



**Mr. G. Umapathy,  
Mr. Rutwik Panda and  
Mr. Anshu Malik for R-2**

**JUDGMENT**

**PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER**

The present Appeal has been filed by M/s. GRIDCO Limited, Bhubaneswar (**hereinafter referred to as “Appellant”**) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 12.06.2013 in case No. 117 of 2009, 31 of 2010 and 56 of 2012 passed by the Odisha Electricity Regulatory Commission (**hereinafter referred to as “State Commission/Respondent No.2”**).

2.0 The Appellant is wholly owned company of the Government of Odisha and is carrying on the functions of bulk supply of electricity to four Distribution Companies in the State of Odisha with effect from 01.04.2005 after the transfer of transmission business to Odisha Power Transmission Corporation Limited (**“OPTCL”**) vide notification dated 10.06.2005 of the Government of Odisha.

3.0 M/s SESA Sterlite Limited (**hereinafter referred to as “Respondent No.1”**) is a generating company in terms of Section 2(28) of the Electricity Act, 2003 and has set up a 4x600 (2400 MW) thermal power plant at Brundamal, Jharsuguda, Odisha. Pursuant to the merger of Sterlite Energy with its parent company SESA Goa Limited as approved by the High Court of Bombay and Madras High Court, and the name of the merged successor entity is SESA Sterlite Limited, the Respondent No. 1 herein.

4.0 Odisha State Electricity Regulatory Commission is a statutory authority constituted under the Electricity Regulatory Commission Act, 1998 with specific powers vested under Section 86 of the Electricity Act, 2003.

5.0 Fact of the Appeal

i) Memorandum of Understanding (**“MOU”**) dated 26.09.2006 was executed between the Government of Odisha and M/s. Sterlite Energy Limited (**“SEL/Sterlite Energy”**) for setting up a thermal power plant of 2400 MW capacity at an estimated expenditure of Rs. 7482 crores within a period of 45 months through the MOU

- route. Pursuant to MOU dated 26.09.2006, a Power Purchase Agreement (PPA) was executed on 28.09.2006 between the Appellant and the Respondent No. 1.
- ii) After a series of proceeding before the State Commission, certain issues emerged needing submission of consolidated PPA before the State Commission for its approval and accordingly the same was executed on 19.12.2012 between the Appellant and Respondent No.1 after incorporating observations made by the State Commission in the order dated 30.07.2010.
- iii) By the Impugned Order dated 12.06.2013, the State Commission approved the consolidated PPA as well as tariff of the generating station.
- iv) Respondent No. 1 submitted a Review petition in the matter of review of the Impugned Order dated 12.06.2013. The same was disposed of by the State Commission by its order dated 25.09.2013.

v) By the Impugned Order dated 12.06.2013, the State Commission directed as under:

“(a) M/s. SEL will submit the revised bill of fixed charges month-wise based on the approved Annual Fixed Charges and the month-wise Energy Charge as per formula given in this Order.

(b) M/s. SEL and GRIDCO will regularize the payment of infirm power received by GRIDCO prior to CoD of the generating unit at the variable charge rate of that particular month.

(c) SLDC should schedule the total power of the project considering the full requirement of GRIDCO as per its own entitlement, full requirement of VAL - II and other Short Term Open Access (STOA) customer of M/s. SEL.

(d) The day-ahead generating availability for the project as a whole shall be declared by the Generator to SLDC and SLDC shall schedule GRIDCO's drawal from Generator's bus bar for the project as a whole. SLDC shall also certify Plant Availability

Factor Achieved during the Month (PAFM) in percentage for the relevant month.

- (e) The tariff of M/s. SEL – IPP, so determined in this Order is valid upto 31.03.2014. M/s. SEL – IPP shall file its tariff application for the FY 2014-15 onwards at least three months prior to validity period i.e. on or before 01.01.2014.
- vi) On the issue of auxiliary consumption, the State Commission vide its Impugned Order dated 12.06.2013 has, interalia, held;”

*“16. ....We agree with the contention of the Petitioner that due to transmission constraint they have not been able to generate at full capacity and inject the State quota of power to the State transmission system.....The 220 KV double circuit transmission line running between M/s. SEL and Budhipadar Grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which M/s. SEL has limited the generation from Unit –II accordingly.”*

In light of the above finding, the State Commission has considered the transmission constraint for evacuation for power from the generating station to the Appellant while determining the tariff on the basis that the 220 KV double circuit transmission line running between the Respondent No. 1 and Budhipadar grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which the Respondent No. 1 has limited the generation from unit 2 of its generating station accordingly.

vii) Aggrieved by the Impugned Order dated 12.06.2013, the present Appeal has been filed. Looking into the above facts of the Appeal, the main issues before us for deciding this Appeal are:

**(a) Whether the State Commission erred in accepting the allegation of Respondent No.1 in respect of the transmission constraint holding that the 220 KV double circuit line running between Respondent No.1 and Budhipadar grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode without going into the requisite technical details on**

**account of actual load transmitted through the same network and thereof determination of the tariff based on the restricted parameters?**

- (b) Whether the State Commission was justified in taking the alleged transmission constraint into consideration even though under the consolidated PPA it is the obligation of the Respondent No. 1 to make power available at the bus bars of the grid sub-station of OPTCL at Budhipadar?**

6.0 We have heard at length Mr. Raj Kumar Mehta, learned counsel for the Appellant, Mr. Amit Kapur, learned counsel for the Respondent No.1 and Mr. G. Umapathy, learned counsel for the State Commission and considered the written submissions and the issues put forth by the rival parties and the following issues emerged for our consideration;

- (A). The Appellant is challenging the Impugned Order dated 12.06.2013 on the following grounds;
- i) The State Commission was not justified in accepting the contention of the Respondent No. 1 that due to the transmission constraint they



had not been able to generate at full capacity resulting into lesser injection than the state quota of power to the state transmission system. The State Commission erred in holding that 220 KV double circuit transmission line running between the Respondent and No.1 and the Budhipadar grid sub-station of OPTCL is capable of carrying power around 400 MW only in sustainable mode resulting into restricted generation from Unit 2 of the generating station of the Respondent No. 1.

The State Commission was not justified in taking the alleged transmission constraint into consideration since under the consolidated PPA it is the obligation of the Respondent No. 1 to make power available at the bus bar of the grid sub-station of OPTCL at Budhipadar. For facilitating supply of power at the bus bars of OPTCL grid sub-station, the Respondent No.1 has installed two numbers of 315 MVA interconnecting transformers along with 5.5 kilometers of 220 KV double circuit line and included the cost of the same in the capital cost of the generating stations.

- ii) The State Commission was not justified in considering the transmission constraint as alleged by Respondent No. 1 in view of the fact that the same State Commission in its earlier order dated 04.04.2012 had stated as under:

*“Commission is not satisfied with the logic of transmission constraints posed by M/s SEL. The IPP must ensure supply of state quota to the SDE (State Designated Entity) & accordingly prepare the infrastructure to fulfil its obligations.”*

- iii) The State Commission was not justified in coming to the conclusion that the double circuit line running between Respondent No. 1 and the Budhipadar grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode, since there was no material on record to support the said conclusion.

The State Commission was not justified in coming to the above conclusion in light of the fact that the double circuit line running between Respondent No. 1 and Budhipadar grid sub-station of OPTCL is capable of carrying more than 500 MW power without endangering the safety of the line in any matter whatsoever and

this fact had been brought to the notice of the State Commission vide submissions made on 23.07.2012 by the Appellant.

- iv) The State Commission ought to have considered the study report for evacuation of power from the Respondent No.1's generating station as conducted by Power Research and Development Consultant Private Limited ("**PRDC**") which clearly states that the subject 220 KV double circuit transmission line with Moose conductor is capable of carrying around 286 MW per circuit which would mean that the double circuit line under the question can carry out 572 MW in a sustainable mode.
  
- v) The Respondent No.1 is not adhering to the directions given by this Tribunal in its order dated 28.03.2014, directing therein that the Respondent No. 1 ought to declare the availability of Unit 2 connected to the OPTCL system every day for the next day to the concerned SLDC as per the capability of the unit keeping in view the transmission constraint. However, in violation of the direction of this Tribunal, the Respondent No.1 is continuing to declare the availability of Unit 2 to the tune of 564 MW.

- vi) The Respondent No. 1 has injected 490 MW of power on continuous basis through the same transmission line in the past and it has also injected 252 MW of power on a single line (when the other line was shut down) which clearly establishes that the double circuit line is capable of carrying more than 500 MW of power.
- vii) The State Commission was not justified in determining the tariff on the basis of the finding that 220 KV double circuit transmission line running between the Respondent No. 1 and the Budhipadar grid sub-station of OPTCL is capable of carrying power more than 400 MW in sustainable mode. As such, the State Commission was not justified in computing the auxiliary consumption and Station Heat Rate on the basis that 220 KV double circuit transmission line running between Respondent No.1 and Budhipadar Grid sub-station of OPTCL is operating at a restricted load.
- viii) As per Section 10 of the Electricity Act, 2003, it is the responsibility of the generating company to establish, operate and maintain the

dedicated transmission line (that is point to point) for evacuation of power.

- ix) Under MOU dated 26.09.2006 (para 1 (vi)) between the Government of Odisha and Respondent No.1, it was the responsibility of the Respondent No.1 to set up the transmission facility for evacuation of power to the point of off-take by the buyer. Respondent No.1 cannot, therefore, take the advantage of its own default in setting up the transmission facility in time for the evacuation of full power. The relevant provisions as per para 1 (vi) of the MOU dated 26.09.2006 are reproduced below;

*“SEL may set up its own Transmission facility for evacuation of power to the point of off-take by the buyer(s) or may request the State Transmission Utility (STU) and Central Transmission Utility (CTU) or any other Transmission Utility or Licensee for evacuation of power from the Thermal Power Plant and may enter into agreements for such purpose. The Government and its concerned agency shall assist SEL in the matters of transmission facility for evacuation of power from the Thermal Power Plant. In case SEL*

*evacuates power through State Transmission Utility or Central Transmission Utility, transmission of the entire Capital Cost for strengthening such lines for evacuation of entire power of the Thermal Power Plant will be borne by SEL.”*

- x) PPA is the derivative of the MOU. Therefore, in case of any dispute in the PPA, the relevant clause of the MOU has to be complied with.
  
- xi) For the purpose of evacuation of power generated from the other units that is Unit 1, 3 and 4, the Respondent No.1 has constructed the associated transmission lines at their cost by way of making LILLO arrangement of 400 KV Rourkela - Raigarh line of the Central Transmission Utility that is Power Grid Corporation of India Limited (**“PGCIL”**). However, for evacuation of state share of power from the dedicated unit that is Unit 2, the Respondent No. 1 has not set up any dedicated transmission line up to the interface of the State Transmission Utility. The Respondent No. 1 ought to have constructed a 400 KV double circuit line from their generating station to the nearby 400 KV sub-station of OPTCL which is around

240 kilometer away and the expenditure for the same would have been to the tune of Rs. 400 crores approximately that is why Respondent No. 1 has preferred to utilize their old and existing 220 KV double circuit line from its sub-station to the Budhipadar sub-station of OPTCL which was commissioned way back during March, 2008 by the Respondent No.1 for evacuation of surplus power form the other generating station of 9x135 MW CGPs and the fact that the said transmission line is owned and maintained by the Respondent No. 1

- xii) Under Clause 4.0 of the consolidated PPA dated 19.12.2012, it is the obligation of the Respondent No.1 to make power available at the bus bar of the grid sub-station of OPTCL at Budhipadar. The Clause 4.0 of the consolidated PPA dated 19.12.2012 is reproduced below;

*“4.0 TRANSMISISON/WHEELING OF POWER.*

*Power to GRIDCO shall be made available by the SEL at the Busbars of the Station connected to the transmission lines of OPTCL/PGCIL and it shall be the obligation and responsibility of*

*GRIDCO to make the required arrangement for evacuation of power from such delivery points. SEL shall make independent arrangements for evacuation of the remaining power from the station at SEL costs and responsibility.”*

The submissions of the Respondent No.1 that under clause 4.0 of the PPA, the bus bar of the generating station is the delivery point and thereafter, it is the Appellant's obligation to make the necessary arrangement for evacuation of power, which is misconceived and untenable.

- xiii) The view taken by the State Commission in its Impugned Order dated 12.06.2013 for treating the transmission capacity to the tune of 400 MW only in view of the alleged constraint by the Respondent No.1 is untenable since the State Commission has overlooked the provisions contained in the MOU and the consolidated PPA to that extent. In support of its arguments that the transmission line in question can carry more than 500 MW power, the Appellant has quoted the Central Electricity Authority's Planning Criteria 2013 and the system study report of PRDC.



xiv) The Appellant also requested the Odisha Power Transmission Corporation Limited (**“OPTCL”**) for carrying out a system study report taking the 220 KV double circuit line as ACSR Moose. The OPTCL has submitted the system study report indicating that the 550 MW of power can be safely evacuated on the line in question considering the zero import. OPTCL has also stated that in the past on numerous occasions, the Respondent No. 1 has exported 490-500 MW of power through the same line in question with no adverse impact on the system. As it could be ascertained from the State Load Despatch Center’s data since October, 2012, the Respondent No, 1 has been giving its capability of the Unit No. 2 to the tune of 564 MW and State Load Despatch Center (**“SLDC”**) has been accepting the same said schedule. However, the Respondent No. 1 was supplying power less than 500 MW, on account of transmission constraint as alleged by the Respondent No. 1 to which the SLDC has objected to and stated categorically that there is no such transmission constraint hence the Respondent No. 1 should supply power as scheduled by it which would be accepted by the SLDC.

- xv) Respondent No.1 is not relying on the PRDC's report of April, 2009 but relying PRDC's report of July, 2014 which is the self serving document procured by the Respondent No.1 for the purpose of getting over the 2009 report and going back upon its clear and unequivocal admission to the effect that the line in dispute is capable of carrying more than 550 MW power. The said report of July, 2014 is based on the factually erroneous premise that 220 KV line in question is with ACSR Zebra conductor whereas the line is in fact AAAC Moose conductor which is capable of carrying more than 500 MW power.
- xvi) The State Commission in its order dated 04.04.2012 was not satisfied that logic of transmission constraint posed by the Respondent No. 1 and stated therein that it must ensure supply of state quota and accordingly prepare its infrastructure to fulfill its obligations. However, the State Commission in its Impugned Order dated 12.06.2013 without any reason, held that the sustainable load carrying capacity of the same line in question is to the extent of 400 MW. The installed capacity of Unit 2 is 600 MW, that would

mean, that it can supply after taking out 6% auxiliary power consumption to the tune of 564 MW and as such the tariff should ought to have been determined considering this capacity and not the restricted transmission capacity as alleged by the respondent No.1 which is factually incorrect and technically untenable. As such the performance of parameters such as auxiliary power consumption and Station Heat Rate ought to have been computed by the State Commission considering capacity of the unit to the tune of 564 MW.

- B. The learned counsel for the Respondent No.1 makes the following submissions;
- i) The fact that these transmission constraints existed due to which the transmission capacity of the 220 KV DC SEL- Budhipadar transmission line was reduced to 400 MW has been recognized by the State Commission in its Impugned Order and even by this Tribunal in its interim order dated 28.03.2014 and subsequent order dated 29.11.2014.

- ii) As per Clause 4 of the PPA, the bus bar of the generating station at Burkhamunda is the delivery point which is 22 kilometer away from Budhipadar sub-station. The Appellant ought to have made the necessary arrangement for evacuation of power from the bus bar/delivery point. The generator bus bar is connected to 220 KV network in which the transmission constraints exist, which is being used by the Appellant to evacuate the power from Unit 2. Even the evacuation problem beyond Budhipadar sub-station has been analysed by the State Commission in its earlier order dated 30.03.2010 in Case No. 15 of 2010 OPTCL Vs. the Respondent No. 1 and the relevant portion is reproduced below;

*“17(ii) Ms. OPTCL confirm that considering the upstream evacuation condition beyond its Budhipadar Grid S/S, they can draw maximum power of 500 MW combinedly from IPP of M/s. SEL and CGP of M/s. VAL, in normal condition. With the available CGP drawl of 150 MW and 250 MW occasionally, about 250 to 350 MW power maximum can be drawn up from the 1<sup>st</sup> 600 MW unit of IPP.”*

iii) Having recognized by the State Commission the existed constraints on the transmission capacity available, the State Commission after having gone through all the relevant technical details accepted that only 400 MW could be considered in sustainable mode of operation and as such determined the tariff and parameters like auxiliary power as well as Station Heat Rate considering the transmission capacity of 400 MW only. The main issue is regarding the evacuation capacity of the network not only up to 220 KV Budhipadar grid sub-station but also beyond Budhipadar grid sub-station. The State Commission in its order dated 30.03.2010 recorded OPTCL's statement which confirmed that beyond Budhipadar grid sub-station, there exists evacuation constraint. This Tribunal in its order dated 29.11.2014 accepted the restricted transmission capability after taking into consideration the relevant documents furnished by Respondent No. 1 such as manuals on transmission planning criteria issued by the CEA, Central Power of Irrigation and power transmission line manual. The Orissa Grid Code Regulations, 2006, Power Grid Corporation of India Limited's Approach Paper for Assessment of Transfer

Capability, Power System Operation Corporation Limited Note on Loading of extra high voltage elements etc.

- iv) The PRDC Report dated April, 2009 assessed the then prevalent grid/evacuation realities which cannot be determinative of real time grid realities during November, 2010 to 31.03.2014. The first unit of the generating station i.e. Unit 2 was commissioned on 10.11.2010. The PRDC Report of July, 2014 assessed the realtime grid capacity at the relevant time and the relevant extract is reproduced below;

*“From the detailed analysis, it is observed that loading on SEL-Budhipadar is close to 400 MW and is beyond the permissible limit as prescribed by CEA. Further, during contingency of one circuit outage, the loading on other circuit would be higher than thermal limits and is prone for cascaded outage. In absence of Special Protection Scheme, the loading is to be limited.”*

- v) The statement given by the Appellant is misleading since it shows only the instance of 15 minutes time block and it does not show

that the transmission line is continually carrying more than 400 MW.

- vi) The Respondent No. 1 has been declaring the Declared Capability (DC) as 564 MW for day ahead availability along with a note as follows;

*“Note: As per the Power Purchase Agreement dated 19-December, 2012, Clause No:4 under the subject’ Transmission/Wheeling of Power’ “Power to GRIDCO Shall be made available by the SEL at the Busbars of the Station Connected to the transmission lines of OPTCL/PGCIL and it shall be the obligation and responsibility of GRIDCO to make the required arrangement for evacuation of power from such delivery points.” The present 220 KV D/C VAL-Budhipadar Transmission Line can only be loaded up to 400 MW in line with OERC Order No. 393 dated 12-June, 2013 Para 16 as “The 220 kv Double Circuit Transmission Line running between M/s SEL and Budhipadhar Grid sub-station of OPTCL is capable of carrying power around 400 MW for sustainable mode”.*

- vii) Load flow studies only gives the resultant power flows in the network on given load-generation scenario and it cannot determine the permissible line loading limits of transmission line, which depend upon various physical parameters such as conductor size, ambient temperature, solar radiations and wind velocity. Further the study report of OPTCL dated 02.09.2014 given on the same day it was sought by the Appellant vide its letter dated 02.09.2014 which makes the veracity of the report questionable.
- viii) After installation 2x315 MVA, 400/220 KV ICTs along with associated 220 KV transmission line, the Respondent No. 1 has been evacuating power through the 220 KV D/C VAL – Budhipadar line.
- ix) The reliance of the Appellant on the State Commission's order dated 04.04.2012 is incorrect since this order was only an interim finding of the State Commission and the said finding was modified in the final order i.e. the Impugned Order holding that the



transmission line in question is capable of carrying 400 MW of power only in sustainable mode.

- x) In light of the above, the State Commission was justified in its Impugned Order dated 12.06.2013 in determining tariff and operating parameters on the premise of the restricted transmission capacity.

C. The learned counsel for the State Commission while defending the Impugned Order dated 12.06.2013 made the following submissions;

- i) The present Appeal is limited only to the issue of auxiliary power consumption and transmission line constraint.
- ii) The State Commission determined the auxiliary consumption in accordance with the law and on the basis of data figure/statement available before the State Commission. The Relevant portion of the order dated 12.06.2013 extracted herein below;

*“16. M/s. SEL submitted that during construction of the power plant, Unit-II was synchronised to the State Grid first for supplying power to GRIDCO. But GRIDCO could not draw the full State share (600 MW) of the plant due to transmission line constraint which was there due to availability of only two circuits of 220 KV line between SEL and*

*Budhipadar Grid sub-station through which SEL power is injected in to the State transmission system. Therefore, SEL has no alternative but to operate the Unit -II which has installed capacity of 600 MW in part load condition. The under generation of Unit-II has resulted in increase in percentage of auxiliary consumption with respect to the total generation. According to Regulation 26 (iv) (a) (ii) of CERC Tariff Regulations M/s. SEL is eligible for a normative auxiliary consumption of 6% of the total generation. We agree with the contention of the Petitioner that due to transmission constraint they have not been able to generate at full capacity and inject the State quota of power to the State transmission system. As per CERC norm M/s. SEL is to consume 36 MW as auxiliary consumption irrespective of the loading of the Generator in absolute term. The 220 KV double circuit transmission line running between M/s. SEL and Budhipadar Grid sub-station of OPTCL is capable of carrying power around 400 MW in sustainable mode for which M/s. SEL has limited the generation from Unit –II accordingly. The normative auxiliary consumption of 36 MW for a generation of 400 MW is calculated to be 9% which we accept for the period till the next unit i.e. Unit – I is declared commercially operated and synchronised to the Power Grid system through which*

its power is evacuated. Therefore, the Commission accept the auxiliary consumption of 9% upto 29.03.2011. It is to be mentioned here that except Unit – II of the power station all other units are connected to 400 KV system of M/s. PGCIL. As per the above principle, subsequent units such as Unit – I, III and IV which were commercially operated in different dates as stated above, their auxiliary consumption is also calculated to be 36 MW each same as that of Unit-II of the power station. Accordingly the Commission calculates the percentage of auxiliary consumption of the power station taking into consideration the units which are actually connected to the Grid either through Power Grid system or OPTCL system on a particular date. The percentage of auxiliary consumption at different point of time till all the four units are commercially operated is given in the table below:

**Auxiliary consumption (in %)**

	10.08.10 to 29.03.11	30.03.11 to 18.08.11	19.08.11 to 25.04.12	26.04.12 to 31.03.13	FY 2013-14
Submitted by M/s SEL	11.93%	8.00%	8.00%	8.00%	8.00%
Submitted by GRIDCO	6.00%	6.00%	6.00%	6.00%	6.00%
Approved by the Commission	9.00%	7.20%	6.75%	6.50%	6.00%

”

- iii) As evident from the above, the transmission capacity was considered only 400 MW in sustainable mode and thereof the auxiliary consumption was determined for different periods. The State Commission did take note of the normative auxiliary consumption of 6% as per the Central Commission's norms and escalated accordingly due to the transmission line constraints for the requisite power flow.
  
- iv) The transmission line constraint has been considered based on the data submitted by the Respondent No. 1 and its affidavits thereof. The State Commission's Impugned Order in respect of both these issues that is auxiliary consumption as well as transmission line constraint do not suffer from illegalities or error and is just proper and as per law.

7.0 After having gone through all the above issues in detail, our observations are as under;

- i) On perusal of State Commission's order dated 04.04.2012, there has been clear admission on the part of the State Commission

stating therein that it is not satisfied with the logic of transmission constraint posed by the Respondent No.1 and directed them to ensure supply of state quota and accordingly prepare the infrastructure to ensure its obligation.

- ii) The State Commission in its Impugned Order dated 12.06.2013 accepted the transmission constraint as alleged by the Respondent No.1 and stated that since the transmission planning programme of OPTCL for evacuation of power from upcoming IPPs which is under process, the Appellant/OPTCL may approach the Commission for suitable amendment of the Clause in the consolidated PPA, if necessary after finalization of the same. Till then, the practice of evacuation from the power station of Respondent No. 1 will continue.
  
- iii) The State Commission in its Impugned Order accepted that due to transmission constraint, the Respondent No. 1 has not been able to generate at full capacity and inject the state quota of power to the State Transmission system and determines the auxiliary power consumption on the existing transmission capability.

iv) Now, we analyze this Tribunal's Interim Order dated 28.03.2014.

The relevant extract is reproduced below;

*“Thus, the divergent issue that remains for us to consider for the purpose of interim order is the computation of Capacity Charges and whether the transmission constraints are to be considered to determine the Plant Availability Factor.*

9. *We find from the impugned order (Paragraph 16) that the State Commission has accepted the contention of the Appellant that due to transmission constraint, they have not been able to generate at full capacity and inject State's quota of power to the State transmission system and the 220 KV double circuit transmission line running between the power project of the Applicant/Appellant and the Budhipadar grid sub-station of the OPTCL, the State transmission licensee is capable of carrying power around 400 MW in sustainable mode for which the Applicant/Appellant has limited generation from unit II accordingly. We also find in the impugned order that Orissa*

*SLDC has to schedule the generation of the Appellant's power station.*

- 10. In view of the above accepted position in the impugned order by the State Commission regarding transmission constraints, we feel that for computation of the Plant Availability Factor and Fixed Charges for the power project, the transmission constraints limiting the evacuation capacity to 400 MW should be taken into account. According to the PPA, the Applicant/Appellant has to make available the capacity at the bus bars of the generating station and it is the obligation of the GRIDCO to make the arrangement for evacuation of power from such delivery points.*
- 12. In view of above we pass the following interim order, subject to adjustment on the disposal of the main Appeal.*

  - i) There is no dispute regarding the Annual Fixed Charges for unit no. 2 for the period 2010-11 to 2013-14. The Capacity Charges payable to the Applicant/Appellant for the FYs 2010-11 to 2013-14 shall be worked out based on Plant Availability Factor computed considering the transmission constraints with capacity of 400 MW of the 220 KV Double Circuit line from the*

*SESA Sterlite Plant to Budhipadar sub-station of OPTCL instead of installed capacity of 600 MW. Orissa SLDC is directed to compute the Plant Availability Factor for the FYs 2010-11 (from November 2010) to 2013-14 as per the above directions and inform the Appellant and GRIDCO within 30 days of passing of this order. The Applicant/Appellant will revise the bills for the FYs 2010-11 to 2013-14, reworking the Capacity Charges based on the Plant Availability Factor determined by the SLDC and Energy Charges for respective financial years determined in the impugned order.”*

- ii) Henceforth, the Applicant/Appellant will declare the availability of unit 2 connected to OPTCL system every day for the next day to the SLDC as per the capability of the unit and the proposed generation schedule keeping in view the transmission constraint. The SLDC will decide the daily generation schedule for the Appellant’s plant considering the demand of the Discoms and the transmission capacity. SLDC will compute the Plant Availability Factor at the end of every month as per our direction considering the transmission constraint in evacuation of power*



*and communicate to the GRIDCO and the Appellant by 3rd day of the following month.”*

After perusing this Tribunal's order as above, we observed that the Tribunal considered the findings of the State Commission in its Impugned Order accepting therein the transmission constraint.

- v) Since the Appellant failed to comply with this Tribunal's order dated 28.03.2014, the Respondent No. 1 filed IA before the Tribunal seeking implementation of its order of 28.03.2014 which was disposed of by the Tribunal's order dated 29.11.2014 directing the Appellant once again to comply with its order dated 28.03.2014 at the earliest.
  
- vi) In light of the above, the transmission constraint from the bus bar of the generating station upto the Budhipadar sub-station of the OPTCL has been accepted by the State Commission in its Impugned Order after going through the relevant data furnished by the parties and the same has been reaffirmed by the Tribunal's order dated 28.03.2014.

- vii) We do not have any doubt that at the time of passing of Impugned Order, the State Commission would have gone into all the requisite details on the transmission capacity and the prevailing constraints in evacuation of power from Unit-II of the generating station.
- viii) We do take note of the PPA condition that the state share of power shall be made available to the Appellant by the Respondent No. 1 at the bus bar of OPTCL nearest EHV sub-station at required voltage level and the Respondent No. 2 would bear the cost of dedicated transmission line from their generating plant to the designated grid sub-station of STU at available voltage level including augmentation of existing equipment/transmission system if any of the STU.
- ix) We have also observed that the State Commission's earlier order dated 30.03.2010 took into account the OPTCL's confirmation that considering the upstream evacuation condition beyond its Budhipadar Grid, about 250 to 350 MW power maximum can be drawn up from the first unit of the Respondent No.1.

- x) The change of stance on the above issues by the State Commission from its earlier observations as per its order dated 04.04.2012 can happen since the term of transmission capacity is a dynamic function and one can determine it only in real time situation at a given point of time. In its Impugned Order dated 12.06.2013, the State Commission had ascertained the transmission scenario in real time situation and considered the transmission constraint for this issue. There could have been instances when in few time clocks of 15 minutes when there have been relatively higher quantum of evacuation. The transmission line in question might cater to higher load at some instances but the point which we have to see for our consideration is what quantum of power could be transmitted in the sustainable mode on continuous basis.

In our opinion, the State Commission is in a better position to ascertain the grid constraints keeping in view the requisite data of the State Load Despatch Centre on this issue in question.

xi) After accepting the State Commission's considered view of 400 MW of power transmission in the sustainable mode for the transmission line in question for that specific period, the auxiliary power consumption as well as Station Heat Rate on account of partial loading as considered by the State Commission in its Impugned Order would stand justified. It is an established fact that if the unit operates at a partial load, it does affect adversely the normative parameters such as auxiliary power consumption, Station Heat Rate etc. Hence, we would not like to interfere with the State Commission's finding in this regard in its Impugned Order.

**Order**

The subject Appeal is devoid of merits and is hereby dismissed. The State Commission's Impugned Order dated 12.06.2013 is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **10<sup>th</sup> day of May, 2016.**

**(I.J. Kapoor)**  
**Technical Member**

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**REPORTABLE/NON-REPORTABLE**

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**(Justice Surendra Kumar)**  
**Judicial Member**