CENTRAL ELECTRICITY REGUATORY COMMISSION
NEW DELHI

Petition No. 275/MP/2019
along with I.A No. 9/2020

Subject:	Petition pursuant to the directions of the Hon'ble Supreme Court vide its Order dated 2.7.2019 in Civil Appeal No. 11133 of 2011 and applicable provisions of the Electricity Act, 2003 including Sections 62 and 79(1)(b)
Petitioner:	Adani Power (Mundra) Limited
Respondent:	Gujarat Urja Vikas Nigam Limited
Date of hearing:	**28.4.2021**
Coram:	Shri P.K. Pujari, Chairperson Shri I.S. Jha, Member Shri Arun Goyal, Member Shri Pravas Kumar Singh, Member
Parties present:	Shri Amit Kapur, Advocate, AP(M)L Ms. Poonam Verma, Advocate, AP(M)L Ms. Sakshi Kapoor, Advocate, AP(M)L Shri Saunak Rajguru, Advocate, AP(M)L Shri M.R. Krishna Rao, AP(M)L Shri Tanmay Vyas, AP (M)L Shri Malav Deliwala, AP(M)L Shri Kumar Gaurav, AP(M)L Shri Sameer Ganju, AP(M)L Shri Mehul Rupera, AP(M)L Shri Rahul Panwar, AP(M)L Shri M.G. Ramachandran, Senior Advocate, GUVNL Shri Shubham Arya, Advocate, GUVNL Ms. Ranjita Ramachandran, Advocate, GUVNL Ms. Anushree Bardhan, Advocate, GUVNL Ms. Poorva Saigal, Advocate, GUVNL Ms. Tanya Sareen, Advocate, GUVNL Ms. Srishti Khindaria, Advocate, GUVNL Shri Sanjay Mathur, GUVNL Shri Kripal Chudasama, GUVNL Shri S.K. Nair, GUVNL Shri Ravi Nair, GUVNL

RECORD OF PROCEEDINGS

Case was called out for virtual hearing.

2. During the hearing, the learned counsel for the Petitioner circulated a note containing rebuttal submissions by the Petitioner and orally submitted mainly on the following counts:

(a) The claim of the Petitioner in the present petition is for approval of the capital cost incurred for setting-up of the plant and the fuel cost incurred for running the plant by the Petitioner, along with carrying cost for the period of power supply to the Respondent, GUVNL from 2.2.2012 (SCoD) to 9.7.2019 (last date of power supply), pursuant to the directions of the Hon'ble Supreme Court in its judgment dated 2.7. 2019 in Civil Appeal No11133/2011;

(b) The Hon'ble Supreme Court in its judgment has upheld the termination of the PPA dated 2.2.2007 with effect from 4.1.2010. The guiding principle for grant of relief to the Petitioner for continued power supply to Respondent GUVNL after 4.1.2010, *de hors* the PPA, as identified by Hon'ble Supreme Court is '*to do economic justice on the principle of business efficacy'*, both with respect to the capital expenditure and the operating expenditure incurred by the Petitioner;

(c) The Respondent GUVNL's contention that the Petitioners bid was based on imported coal as well as domestic coal and hence, the basis of compensation to be granted should be the difference between the landed cost of alternative coal price vis-à-vis the landed cost of GMDC coal price, if GMDC coal had been made available and the additional operating cost on account of use of alternative coal, is contrary to the specific directions of the Hon'ble Supreme Court to compute tariff under Section 62 of the 2003 Act read with the Tariff Regulations;

(d) The Commission has been directed to determine the tariff in terms of Section 62 of the 2003 Act read with the 2009 Tariff Regulations, to compensate the Petitioner, with respect to the (i) Capital expenditure and the interest on the expenditure incurred by the Petitioner for completion of the project, (ii) Operational expenditure of the project after obtaining coal from open market, and (iii) Carrying cost/Interest on delay of payments for both the above. The amount so determined is subject to adjustments towards amounts already paid by the Procurer, and the balance amount recoverable towards liquidated damages of 100 crore;

(e) For determination of tariff, in terms of the said judgment of the Hon'ble Supreme Court, some of the aspects like GMDC coal, Bid parameters and Section 63 are not to be considered as the PPA stood terminated. The elements of tariff are to be determined on prudence check, on the basis of the claimed actual expenditure qualifying as 'reasonable cost, in terms of Section 62 of the 2003 Act read with the Tariff Regulations notified by this Commission from time to time.

This is distinct from the 'lowest cost' approach as envisaged under Section 63 of the 2003 Act;

(f) Against the judgment dated 2.7.2019 of the Hon'ble Supreme Court, the Respondent GUVNL had filed Review Petition No.2012/2019 and the same was dismissed by the Hon'ble Supreme Court on 3.9.2019. The Respondent GUVNL cannot therefore re-agitate the issues rejected by the Hon'ble Supreme Court in its order dated 3.9.2019 on the grounds namely (i) Bid not being based on GMDC coal in view of the draft red herring prospectus (July 2009) and the MoUs with Kowa Company and Coal Orbis for imported coal and (ii) The portion of fixed cost must be excluded from the Petitioner's entitlement to tariff. The Respondent GUVNL arguments are therefore inadmissible once the Hon'ble Supreme Court has concluded that the PPA was based on GMDC coal;

(g) The Petitioner has filed all relevant documents required for the determination of tariff in terms of the 2009, 2014 and 2019 Tariff Regulations, including the tariff filing forms, in compliance with directions of this Commission from time to time, The Petitioner has also furnished Auditor Certificates supporting the claims and this Commission may verify all claims on the basis of the documents available on record. The Respondent GUVNL cannot cast aspersions on the veracity of the Auditor Certificates, without any cogent reasoning or material evidence (*SC judgments in WBERC v CESC Ltd (2002) 8 SCC 715 and S.Sukumar V ICAI (2018) 14 SCC 360 and APTEL judgment in LAPL V HERC (2014 SCC Online APTEL 4) was referred to*);

(h) The Petitioner has also undertaken to submit any relevant information required by this Commission to determine the tariff in terms of the said judgment. The Respondent GUVNL cannot be permitted to delay the proceedings by seeking information/ data irrelevant to the scope of the present proceedings and continue with fishing and roving enquiries to evade its liabilities. It is also not open for the Respondent GUVNL to reinterpret and read down the directions contained in the judgment of the Hon'ble Supreme Court;

(i) It is a settled position of law that in a case of remand with directions, the remanded court must act strictly as per the directions of the remand order (*Judgment of APTEL dated 11.4.2018 in GUVNL v GERC & ors [2018 SCC On line APTE*L and Supreme Court judgment in *Paper Products Ltd. . CCE*, (2007) 7 SCC 3520) was relied upon]. Respondent GUVNL cannot re-open all the issues which were decided by the Hon'ble Supreme Court its judgment dated 2.7.2019 and in the Review order dated 3.9.2019. The Hon'ble Supreme Court takes it seriously when its orders are played around [*Order dated 9.3.2021 in Nabha Power v PSPCL in Contempt Petition Nos. 1174-1177 of 2019 in Civil Appeal No. 179 of 2017*) was relied upon];

(j) The Petitioner's claim for capital cost of Rs.4.32 cr./MW for Units 5 & 6 of the Project is prudent and reasonable keeping in view the comparison made with the

capital cost of some of the NTPC generating stations of same vintage (except Simhadri TPS) which are river water based and do not require the additional facilities of a sea-water based power plant and the benchmark capital cost determined by this Commission;

(k) The submissions of the Respondent GUVNL regarding 'related party transactions' has no relevance to the tariff determination exercise since the Petitioner had not procured a single kilogram of coal under the FSA dated 24.3.2008 with Adani Enterprises Ltd, for the power supplied to GUVNL. The said FSA was replaced with FSA dated 26.7.2010 as the quality of coal was not matching with the agreed terms. Further, the FSA dated 26.7.2010 was terminated as it became commercially unviable due to the promulgation of Indonesian Regulations. The Commission in ROP dated 6.2.2013 in Petition No. 155/MP/2012 had recorded that coal was not procured under FSA dated 26.7.2010. Even otherwise, the Respondent's contention regarding related party transactions are barred by '*res judicata*', as the issue stands settled by the Commission in its order dated 6.12.2016 in Petition No.155/MP/2012;

(l) The Commission is not empowered to convert the tariff determination process pursuant to remand by the Hon'ble SC into an inquisitorial proceeding, as the scope of the present proceedings is confined to be boundaries created by the said judgment. The inquisitorial role of this Commission is limited to circumstances envisaged under Sections 128 to 130 of the 2003 Act. Also, the Commission is a regulator and is not dealing with any criminal proceedings (SC Judgments in *Bhog Food Industries Ltd v. The Central Bank of India & Anr, UHBVN v. NTPC Ltd* was relied upon);

(m) The Hon'ble SC in Energy Watchdog case and the Commission in its order dated 6.12.2016 in Petition No.155/MP/2012 and Order dated 12.4.2019 in Petition No. 374/MP/2019 had held that the DRI issue is not relevant for the proceedings. An identical plea was raised by the Rajasthan Discoms before the Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Ltd. vs. Adani Power Rajasthan Ltd. 2020 SCC Online SC 697* and the Hon'ble Supreme Court in its judgment dated 31.8.2020 rejected the said contention holding that until and unless there is a finding recorded by the competent Court as to over-invoicing, such allegation cannot be accepted. The Respondent GUVNL's contentions in this regard ought to be rejected;

(n) GUVNL's allegation of over-pricing is baseless since the Petitioner is not claiming any premium over the Benchmark prices of coal. As per Indonesian Regulations, the Benchmark prices are the 'lower-limit price' below which coal cannot be exported. The Petitioner had envisaged the project on the basis of Section 63 of the 2003 Act premised on GMDC coal supply. The Petitioner was constrained to supply power, despite termination of PPA, due to orders of GERC and APTEL at the instance of the Respondent GUVNL, till the Hon'ble SC judgment dated 2.7.2019. During such time, the Petitioner continued to procure coal for power

supply to the Respondent GUVNL, which now seeks to evade paying the price of imported coal procured at the stipulated Benchmark prices;

(o) The contention of the Respondent, GUVNL that compensatory tariff is required to be determined on 'restitution principles' in terms of Section 144 of the Civil Procedure Code, 1908 is misleading. The relief to do 'economic justice on the principle of business efficacy' to the Petitioner in terms of Section 62 read with Tariff Regulations, covering both the capital expenditure and operating expenditure, with interest on both, is akin to compensation under Section 70 of the Indian Contract Act, 1872 (Judgments of SC in *Mulamchand vs. State of Madhya Pradesh (1968 3 SCR 214), M/s Hansraj Gupta & Co. vs. UoI (1973) 2 SCC 637)and Orissa Industrial Infrastructure Development Corporation vs. MESCO Kalinga Steel Limited & Ors (2017) 5 SCC 86)* was refereed to;

(p) While applying the principles of restitution, it is a settled position of law that the Courts need to strike balance between public and private interest along the lines of Section 61(d) of the 2003 Act [*judgment of SC in APERC vs. R.V.K. Energy (P) Ltd (2008) 17 SCC 769*) *was relied upon*]. Also, Section 61 principles apply to both, Section 62 and Section 63 projects (*refer Energy Watchdog case (2017) 14 SCC 80*). Section 144 of the CPC has no applicability as the pre-conditions for the said section has not been satisfied in the present case;

(q) The Indonesian Regulations all along the period of the claim from February 2012 till date continue to mandate coal suppliers not to export coal at prices below HBA index price. (*Attachment-2 of the note was referred to*). The contention of the Respondent GUVNL that Indonesian Regulations have undergone change in 2017 and 2018 and that coal export from Indonesia is allowed at less than the HBA index price, is misleading as the Regulation of the Government of the Republic of Indonesia No. 23 of 2010 concerning 'Implementation of Mineral and Coal Mining Business Activities" dated 1.2.2010 [2010 Government Regulations] continue to be in operation, even as per documents placed on record by Respondent GUVNL. Also, the contention of the Respondent that HPB is not the floor price, but the ceiling price and coal procurement prices need not adhere to Benchmark Prices is erroneous;

(r) The Respondent GUVNL cannot resort to selective reliance of the Indonesian Regulations to contend that the Petitioner has claimed higher energy charge rate, as compared to CGPL and Essar Power, for a similar GCV of coal imported from Indonesia during the same period. Article 2(4) of the Regulations of the Director General of Minerals dated 24.3.2011 mandates the consideration of all 4 indices for HBA of steam (thermal) coal i.e. (i) Indonesian Coal Index/Argus Coalindo, (ii) New Castle Export Index, (iii) Platts and (iv) Global New Castle Index in equal proportion i.e., 25% each. Similarly, Article 3(2) of the DG's Regulations refers to multiple variables to be accounted while determining Benchmark prices [HPB] *viz.* (i) steam coal prices, (ii) GCV, (iii) Water content (moisture content), (iv) Sulphur content and (v) Ash content. The selective reliance by Respondent on

only two indices namely Indonesian Coal Index/Argus Coalindo and Platts and only the variable 'GCV', by the Respondent is untenable;

(s) Article 21 of 2010 Minister's Regulations, Article 9 of the 2017 Indonesian Regulations and the DG's 2014 Regulations, referred to by the Respondent GUVNL applies only to coal of 'certain type' [i.e., fine coal, reject coal and coal with certain impurities] and 'certain purpose' [(i) coal used by Company for its own purpose in the process of coal mining, (ii) coal used by Company in order to increase the value added of coal at mine mouthnits 5 & 6 of the Petitioner are super-critical power generating units, where such coal is not suitable and not used. Hence, the Regulations referred by the Respondent GUVNL are irrelevant for the present matter;

(t) The Respondent GUVNL's contention that the Petitioner has not disclosed how it is procuring imported coal after termination of CSA with its subsidiaries is misleading and erroneous. The Petitioner has procured coal under 'spot' procurement in terms of the Indonesian Regulations and the Respondent was aware of the same (*reliance placed on Commission's order dated 2.4.2013 in Petition No.155/MP/2012 and APTEL Full Bench judgment dated 7.4.2016 in Appeal No 100/2013 & batch*)**;**

(u) As per the Regulation 6 of the 2009 Tariff Regulations, truing-up is done only for capital expenditure. Also, Energy Charge Rate (ECR) has been calculated based on actual landed cost of primary fuel like coal or gas at plant and not based on any benchmark. The Petitioner's coal procurement and the associated ECR claimed is prudent and is lower, as evident from a comparison of the ECR claimed by the Petitioner with the ECR claimed by (i) various NTPC generating stations and (ii) Gujarat State Electricity Corporation Limited's Sikka Thermal Power station [Units 3 and 4] with usage of imported coal (*Attachment-5 of the note was referred to*);

(v) Since Respondent GUVNL has personal knowledge of the details of imported coal procurement by CGPL and Essar Power, it is incumbent upon the Respondent to place on record evidence to corroborate its assertions (*Sections 101 and 106 of the Evidence Act, 1872 was relied upon*). Since the Respondent has failed to bring on record the certified copies of the documents evidencing the lower fuel price billed by the said generators, it is impossible for the Petitioner to ascertain whether the ECR claimed by other generators, is based on coal procurement prices actually incurred, since there has been multiple revisions of ECR indicated by such generators to Respondent for the purpose of Merit Order Despatch;

(w) It is a settled position of law that lifting of corporate veil is an exception to the rule and not the law. Corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated Companies are inextricably connected as to be, in reality, part of one concern.

None of the aforesaid conditions are present in the facts and circumstances of this case for corporate veil to be lifted. As such, the contention of the Respondent GUVNL ought to be discarded;

(x) The case laws relied upon by the Respondent GUVNL are related to the issues of fuel cost for generation tariff under Section 62(5) of the 2003 Act and are thus irrelevant (*Attachment-4 of note was referred to*);

In the above background, the learned counsel for the Petitioner submitted that the present petition is a 'time bound remand' with directions and the Commission may determine the capital cost and operating expenditure with interest, in terms of the Section 62 and 64 of the 2003 Act read with the Tariff Regulations, along with variable charges, subject to adjustment of the amounts already paid by the Respondent GUVNL.

3. At the outset, the learned Senior Counsel for the Respondent GUVNL submitted that the Respondent may be given opportunity to file its response on the comparative statement filed by the Petitioner on the ECR claimed by the Petitioner *vis-a-vis* the ECR of NTPC generating stations and Sikka TPS of GSECL. On other aspects, the learned Senior Counsel clarified as under:

(a) The regulations notified by this Commission and the supplementary PPA require the Petitioner to provide for actual FOB coal price from Indonesia, which has not been complied with the Petitioner. The Petitioner is deliberately not making available in a transparent manner, the FOB price of coal of the Indonesian mining company, said to have been affected by the Indonesian Regulations, providing for the benchmark prices by the authorities. The Respondent has given circumstantial evidence to show that the Petitioner ought to disclose to this Commission, the mine company price, which is to be compared with the Indonesian Regulations;

(b) As per the KPMG document (page-5935) filed by the Petitioner in the earlier proceedings before this Commission, the FOB price of coal has been indicated as 21 dollars. The FOB price of coal varies with the transportation price (*i.e if transportation price goes up, the FOB price comes down and vice versa*), but the sum total is 36 dollars (*page-5936 referred to*). This indicates that even after Indonesian Regulations, there is a price which has been determined for export of coal. The Petitioner has not submitted any clarification on this issue;

(c) As per the basic Indonesian law, HBA price is determined for 6322 kcal and it is thereafter converted to GCV of coal (which is to be exported) considering various factors like age and sulphur content etc., which is the HPB-derived price. The 6322 kcal of coal is considered on the basis of the average of the 4 indices for arriving at the HPB -derived price and then the Minister decides at what rate the export of coal is to be allowed;

(d) The escalation index notified by the Commission for the purpose of allowing escalation factor in cases of imported coal is based on two/three indices. These

indices (submitted to Commission) clearly indicate that coal has been exported by the Petitioner from Indonesia at much lower rates, than the price claimed by the Petitioner. The Respondent has submitted on affidavit, the energy charge rates paid to CGPL and Essar Power, which is much lesser than what the Petitioner is claiming for the same GCV of coal and for the same origin of the coal. Since the Indonesian coal companies belong to the Petitioner and the FOB price of coal has not been furnished by the Petitioner, the Respondent's submissions regarding related party transactions /lifting of corporate veil in this context, are relevant for consideration;

(e) The Petitioner is bound to submit the FOB price of coal at which the Indonesian coal company has exported coal to Adani Enterprises Ltd or Adani Global PTE Limited (Singapore). The Respondent is not seeking any DRI investigation, but has relied on the paper report to show that there is need for the Commission, during prudence check, to call for such information from the Petitioner. Section 126 and 127 of the 2003 Act deals with unauthorized use of electricity. While Section 126 applies only to distribution licensees, Section 128 applies to generating company;

(f) The submission of the Petitioner that the Respondent GUVNL is required to compensate the Petitioner is erroneous, considering the fact that the bid was submitted by the Petitioner and it was the Petitioner who informed the Respondent GUVNL on 12.2.2007, that it would supply power against Bid 2 from Mundra Power Project in Gujarat, instead of Chhattisgarh Project, at the same tariff (Rs.2.35/kWh) which covers both, fixed charges and the variable charges, using the same grade of coal. The submission of the Respondent that the grant of compensation shall be limited to the increase in the landed cost of alternative coal at Mundra station minus the landed cost of GMDC coal is therefore relevant for consideration;

(g) Moreover, the supply of power by the Petitioner to the Respondent, till the judgment of the Hon'ble Supreme Court, was on account of the orders/directions of the competent court (APTEL, GERC) and not on any unilateral action on the part of GUVNL. This is a fit case for application of the principle of 'restitution' (due to act of Court) in terms of Section 144 of the CPC. The principle of 'restitution' has to be balanced, equitable and non-meritorious claims are not to be allowed. The right to restitute exercised by the Hon'ble Supreme Court in the said judgment, is in terms of Section 144 CPC and not Section 70 of the Indian Contract Act, 1872, which is applicable only in cases of 'void' contracts and not in respect of contracts which has been terminated;

(h) The Hon'ble Supreme Court in its judgment has not directed to allow all the claims of the Petitioner under Section 62 of the 2003 Act, but has said to follow Section 62 as a guiding factor, for the reason that the termination of PPA was due to non-availability of GMDC coal. Therefore, the formula for just compensation, either in terms of Section 73 of the Contract Act or otherwise for breach of contract, shall be based on the principle of 'what would have happened

if GMDC coal was available and what has happened due to non-availability of GMDC coal;

(i) The statement of the Petitioner that it had undertaken a number of works, being a coastal project cannot be considered, as these works were undertaken even when use of GMDC coal was in the contemplation of the Petitioner (*letter of the Petitioner dated 12.2.2007 was relied upon*);

(j) The Review petition filed by GUVNL was rejected by the Hon'ble Supreme Court on the ground of error apparent on the face of record. Merely because the submissions of the Respondent GUVNL in the said review petition regarding tariff determination under Section 62 was rejected by the Hon'ble Court, cannot mean that the Respondent has given up its arguments against compensation to the Petitioner or has agreed to the tariff determination *de no*vo, under Section 62 of the 2003 Act. Further, rejection of the review petition never implies that it cannot be examined by this commission and the same cannot form a binding precedent;

(k) For the Commission to determine the compensation in terms of the judgment of the Hon'ble Supreme Court, information on the actual cost of coal has not been furnished by the Petitioner. The Commission may therefore direct the Petitioner to provide the actual FOB price of coal, for prudence check in terms of the Tariff Regulations, failing which, the Petitioner will not be entitled to any compensation. The burden of proof cannot be shifted on to the Respondent GUVNL for such information (*IA filed by Respondent was relied upon*). The statement of the Petitioner that the Indonesian Regulations till 2017-18 provide only for HBA index price and not HPB price is completely erroneous;

(l) Though the Petitioner's claim for 'spot price' of coal was taken on record by the Commission in the earlier proceedings, the same was not consented by the Respondent GUVNL, as the PPA did not provide for the same, This was also accepted to by the Commission. However, the issue of actual price of coal has assumed significance pursuant to the supplementary PPA, which provides that the FOB price of imported coal shall be the lower of the actual price or the HBA price."(*Extracts from Article 3.2.4 of SPPA in page-28 of the rebuttal submissions was referred to*). The Petitioner has also not pointed out to any extra cost which has been incurred by it on account of the non-availability of GMDC coal;

Accordingly, the learned Senior Counsel for the Respondent GUVNL submitted that the Commission may only consider the additional expenditure arising as a result of the need for the Petitioner to use imported coal/alternate coal in place of GMDC Coal and expenses directly related or associated with the same and not any other expenditures related to capital cost or determination of capacity/fixed charges.

4. On an observation of the Commission whether the process of determination of compensatory tariff involved the truing-up of the expenditure already incurred, in terms of the Tariff Regulations, the learned counsel for the Petitioner clarified that no expenditure has been projected by the Petitioner in this petition. He also submitted that in terms of the judgment of the Hon'ble Supreme Court, the compensatory tariff payable

to the Petitioner is required to be determined in the light of Section 62 of the 2003 Act read with the Tariff Regulations notified by this Commission (*paras 44 to 51 of the SC judgment was relied upon*).

5. On further queries of the Commission as to (i) whether there exists any element of 'settlement' acceptable to both parties in terms of Section 89 of the CPC, 1908; and (ii) whether any additional capital investment was made on the project on account of shifting the project to imported coal based project:

(a) As regards any possibility of settlement, the learned counsel for the Petitioner pointed out to the other pending issues between the parties (*disputes regarding non-payment by GUVNL, the revocation of SPPA by GUVNL etc., pending before this Commission*), and the approach of the Respondent and ruled out the possibility of any settlement in the matter presently. As regards the use of imported coal, the learned counsel for the Petitioner clarified that the primary fuel was GMDC coal (as per bid) with discretion to use imported coal, if techno-commercially feasible. The learned counsel for the Petitioner further submitted that the relief granted by the Hon'ble Supreme Court to the Petitioner for imported coal, was not on account of any change in law. He also reiterated that the Hon'ble Supreme Court in its judgment has directed the determination of compensatory tariff under Section 62, keeping in view that the termination of the PPA with effect from 4.1.2020 was valid and that the supply of power thereafter by the Petitioner was *de hors* the PPA and therefore, tariff under Section 63, premised on competitive bidding, can no more hold the field. He added that as per directions of the Hon'ble Supreme Court, the Commission shall, in terms of Section 62 of the 2003 Act read with the Tariff Regulations, determine on prudence check, the capital cost and the operating expenditure *de novo,* along with interest, payable to the Petitioner, subject to adjustments of the amounts already paid/refunded.

(b) The learned Senior Counsel for the Respondent GUVNL submitted that keeping in view the various issues between the parties and since arguments have been completed, there was no possibility of any settlement at this stage. The learned Senior Counsel clarified that no capital investment was made by the Petitioner on account of shifting the project from GMDC coal based to imported coal based project and that the investments made were prior to the termination of the GMDC coal arrangement which was available with them.

6. The Commission, after hearing the parties, gave liberty to the Respondent GUVNL to file its written response on the comparative statement filed by the Petitioner in respect of the ECR claimed by the Petitioner *vis-a-vis* the ECR of NTPC generating stations and Sikka TPS of GSECL by 27.5.2021 and reserved the order in the Petition and IA.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (law)