations, 2009 became applicable to the case of the Appellant so far as the date of commercial operation in relation to the transmission system (Asset-I) set-up by it is concerned.
- (j) that the Appellant filed a petition being Petition No.2/TT/2011 before the Central Commission for approval of Date of Commercial Operation (DOCOC) for Asset-I as 1.4.2010 under Regulation 3(12)(c) of the Tariff Regulations and for the determination of transmission tariff from proposed DOCOC to 31.3.2014. In the said petition, the Appellant submitted an estimated capital cost incurred upto the proposed DOCOC and projected to be incurred during 2010-11, 2011-12 and 2012-13 and requested that the admissibility of additional capitalization be considered as per provisions of Regulation 9(1) of the Tariff Regulations, 2009. For the purpose of determination of transmission tariff, the Appellant submitted in the petition that

the tariff for block 2009-14 had been worked out from the proposed DOCO of 1.4.2010 and that the tariff was to be claimed from the beneficiaries from 1.4.2010 to 31.3.2014. The said transmission tariff was to be recovered on monthly basis on proposed DOCO in accordance with Regulation 23 of Tariff Regulations, 2009 and was to be borne by the beneficiaries (Respondent No.2 to 18 herein).

- (k) that the situation regarding execution of the work of construction of 400/220 kV sub-station at Ludhiana is also similar to that of construction of Koldam-Nalagarh 400 kV D/C (Quad) line and 400/200 kV Nalagarh sub-station. The Appellant commenced the work of bays at Ludhiana keeping in view the parallel time line of generation. With the subsequent shift/delay in generation project, the Appellant had to slow down the work. The Appellant was constrained to complete the construction activity and bays at Ludhiana projected to be completed with anticipated DOCO of 1.3.2011. The bays at Ludhiana were also ready for their intended use but the Appellant was unable to charge the same because of the non-readiness of generation not attributable to the Appellant. The Appellant was, therefore, not able to provide service for reasons not attributable to itself, its supplier or contractors. The Appellant, accordingly, filed another petition being Petition No.57/TT/2011 for approval of DOCO (Asset-II) as 1.3.2011 under Regulation 3(12)(c) of the Tariff Regulations, 2009 and for determination of tariff from proposed DOCO to 31.3.2014.
- (l) that in line with procedure notified by the Central Commission, the Appellant clubbed Asset-I and Asset-II of the Koldam transmission system for the purpose of determination of transmission tariff and submitted that notional DOCO for combined assets be considered as anticipated DOCO i.e. 1.3.2011.

- (m) that after considering the pleadings made and materials placed on record including the agreed terms under the Indemnification Agreement, the Central Commission, vide impugned Tariff Order, dated 9.5.2013, decided the transmission tariff for the combined assets (Asset-I and Asset-II) of the transmission system of Koldam Hydro-electric Project. With respect to the prayer for approval for date of commercial operation of the transmission assets, the Central Commission has allowed the commercial operation date for the combined assets under the transmission system project as per Regulation 3(12(c) of the Tariff Regulations, 2009 as claimed by the Appellant. With respect to time over-run in completion of the transmission system, the learned Central Commission has condoned the delay of 12 months and has refused to condone the delay of remaining 6 months as detailed above.
- (n) that the Appellant submitted its claim to NTPC after passing of the impugned order as per the direction of the Central Commission for claim of IDC amounting to Rs.197.85 lacs and IEDC amounting to Rs.73.63 lacs for a period of 6 months on account of delay in commissioning of the Koldam generation project vide letters dated 27.5.2013 and 13.6.2013.
- (o) that NTPC expressed its acceptance vide letter, dated 10.6.2013, to the Appellant for payment of IDC for 6 months; however, by citing Indemnification Agreement between the Appellant and NTPC and stating that the same does not cover the terms of IEDC for the purpose of indemnification. Thus, NTPC refused to pay the 6 months IEDC amounting to Rs.73.63 lakhs to the Appellant as it was beyond the provisions of the Indemnification Agreement.
- (p) that NTPC, by further communication, dated 27.6.2013, informed its payment of IDC to the Appellant and reiterated its refusal to pay IEDC for 6 months.

- (q) that the Appellant in the said circumstances, was constrained to file a Review Petition, being Review Petition No.12/RP/2013 before the Central Commission. The learned Central Commission had rejected the said review petition of the Appellant vide order, dated 14.11.2013, holding that it was the responsibility of the Appellant to safeguard its interest in the matter of IDC and IEDC in the Indemnification Agreement (IA), since the Appellant has failed to protect its interest, the Appellant cannot be allowed to now shift the responsibility of his own omission to the beneficiaries.

7. We have heard Ms. Suparna Srivastava, the learned counsel for the Appellant, Mr. K.S. Dhingra, the learned counsel for the Central Commission, Mr. Bipin Gupta, learned counsel for Respondent No.3 to 5, Mr. Rajiv Srivastava, learned counsel for Respondent No.10, Mr. S.K. Chaturvedi, learned counsel for Respondent No.11 and Mr. R.B. Sharma, learned counsel for Respondent No.13. We have deeply gone through the evidence and other material available on record including the impugned order passed by the Central Commission and written submissions.

8. The only issue arising for our consideration is **whether the Central Commission was justified in disallowing Incidental Expenses During Construction (IEDC) to the Appellant for 6 months i.e. 1.10.2008 to 31.3.2009 amounting to Rs.73.63 lakhs while determining the tariff for the associated transmission system commissioned by the Appellant for Koldam Hydro-electric Project?**

9. On this issue, the learned counsel for the Appellant has made the following contentions:

- (a) That the learned Central Commission, while determining the transmission tariff of the Appellant, has condoned the time over run of only 12 months and wrongly declined to condone the time over run of balance six months with a direction to the

Appellant to claim Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) for the said six months from NTPC in terms of the Indemnification Agreement entered into between the Appellant and NTPC.

- (b) that the said Indemnification Agreement between the Appellant and NTPC contains a provision of Indemnification with respect to IDC only and not with respect to IEDC. According to the Indemnification Agreement, only IDC for six months was to be payable by the NTPC to the Appellant.
- (c) that the Appellant has wrongly been denied the recovery of IEDC for the said six months as part of the capital cost by the learned Central Commission.
- (d) that though, the line was ready for its intended use, the Appellant was unable to charge the same because of non-readiness of generation project, which was not attributable to the Appellant. Consequently, the Appellant was not able to provide the service for reasons not attributable to itself or its suppliers or contractors. In the circumstances, the provisions of Regulation 3(12)(c) of the Tariff Regulations, 2009 became applicable to the case of the Appellant so far as the date of commercial operation in relation to the transmission system set-up by the Appellant is concerned.
- (e) that the Appellant submitted an estimated capital cost incurred upto the proposed DOCO and projected to be incurred during 2010-11, 2011-12 and 2012-13 and requested that the admissibility of additional capitalization be considered as per provisions of Regulation 9(1) of the Tariff Regulations, 2009. For the purpose of determination of transmission tariff, the Appellant submitted in the petition before the Central Commission that the tariff for block 2009-14 had been worked out from the proposed DOCO of 1.4.2010 and that the tariff

was to be claimed from the beneficiaries from 1.4.2010 to 31.3.2014. The said transmission tariff was to be recovered on monthly basis on proposed DOCO in accordance with Regulation 23 of Tariff Regulations, 2009 and was to be borne by the beneficiaries (Respondent No.2 to 18 herein). The learned Central Commission has not appreciated these facts while passing the impugned order.

- (f) that according to Appellant's petition being Petition No.2/TT/2011, the Date of Commercial Operation (DOCO) for Asset-I was 31.3.2010. As per petition being Petition No.57/TT/2011, regarding Asset-II, the Date of Commercial Operation was 1.3.2011. The Appellant clubbed Asset-I and Asset-II of the Koldam transmission system for the purpose of determination of transmission tariff in line with procedure notified by the Central Commission and submitted that notional Date of Commercial Operation for combined assets be considered as anticipated DOCO i.e. 1.3.2011. The learned Central Commission has not appreciated the factum of clubbing Asset-I & Asset-II while passing the impugned order.
- (g) that after passing the impugned order, on exchange of correspondences between the Appellant and the NTPC, NTPC, with whom the Appellant was having an Indemnification Agreement, has made payment of IDC to the Appellant. NTPC has refused to pay the six month's IEDC amounting to Rs.73.63 lakhs to the Appellant saying that it was beyond the provision of Indemnification Agreement executed between the Appellant and NTPC. The Indemnification Agreement provides only for payment of IDC which payment has been made by the NTPC to the Appellant.
- (h) that the learned Central Commission has failed to consider the fact that the Indemnification Agreement does not contain any provision for payment of IEDC to the Appellant by the NTPC

and in its Review Order, dated 14.11.2013, dismissed the review petition, being Review Petition No. 12/RP/2013 further holding that it was the responsibility of the Appellant to safeguard its interest in the matter of IDC and IEDC in the Indemnification Agreement.

- (i) that in the review order, the learned Central Commission has wrongly held that since the Appellant has failed to protect its interest, the Appellant cannot be allowed to now shift the responsibility of his own omission to the beneficiaries as it was the duty of the Appellant to safeguard its interest in the matter of IDC and IEDC both while executing Indemnification Agreement with the NTPC.

10. **Per contra**, the learned counsel for the Respondents have made the following submissions:

- (a) that the Appellant sought approval of the Dates of Commercial Operation (DOCO) of the transmission Asset-1 and Asset-II under Regulation 3(12)(c) of Tariff Regulations, 2009 as the completion of the Koldam Hydro-electric Project of NTPC got delayed. The learned Central Commission has approved the Date of Commercial Operation, in the impugned order, as proposed by the Appellant in terms of Regulation 3(12)(c) of Tariff Regulations, 2009 without examining the statutory role of the Appellant as 'Central Transmission Utility' (CTU). In its capacity as CTU, the Appellant has a statutory responsibility to undertake transmission of electricity through inter-state transmission system and also discharge all functions of planning and coordination relating to inter-state transmission system with the generating company under Section 38(2) of the Electricity Act, 2003. The learned Central Commission has accepted the request of the Appellant and approved the Dates of

Commercial Operation (DOCO) in utter disregard to the statutory functions as CTU.

- (b) that the learned Central Commission has not taken any cognizance of the judgment, dated 2.7.2012, in Appeal No. 123 of 2011, Punjab State Power Corporation Ltd. vs. Power Grid Corporation of India Ltd. & Ors. of this Appellate Tribunal wherein the applicability of the second proviso to Regulation 3(12)(c) of the Tariff Regulations, 2009 came to be decided. In view of the said judgment of this Appellate Tribunal, dated 2.7.2012, it was necessary to determine the COD of transmission Asset in question in accordance therein and, thereafter, determine the capital cost of the Asset for which capital expenditure incurred up to COD duly certified by the auditors were required to be filed. In these circumstances, Mr. R.B. Sharma, learned counsel appearing for the BSES Rajdhani Power Limited (Respondent No.13) has pleaded that the impugned order should be set-aside and the matter should be remanded back to the learned Central Commission for re-determination of COD and tariff in the light of Regulation 3(12)(c) of the Tariff Regulations, 2009 and this Appellate Tribunal's judgment, dated 2.7.2012, in Appeal No. 123 of 2011.
- (c) that the learned counsel appearing for the Central Commission (Respondent No.1) has also submitted that it was the responsibility of the Appellant to safeguard its interest through the Indemnification Agreement and since it failed to do so by making proper provision therein, it could not be permitted to pass the burden on the consumers. Since, the Appellant had not been diligent while executing the Indemnification Agreement with NTPC, in as much as it failed to make any provision for recovery of entire cost, the consumers should not be made to suffer on account of lack of diligence on the part of

the Appellant. IEDC is recoverable as part of the capital cost under Regulation 7 of Tariff Regulations, 2009. In the instant case, the Central Commission on scrutiny, has found it imprudent to allow IEDC for six months period considering the interest of the consumers because the Appellant has been found lacking diligence in executing the Indemnification Agreement with the NTPC. Further, neither in law nor in equity, the consumer can be burdened with additional cost on account of the Appellant's claim for capitalization of IEDC for the period of delay as there is no law conferring a right on the Appellant to claim IEDC in every case of delay.

- (d) that, further, the learned counsel for the Central Commission has also contended that the issue involved in this Appeal is no longer *res integra* as this Appellate Tribunal through a series of judgments, mainly judgment, dated 12.1.2012, in Appeal No. 65 of 2011, filed by the same Appellant, upheld the order of the Central Commission whereby the Central Commission had not allowed IDC and IEDC under similar circumstances and dismissed the appeal. The view expressed by this Appellate Tribunal in its judgment, dated 12.1.2012 in Appeal No. 65 of 2011 has been reiterated in the subsequent judgment, dated 10.5.2012 in Appeal no. 160 of 2011, filed by the Appellant before this Appellate Tribunal, wherein also the Central Commission had not allowed IDC and IEDC. In the instant case, the learned Central Commission, by the impugned order, has already condoned the major portion of the delay and the Appellant is in a far better position.

11. **Our consideration and conclusion:**

11.1 It is evident from the perusal of the record and after going through the rival submissions made by the parties, that the learned Central Commission, while determining the transmission tariff and adjudicating

upon the time over run of 18 months in commissioning of Assets (Asset-I & Asset-II), has condoned the time over run of 12 months out of total time over run of 18 months. Thus, the Central Commission has declined to condone the time over run of balance six months with a direction to the Appellant/petitioner to claim Interest During Construction (IDC) and Incidental Expenditure During Construction (IEDC) for the said six months from NTPC in terms of the Indemnification Agreement entered into between the Appellant and NTPC. It is further evident that after passing the impugned order, as a result of exchange of correspondences between the Appellant and NTPC, NTPC has made the payment of IDC for six months to the Appellant citing that only the provision for payment of IDC is in existence in the Indemnification Agreement between the Appellant and NTPC. NTPC has refused to make payment of IEDC for six months to the Appellant citing that the same was beyond the provision of the said Indemnification Agreement.

11.2 After the payment of IDC for six months by NTPC to the Appellant after passing of the impugned order, only the issue of non-payment of IEDC for six months, amounting to Rs.73.63 lakhs, is in question in the instant Appeal.

11.3 NTPC has refused to pay six months IEDC to the Appellant saying that the said payment of IEDC is beyond the provision of Indemnification Agreement entered into between the NTPC and the Appellant. The Appellant filed a review petition, being Review Petition No.12/RP/2013 before the Central Commission which was also rejected vide Central Commission's review order, dated 14.11.2013, holding that it was the responsibility of the Appellant to safeguard its interest in the matter of IDC and IEDC in the Indemnification Agreement, since the Appellant has failed to protect its interest, the Appellant cannot be allowed to now shift the responsibility of its own omission to the beneficiaries.

11.4 We may further observe that after considering the pleadings and the material placed on record including the terms of the Indemnification Agreement executed between the Appellant and NTPC, the learned Central Commission, vide impugned order, dated 9.5.2013, has decided the transmission tariff for the combined Assets (Asset-I & Asset-II) of the transmission system of the Appellant. The appellant, in line with procedure notified by the Central Commission, clubbed Asset-I and Asset-II of the Koldam transmission system for the purpose of determination of transmission tariff and submitted that notional DOCO for combined assets be considered as anticipated DOCO i.e. 1.3.2011. We may further note that the DOCO of Asset-I as per Petition No. 2/TT/2011 and DOCO for Asset-II in Petition No. 57/TT/2011 were 31.3.2010 and 1.3.2011 respectively. After clubbing Asset-I & Asset-II of the said transmission system of the Appellant, the Appellant submitted that the notional DOCO for combined Assets (Asset-I & Asset-II) be considered as anticipated DOCO i.e. 1.3.2011.

11.5 We may further note that with respect to the prayer for approval of DOCO of the transmission system of the Appellant, the Central Commission has allowed the commercial operation date for the combined asset under the transmission system project as per Regulation 3(12)(c) of the Tariff Regulations, 2009 as claimed by the Appellant. Thus, there remains no grievance to the Appellant on the DOCO for combined assets of the transmission system of the Appellant. The learned Central Commission has condoned the delay, as stated above, for the period which were found beyond the control of the Appellant and refused to condone the delay for the period to which there was no satisfactory explanation or details on record produced by the Appellant before the Central Commission.

11.6 It is evident from the Review Order, dated 14.11.2013, passed in Review Petition No. 12/RP/2013 by the Central Commission that while dismissing the review petition, the learned Central Commission has held

that it was the responsibility of the Appellant to safeguard its interest in the matter of IDC and IEDC in the Indemnification Agreement executed between the Appellant and NTPC. We are further unable to find force in this contention of the Appellant that since there is no provision for payment of IEDC in the Indemnification Agreement executed between the Appellant and NTPC, the Appellant should now be allowed IEDC for the period of six months even in the absence of the provision with regard to payment of IEDC in the Indemnification Agreement. Further, we are unable to agree to the Appellant's contention that the Appellant has wrongly been denied of recovery of IEDC for the said six months period as part of the capital cost. After going through the material on record and the relevant regulations, the learned Central Commission has passed the impugned order giving further direction to the Appellant/petitioner to claim IDC and IEDC for the said six months period from NTPC in terms of the Indemnification Agreement entered into between the Appellant and NTPC. If the Appellant remained careless and un-careful about the inclusion or incorporation of the provision with regard to the payment of IEDC in the Indemnification Agreement, the Appellant cannot legally be allowed the said IEDC for the six months period, as a part of the capital cost. The Appellant cannot be legally allowed to shift the responsibility of its own omission to the beneficiaries as it was the duty of the Appellant to safeguard its interest in the matter of IDC and IEDC both, while executing the Indemnification Agreement with the NTPC. We are also of the view that since it was the responsibility of the Appellant to safeguard its interest by incorporating provisions with regard to the IDC and IEDC in the Indemnification Agreement and since it failed to do so by making proper provisions in the Indemnification Agreement, the Appellant cannot be permitted to pass the burden on to the consumer. The Appellant had not been diligent while executing the Indemnification Agreement with NTPC in as much as it failed to make any provision for recovery of entire cost and the consumer should not be made to suffer on account of lack of diligence of the Appellant. Further, the learned Central Commission, on scrutiny

has found it imprudent to allow IEDC for six months period to the Applicant considering the interest of the consumers. We also hold the same view according to the view and findings recorded by the Central Commission in the impugned order that neither in law nor in equity, the consumer can be burdened with additional cost on account of the Appellant's claim for capitalization of IEDC for the period of six months as there is no law conferring a right on the Appellant to claim IEDC in every case of delay. We also observe that the learned Central Commission, by the impugned order, has already condoned the major portion of the delay and the Appellant has been placed in a far better position by the Central Commission while accepting DOCO of the combined assets of the transmission system of the Appellant as 1.3.2011, which was proposed by the Appellant before the Central Commission under Regulation 3(12)(c) of the Tariff Regulations, 2009. The Central Commission has rightly, justly and legally condoned the time over run of 12 months out of the total time over run of 18 months and has rightly determined the tariff for the transmission system of the Appellant. Since, there was no justification or explanation for the delay of remaining six months caused in the commissioning of the assets, the learned Central Commission has rightly declined to condone the delay of remaining six months period.

12. In view of the above discussions, we do not find any infirmity, illegality or perversity in the impugned order, dated 9.5.2013, passed by the Central Commission **and, accordingly, this issue is decided against the Appellant.** The instant Appeal is liable to be dismissed as the contentions raised on behalf of the Appellant are sans without merits.

13. **SUMMARY OF OUR FINDINGS:**

13.1 In this matter of determination of tariff for the transmission system of the Appellant and adjudicating upon the time over run of 18 months

in commissioning of the transmission assets, the learned Central Commission has rightly, justly and legally condoned the time over run of only 12 months and has further rightly declined to condone the time over run of balance six months with a direction to the Appellant/petitioner to claim Interest During Construction and Incidental Expenses During Construction for the remaining six months from NTPC in terms of the Indemnification Agreement entered into between the Appellant/petitioner and NTPC. NTPC has made the payment of IDC for six months period in accordance with the provisions of the Indemnification Agreement between the Appellant and NTPC. Since, there was no provision in existence in the said Indemnification Agreement regarding payment of IEDC for balance six months period, the NTPC has denied the same. In the absence of the any provision in the Indemnification Agreement entered into between the Appellant and NTPC, the Appellant cannot legally be allowed the IEDC for six months period and the same cannot be allowed to be passed on to the consumer. Since, the Appellant had not been diligent and remained negligent while executing the Indemnification Agreement with NTPC to make a provision for recovery of entire cost, the consumer cannot be made to suffer on account of lack of diligence or negligence on the part of the Appellant and for the said omission of the Appellant, the consumer cannot be burdened with additional cost on account of Appellant's claim for capitalization of IEDC for the six months delay.

13.2 Further, the learned Central Commission, on scrutiny, while passing the impugned order, has rightly and properly found it imprudent to allow IEDC for six months period considering the interest of the consumers and given appropriate consideration to the provisions of Section 61(d) of the Electricity Act, 2003 relating to safeguarding of consumers interest and at the same time, recovery of cost of electricity in a reasonable manner. Thus, we hold that the learned Central Commission has not committed any illegality in passing the impugned order in declining the time over run of balance six months with the

aforesaid direction to claim IDC and IEDC for the said six months period from NTPC in terms of Indemnification Agreement.

14. Consequently, in view of the above discussions, we do not find any merits in the Appeal and the instant Appeal, being Appeal No. 118 of 2014, is hereby dismissed without any order as to costs. The impugned order, dated 9.5.2013, passed by the Central Commission in Petition Nos.2/TT/2011 and 57/TT/2011, is hereby affirmed.

PRONOUNCED IN THE OPEN COURT ON THIS 25TH DAY OF FEBRUARY, 2015.

**(Justice Surendra Kumar)
Judicial Member**

**(Rakesh Nath)
Technical Member**

√ REPORTABLE/NON-REPORTABLE

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