

**In the Appellate Tribunal for Electricity at New Delhi  
(Appellate Jurisdiction)**

**Appeal No. 13 of 2014**

Dated: 10<sup>th</sup> February, 2015.

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

**In the matter of:**

IN THE MATTER OF:

Power Grid Corporation of India Ltd.,  
Saudamini, Plot No. 2,  
Sector 29, Gurgaon ,  
Haryana - 122001

..... Appellant/petitioner

VERSUS

1. Central Electricity Regulatory Commission,  
3<sup>rd</sup> and 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi - 110001.
2. Rajasthan Power Procurement Centre,  
Vidyut Bhawan, Janpath,  
Jaipur - 302 005.
3. Ajmer Vidyut Vitran Nigam Ltd,  
400kV GSS Building(Ground Floor)  
Ajmer Road, Heerapura, Jaipur-302005.
4. Jaipur Vidyut Vitran Nigam Ltd,  
400kV GSS Building(Ground Floor),  
Ajmer Road, Heerapura, Jaipur -302005.
5. Jodhpur Vidyut Vitran Nigam Ltd,  
400kV GSS Building (Ground Floor),  
Ajmer Road, Heerapura, Jaipur-302005.
6. Himachal Pradesh State Electricity Board Ltd.,  
Vidyut Bhawan, Kumar House Complex Building II,  
Shimla - 171004.
7. Punjab State Power Corporation Ltd.,  
Thermal Shed, T-1A, Patiala - 147 001.
8. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector 6,  
Panchkula (Haryana) 134 109.
9. Power Development Department,

Janipura Grid Station,  
Jammu (Tavi) - 180 007.

10. Uttar Pradesh Power Corporation Ltd. ,  
Power Purchase Agreement Directorate (10<sup>th</sup> Floor),  
Shakti Bhawan Extension, 14, Ashok Marg,  
Lucknow - 226001.
11. Delhi Transco Ltd. ,  
Shakti Sadan, Kotla Road,  
New Delhi - 110002.
12. BSES Yamuna Power Ltd. ,  
Skakti Kiran Building,  
Karkardooma, Delhi - 110 092.
13. BSES Rajdhani Power Ltd. ,  
BSES Bhawan, Building No. 20, Nehru Place,  
New Delhi - 110019.
14. North Delhi Power Limited, Power Trading and Load Dispatch Group,  
CENNET Building, Adjacent to 66/11 KV,  
Pitapuram-3, Grid Building , Near PP Jewelers,  
Pitapuram, New Delhi 110034.
15. Chandigarh Administration,  
Sector 9, Chandigarh - 160 022.
16. Uttarakhand Power Corporation Ltd. ,  
Urja Bhawan, Kanwali Road,  
Dehradun - 248 001.
17. North Central Railway,  
DRM office, Nawab Yusuf Road,  
Allahabad-211 001.
18. New Delhi Municipal Council,  
Palika Kendra, Sansad Marg,  
New Delhi - 110002

..... Respondents

### JUDGMENT

#### PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

1. The appellant/petitioner Power Grid Corporation of India Ltd.(PGCIL) has filed the present Appeal under Section 111 of the Electricity Act, 2003 against the order dated 23.10.2013 passed by the Central Electricity Regulatory Commission (hereinafter called the 'Central Commission') in Petition No. 314 of 2010 whereby the Central Commission has determined the tariff for Asset 1 Combined elements of: (a) 30% FSC on 400 KV Bareilly-Mandola Ckt-1 & Ckt-2 at Bareilly, (b) 45% FSC on 400 KV D/C Unnao-Bareilly Ckt-1 and Ckt-2 at Unnao end and (c) 30% FSC on 400 Kv Gorakhpur-

Lucknow Ckt-1 at Lucknow (hereinafter referred as 'Asset 1') and Asset 2: 30% FSC on 400 Kv Gorakhpur-Lucknow Ckt-2 at Lucknow (hereinafter referred as 'Asset 2') under system associated with Enhancement of Transmission Capacity in East-West Corridor of Northern Region. The Central Commission while dealing with the aspect of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) has disallowed the claim amounting to Rs 93.91 lakh on the ground that appellant has not given the evidence in support of reasons claimed for the delay.

2. that the matter in issue is disallowance of the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) by the Central Commission amounting to Rs. 93.91 lacs in respect of time overrun relating to Asset 1 (a) of 8 months, Asset 1 (b) of 5 months, Asset 1 (c) of 4 months and Asset 2 of 7 months of the appellant/petitioner.

3. that the reasons for time overrun according to the appellant/petitioner are as under:-

- a) Non-availability of shut down from various agencies;
- b) Unprecedented rain and flooding;

4. that the appellant/ petitioner herein PGCIL, is a Government Company and discharging the functions of the Central Transmission Utility and is engaged in the transmission of electricity and other functions provided under the Electricity Act, 2003. The Appellant is a deemed Transmission Licensee under Section 14 of the Electricity Act, 2003. The Appellant discharges the said functions under the regulatory control of the Central Commission. Tariff for the appellant's transmission activities is determined by the Central Commission. Respondent no.1 is the Central Commission which has notified the Central Electricity Regulatory Commission (Terms and Conditions for determination of Tariff) Regulations, 2009 (hereinafter referred to as the 'Tariff Regulations, 2009') during the period 1.4.2009 to 31.3.2014. Remaining Respondents are the Distribution Licensees in different States.

5. The relevant facts giving rise to the instant appeal are as under:-

5.1. that on 27.10.2006 the Board of Directors of Appellant approved the investment approval for the transmission project associated with enhancement of transmission capacity in Northern Region at the cost of Rs. 10380 lakhs including Interest During Construction of Rs. 427 lakh based on 2<sup>nd</sup> quarter 2006 price level.

5.2. that the scope of work covered under the above project is as follows;

- (i) Asset - 1 combined elements of
  - a) 45% FSC on 400 kv D/C Unnao -Bareilly line at Unnao end
  - b) 30% FSC on 400KV D/C Bareilly- Mandola at Bareilly end
  - c) 30% FSC on 400KV D/C Gorakhpur- Lucknow Ckt-1 at Lucknow end
- (ii) Asset - 2 - 30% FSC on 400 KV Gorakhpur - Lucknow Ckt 2 at Lucknow

5.3. that as per the investment approval, on 27.10.2006 the above assets of the appellant were scheduled to be commissioned within 24 months from the date of issue of first Letter of Award (LOA). On 30.07.2007, the Letter of Award was issued by the appellant. Accordingly, the transmission assets were schedule to be commissioned on 01.08.2009.

5.4. that the above project was involving installation of Fixed Series Compensation (FSC) at existing charged substations of Lucknow, Bareilly and Unnao which require long shutdowns as these are operating stations. Therefore, the appellant co-ordinated with various agencies involved in the operation of such substations for shutdown. The shutdown could only be available during off-peak load seasons. The implementation of the project was affected by the fact that the appellant had to wait for such shut down for a period of time due to operations in the said substations.

5.5. that after getting the approval for shutdown, the Asset 1 was commissioned on 01.04.2010 with a delay of 8 months and the Asset 2 was commissioned on 01.07.2010 with a delay of 11 months.

5.6. that on 24.11.2010 the appellant filed a petition being Petition No. 314 of 2010 for determination of transmission tariff of Asset 1 and Asset 2 from the date of commercial operation to 31.03.2014 as per the Tariff Regulations, 2009.

5.7. That in the said petition, the Central Commission from time to time sought various informations, details of justification and clarifications etc. from the appellant regarding the delay. In response to the above, the appellant submitted the requisite details vide affidavits dated 15.04.2011 & 16.07.2012 regarding the non-availability of shutdown and heavy rain and flooding of construction area being the causes for the delay.

5.8. that the respondent No. 9 Uttar Pradesh Power Corporation Ltd. (UPPCL), respondent No. 6 Punjab State Powers Corporation Limited (PSPCL) and the respondent No. 12 BSES Rajdhani Power Limited also filed their reply to the above petition.

5.9. that the learned Central Commission passed the impugned order on 23.10.2013 determining the transmission tariff for the above project of the appellant but has not fully

allowed the IDC & IEDC as claimed by the appellant. The said impugned order dated 23.10.2011 has been assailed before us by filing the instant Appeal.

5.10. that the learned Central Commission, in terms of the impugned order, while allowing some part of the time overrun claimed by the appellant, has rejected the claim in regard to time overrun of 8 months in regard to **Asset 1 (a)**; **5 months in regard to Asset-1 (b)**; **4 months in regard to Asset 1 (c)** and **7 months in regard to Asset-2** on the ground that the appellant/petitioner had not submitted documentary evidence in regard to the causes for delay in the execution of the project for which the above time overrun had been claimed. The causes for delay claimed by the appellant before the learned Central Commission were non-availability of shut down, unprecedented rains from May to October 2008 and floods during the period August to September 2008.

5.11. According to the appellant, the delay in commissioning of the Asset-1 and Asset-2 is on account of the following reasons:-

- (a) The project of installation of Fixed Series Compensation (FSC) was to be taken up on the existing old transmission lines of Unnao-Bareilly, Bareilly-Mandola and Gorakhpur - Lucknow lines.
- (b) This project was involving installation of FSC on Unnao-Bareilly DC lines at Unnao station of UPPTCL. This being old station of UPPTCL, clearance was required to work in their premises in which re-location of existing equipments including dead end tower was required. With lot of persuasion and co-ordination, permission to work in their premises was accorded by UPPTCL in January, 2008. The relocation requires details regarding existing ACDB & DCDB, sub station drawings & documents etc. The sub-station being an old station, these were not readily available with Unnao UPPTCL sub station. Further, civil works got delayed due to non-availability of old equipments foundation drawings with UPPTCL.
- (c) that further, FSCs installation at existing charged stations of Lucknow, Bareilly and Unnao require long shutdowns, as these are running stations. The shutdown after co-ordination with various agencies such as UPPTCL, CLDS, ALDS, NRLDC, CPCC and Powergrid etc., could be made available only during off-peak load seasons and has contributed slower pace of work and to delay in project commissioning.
- (d) that in addition to the above reasons, due to heavy rains during monsoon season in 2008 and flooding of Lucknow sub station during un-seasonal heavy rains in mid August, 2008 and mid September, 2008 which alarmingly raised the water level and made the civil

works (like TG and TH tower foundations, platform structure foundation & cable trench etc.,) impossible from July, 2008 to January- February, 2009.

The above delay is mainly on account of permits that were required many a times for availing shutdowns, which are beyond the control of appellant/petitioner and Hon'ble Commission should have condoned the delay in the completion of the construction of the above Assets (Asset -1 and Asset-2).

Before the Central Commission, the appellant/petitioner prayed for condoning the delay, which is beyond the control of Powergrid or its contractors. It was also prayed that however liquidated damages for the delay in supply of equipment, if any, attributable to the contractor shall be adjusted in the capital cost, at the time of closing of contract, which is yet to take place.

5.12. that the learned Central Commission has failed to fully consider the justification given by the appellant in the petition and the two affidavits along with the supporting evidence filed by the appellant to arrive at the correct conclusion.

6. The only issue for our consideration in this Appeal is whether the Central Commission was justified in disallowing the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) amounting to Rs. 93.91 lacs in respect of time overrun relating to Asset-1 (a) of 8 months; Asset-1(b) of 5 months; Asset-1 (c) of 4 months and Asset-2 of 7 months?

7. We have heard Mr. M.G. Ramachandran, assisted by Ms. Anushree Bardhan and Ms. Poorav Saigal, learned counsel appearing for the appellant and Mr. Ramlingam for respondent no.1, Mr. Pradeep Misra assisted by Mr. Suraj Singh and Mr. Manoj Kumar Sharma for respondent nos. 3 to 5 and Mr. R.B. Sharma for respondent no.13. We have also gone through the material on record as well as the respective written submissions filed by the rival parties.

8. **OUR DISCUSSION & CONCLUSION ON THE ISSUE OF DISALLOWANCE OF IDC AND IEDC**

8.1. The following submissions have been made on this issue by the learned counsel for the appellant.

8.2. that the learned Central Commission has failed to appreciate that Asset 1 was commissioned on 01.04.2010 with a delay of 8 months and Asset 2 was commissioned on 01.07.2010 with a delay of 11 months and the said delay has been supported by the appellant.

8.3. that the transmission project of the appellant was involved in installation of Fixed Series Compensation (FSC) at existing charged substations of Lucknow, Bareilly and Unnao which require long shut downs of such operating station. The shut down could only be available during off peak load seasons. The implementation of the project was, therefore, affected by the fact that the appellant had to wait for such shut down for a longer period of time because of the need to maintain operations in the said substation. Thus, the relevant facts have not been correctly and properly appreciated by the learned Central Commission in the impugned order.

8.4. that the learned Central Commission has wrongly and illegally rejected the aforesaid claim of the appellant in regard to time overrun of 8 months in regard to Asset 1 (a), 5 months in regard to Asset 1 (b), 4 months in regard to Asset 1 (c) and 7 months in regard to Asset 2, on the ground that the appellant has not furnished documentary evidence in regard to cause for delay in the completion of the said project.

8.5. that in the affidavit dated 15.04.2011 the appellant had specifically pleaded before the Central Commission for heavy rain during monsoon season i.e during May, 2008 to September, 2008 flooded the sub-stations area and raised the water level and made the civil work (like tower foundation, platform structure and cable trench etc) impossible and further non-availability of shut down from UPPCL at Unnao sub-station etc as reasons for delay.

8.6. that the learned Central Commission while dealing with time over run due to rain has accepted the delay of 4 months only with regard to Asset 1 (c) and Asset 2. The Central Commission has not appreciated that heavy rains during the monsoon season in the year 2008 affected not only Asset 1 (c) and Asset 2 but also Asset 1 (a) and (b). The Central Commission has failed to consider that as per the Uttar Pradesh Flood Works and Minor Irrigation Department, the actual rainfall upto October, 2008 was about 138% to 158%, more than the average rainfall in the area of Barabanki and Lucknow.

8.7. that regarding the non-availability of shut down, the Central Commission has proceeded on the erroneous basis that the shut down from UPPCL was to be requested only through documents/letters and not through telephone calls. The appellant in its affidavit dated 16.07.2012 had specifically stated that the shut downs were being requested through telephone calls and the details of the same were also given alongwith the affidavit which fact had not specifically been controverted by the UPPCL.

8.8. that the shut down can be coordinated through telephone calls and it is not necessarily be through the letters. In the day to day dealings, between two public utilities, such communication on phone is the usual mode.

8.9. that the respondents had vaguely denied the claim of the appellant in regard to the shut down required for construction of the lines and in regard to the heavy rains.

8.10. that in the absence of any specific denial by UPPCL, the Central Commission ought to have accepted the plea of the appellant on affidavit. The Central Commission has failed to appreciate that the above mentioned Assets were implemented in the areas of UPPCL and UPPCL ought to have specifically dealt with the claims of the appellant on factual aspects if the same were not correct.

9. Per contra, Mr. Pradeep Misra, learned counsel appearing for the respondent nos. 3-5 has made the following submissions:-

9.1. that the instant Appeal relates to the exercise of judicial discretion by the Central Commission.

9.2. that the appellant/petitioner in its affidavits dated 15.04.2011 and 16.07.2012 filed before the Central Commission, in order to explain the delay as required by the Central Commission, failed to explain the said delay except the vague ground that due to unprecedented rains and delay and shut down, project got delayed. The appellant did not file any documentary evidence before the Central Commission regarding these facts.



9.3. that the Central Commission did not condone the delay of eight months regarding Asset-1(a), however, it has condoned the delay of four months regarding Asset-1(c) and Asset-2 accepting the ground of the appellant for abnormal rains. Regarding Asset-1(b) the Central Commission has condoned the delay of three months when the shut down was asked on 09.11.2009 and granted from 17.02.2010 to 27.10.2010 and extended upto 04.03.2010. For the remaining period, the Central Commission has held that appellant has failed to furnish the reasons to show that the delay was beyond its control. Consequently, the Central Commission disallowed IDC and IEDC for the period for which delay has not been specifically and sufficiently explained by the appellant.

9.4. that the appellant has not furnished sufficient reasons to show that the delay caused in the commissioning of the aforesaid assets was beyond the control of the appellant. The respondent nos. 3-5, on the one hand could not get the benefit of the project due to the delay and on the other hand penalize with IDC and IEDC for no fault on their part.

Section 61(d) of Electricity Act, 2003 provides as under:

**“61. Tariff Regulations- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-**

**(d) safeguarding of consumers’ interest and at the same time, recovery of the cost of electricity in a reasonable manner;”**

From the above provision, it is clear that the aim and spirit of Electricity Act, 2003 is that the tariff should be cheapest at the hands of the consumers. In case, the appellant’s contention is accepted, the tariff will be higher at the hands of consumers in Rajasthan which is against the aim and spirit of the Act.

9.5. that the appellant issued the LOA on 30.07.2007 and the Assets were to be commissioned by 01.08.2009. The appellant has not stated as to why it had waited for rainy season and did not complete the work before the rainy season. Regarding shut down also, there is no evidence on record that the appellant has asked for shut down before the date as mentioned by the Central Commission. The learned Central Commission has exercised the jurisdiction vested in it judiciously which does not warrant any interference by this Tribunal at this stage.

9.6. that this Appellate Tribunal in Appeal No. 65 of 2011 titled as Power Grid Corporation of India Ltd. Vs. CERC & Others vide its order dated 12.01.2012 declined to interfere with the order passed by the Central Commission of not condoning the delay in commissioning the Asset on the ground that the appellant has not made the adequate measures for compensation of the delay caused by NTPC. This Appellate Tribunal also relied upon Section 61(d) of the Electricity Act, 2003 and confirmed the order passed by the Central Commission on the ground that award of IDC and IEDC would amount to higher tariff which will be prejudicial to the interest of consumers.

In view of these counter submissions, the Appeal is liable to be dismissed.

10. Before coming to our conclusion, we reproduce the relevant part of the impugned order dated 23.10.2013 which is as under:-

"28. We have gone through the submissions made by the petitioner and the documents filed in support of time over run and the submissions of the respondents. The petitioner has submitted that non-availability of shut down and rains from May to October, 2008 delayed the commissioning of Asset - 1 (a). But the petitioner has not submitted any documentary evidence to show non-availability of shut-down and the rains delayed the commissioning of the Asset 1 (a). Accordingly, the delay of eight months in commissioning of Asset 1 (a) is not condoned. The petitioner has submitted that commissioning of Asset 1 (b) was delayed due to non-availability of shut down, delay in permission to work in UPPCL premises and non-availability of drawings with UPPTCL. On perusal of the documents filed by the petitioner, it is observed that though request for shutdown was first made on 09.11.2009, it was only granted from 17.02.2010 to 27.2.2010 and was extended upto 04.03.2010. Thus, there was a delay of three months in granting shut down and hence we condone the delay of three months due to non-availability of shut down due to foggy conditions in Northern Region in winter months. As regards the remaining period of delay, the petitioner has not made any clear submissions regarding delay and hence the delay of remaining five months is not condoned. The petitioner has submitted that the Asset 1 (c) and Asset -2 were delayed due to non-availability of shut down and heavy rains and floods in Lucknow during August and September, 2008. The petitioner has not submitted any documents to show that the shutdown was refused. The petitioner has shown that the rains in 2008 were more than the normal rains leading to flooding of the construction area. Abnormal rains for two months made it difficult for the petitioner to carry out any

activity for the next two months and it appears that the petitioner was not able to carry out any construction activity for four months in case of Asset -1 ( c) and Asset-2. Therefore, we condone the delay of only four months due to rains and flooding and the remaining period of delay of four months and seven months in case of Asset -1 ( c) and Asset -2 respectively is not condoned as the petitioner has failed to provide any proper justification.

### IDC & IEDC

The IEDC & IDC amounting to Rs. 44.45 lakh, Rs. 35.40 lakh, Rs. 11.01 and Rs. 3.05 lakh has been deducted in respect of Asset 1 (a), Asset 1 (b), Asset 1 (c) and Asset -2 respectively on prop rata basis as the time over run has not been condoned. The details of IEDC & IDC disallowed are as follows:-

Asset	Claimed			(Rs. In Lakh) Disallowed		
	IEDC	IDC	Total	IEDC	IDC	Total
Asset - 1 (a)	58.97	118.83	177.80	14.74	29.71	44.45
Asset - 1 (b)	75.13	151.40	226.53	11.74	23.66	35.40
Asset - 1 ( c)	29.20	58.84	88.04	3.65	7.36	11.01
Asset -2	4.58	10.68	15.26	0.92	2.14	3.05."

11. We are to consider whether the Central Commission was justified in disallowing the Interest During Construction and Incidental Expenses During Construction amounting to Rs. 93.91 lacs in respect of time overrun relating to Asset-1 (a) of 8 months, Asset-1 (b) of 5 months, Asset-1 (c) of 4 months and Asset-2 of 7 months. The learned Central Commission in the end of para 26 of the impugned order has held as under:

"We are unable to quantify the delay due to non-availability of shutdowns in the absence of the information called from the petitioner".

The learned Central Commission has, in the impugned order, observed that the appellant/petitioner has not submitted any documentary evidence to show non-availability of shut-down and the rains which delayed the commissioning of the Asset-1(a). Accordingly, the delay of eight months in commissioning of Asset 1(a) has not been condoned in the impugned order. The commissioning of Asset-1(b) was held to be delayed due to non-availability of shutdown, delay in permission to work in UPPCL premises and non-availability of drawings with UPPTCL. According to the

appellant/petitioner, the learned Central Commission has, in the impugned order, further observed that though request for shutdown was first made on 9.11.2009, which was only granted from 17.2.2010 to 27.2.2010 and was extended upto 4.3.2010. The Central Commission by the impugned order held that there was a delay of three months in granting shutdown because request was first made on 09.11.2009 and shut down was granted from 17.02.2010 and the grant of shut down took around three months. The Central Commission accordingly has condoned the delay of three months in the commissioning of Asset 1 (b) due to non -availability of shutdown due to foggy conditions in Northern Region in winter season. The learned Central Commission has not condoned the delay of remaining five months in the commissioning of asset 1 (b) observing that the appellant/petitioner has not made any clear submissions regarding the said delay. The commissioning of Asset 1 (c) and Asset 2 was delayed, according to the appellant, due to non availability of shut down and heavy rains and floods in Lucknow during August and September, 2008. Out of this delay in the commissioning of Asset 1 (c) and Asset 2, the learned Central Commission has condoned the delay of only 4 months due to rains and flooding and the remaining period of delay of 4 months and 7 months in case of Asset 1 (c) and Asset 2 has not been condoned by the Central Commission on the ground that the appellant/petitioner has failed to provide any proper justification.

12. The learned Central Commission, after considering the material available on record, has rejected the claim of the appellant in regard to time over run of 8 months with regard to Asset (1) (a), 5 months in regard to Asset (1) (b), 4 months in regard to Asset 1 (c) and 7 months in regard to Asset 2 on the ground that the appellant had not submitted any documentary evidence in regard to the causes for delay in execution of the project for which the above time over run had been claimed.

13. The learned Central Commission relying on the facts pleaded by the appellant/petitioner that the rains in 2008 were more than the normal rains leading to flooding of the construction area, abnormal rains for two months made it difficult for the appellant to carry out any activity for the next two months rendering the appellant not able to carry out any construction activity for four months in case of Asset 1 (c) and Asset 2. The Central Commission has justly and correctly condoned the delay of 4 months each in case of Asset 1 (c) and Asset 2 refusing to condone the delay of remaining period of 4 months and 7 months in case of Asset 1 (c) and Asset 2 respectively.

14. We have perused para 29 of the impugned order which gives details of IDC and IEDC claimed by the appellant and disallowed by the Central Commission. The delay which has justly and properly been explained by the appellant in the commissioning of the aforesaid project has rightly been condoned by the Central Commission by the impugned order and the delay which remained unexplained and to which there was no supporting evidence has rightly been disallowed by the Central Commission.

15. There was a delay of 8 months in the commissioning of Asset 1 comprising of Asset 1 (a) and Asset 1 (b) and Asset 1 (c). The Learned Central Commission has refused to condone the delay of 8 months for the commissioning of Asset 1 (a). Regarding Asset 1 (b), there was delay of 8 months, out of which the Commission condoned the delay of 3 months only and refused to condone the delay of remaining 5 months. Regarding Asset 1 (c) there was delay of 8 months, the learned Central Commission condoned the delay of 4 months. There was delay of 11 months in commissioning of Asset 2, out of which the Central Commission only allowed delay of 4 months and disallowed 7 months delay. We find no illegality or perversity in the findings recorded in the impugned order.

16. We are unable to accept the contention of the learned counsel for the appellant that in the absence of specific denial by the UPPCL regarding shut down required for construction of the lines and heavy rains, the Central Commission ought to have accepted the contents or plea given in the affidavit of the appellant. The provisions regarding affidavits provided in the Code of Civil Procedure, 1908 may be considered for this purpose. In the matter of determination of tariff for generation, transmission and distribution, only in the exceptional circumstances the contents of the affidavit can be relied upon. Since the appellant has failed to furnish any documentary evidence or other supporting evidence lending credence to the contents of the affidavit, the bare contents of the affidavit cannot be allowed to be accepted. After deep scrutiny of the submissions and counter-submissions of the rival parties, we do not find any force in any of the contentions raised on behalf of the appellant. The reasonings and findings recorded in the impugned order by the Central Commission appear to be based on the proper and correct scrutiny of the material and other evidence available on record and we agree and approve to the said findings of the Central Commission. The issue relating to disallowance of Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) amounting to Rs. 93.91 lacs in

respect of time over run relating to Asset 1 (a) of 8 months, Asset 1 (b) of 5 months, Asset 1 ( c ) of 4 months and Asset 2 of 7 months is decided against the appellants/petitioner. The instant Appeal is liable to be dismissed.

17. SUMMARY OF FINDINGS

The learned Central Commission is justified in disallowing the Interest During Construction (IDC) and Incidental Expenses During Construction (IEDC) amounting to Rs. 93.91 lacs in respect of time overrun relating to Asset-1 (a) of 8 months; Asset-1(b) of 5 months; Asset-1 (c) of 4 months and Asset-2 of 7 months.

18. In view of the above findings, we conclude that there is no merit in this Appeal and we do not find any infirmity in the impugned order. Accordingly, the Appeal is dismissed as being devoid of merits. However, there is no order as to costs.

Pronounced in open Court on this 10<sup>th</sup> day of February, 2015.

(Justice Surendra Kumar)  
Judicial Member

(Rakesh Nath)  
Technical Member

rkt