

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 104/MP/2017

Coram:

**Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 23rd October, 2021

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Article 13 (“Change in Law”) of the Power Purchase Agreements dated 7.8.2008 executed between Uttar Haryana Bijli Vitran Nigam Limited/ Dakshin Haryana Bijli Vitran Nigam Limited and Adani Power Limited.

And

In the matter of

Adani Power (Mundra) Limited,
“Adani House”,
Near Mithakhali Six Roads, Navarangpura,
Ahmedabad-380 009.

...Petitioner

Vs

1. Uttar Haryana Bijli Vitran Nigam Limited,
Shakti Bhawan, Sector 6,
Panchkula-134 109,
Haryana.

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar, Hisar-125 005,
Haryana.

...Respondents

Parties Present:

Shri Amit Kapur, Advocate, APMuL
Shri Hemant Singh, Advocate, APMuL
Shri Lakshyajit Singh Bagdwal, Advocate, APMuL
Ms Poorva Saigal, Advocate, Haryana Utilities
Shri Shubham Arya, Advocate, Haryana Utilities
Ms. Tanya Sareen, Advocate, Haryana Utilities
Shri Vikas Kadian, Haryana Utilities



ORDER

The Petitioner, Adani Power (Mundra) Limited (“APMuL”) has set up a 4620 MW thermal power plant (hereinafter referred to as “the Mundra Power Project”) in Special Economic Zone at Mundra, Gujarat consisting of four Units of 330 MW in Phase I and Phase II; two Units of 660 MW in Phase III; and three Units of 660 MW in Phase IV (Unit 7, Unit 8 and Unit 9). In response to the Request for Qualification and Request for Proposal invited by the Haryana Power Generation Company Limited, the Petitioner submitted bids for supply of 1424 MW of power from Unit 7, Unit 8 and Unit 9 (Phase IV) of the Mundra Power Project. After being declared as the successful bidder, the Petitioner entered into two separate long term PPAs dated 7.8.2008 with Uttar Haryana Bidyut Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bidyut Vitran Nigam Limited (DHBVNL) (hereinafter collectively referred to as “Haryana Utilities”) for supply of 712 MW each at a levelized tariff of Rs. 2.94 per unit at the Haryana periphery.

2. The Petitioner had filed Petition No. 104/MP/2017 seeking reimbursement of expenditure for installation and operation of Flue Gas De-Sulfurization ('FGD') system in Unit 7, Unit 8 and Unit 9 of the Mundra Power Project under “Change in Law” provisions of the Power Purchase Agreements dated 7.8.2009 between the Petitioner and Haryana Utilities along with carrying cost. The Commission in its order dated 28.3.2018 in Petition No. 104/MP/2017 allowed Change in Law relief to the Petitioner towards installation and operation of FGD system in terms of additional capital cost, O & M expenses and additional auxiliary power consumption. However, the claim of carrying cost was disallowed by the Commission holding that there is no provision in the PPAs to grant carrying cost from the date of incurring the expenditure under Change in Law.

3. Subsequently, the Petitioner filed Petition No. 214/MP/2018 before the Commission seeking clarifications in regard to order dated 28.3.2018 in Petition No. 104/MP/2017. In the said Petition, the Petitioner also filed IA No. 70 of 2018 seeking carrying cost on installation of FGD system relying on the judgment dated 13.4.2018 of Appellate Tribunal for Electricity (APTEL) in Appeal No. 210 of 2017. The Commission vide order dated 6.6.2019 in Petition No. 214/MP/2018, *inter-alia*, held that once the claim has been rejected by the Commission in Petition No. 104/MP/2017, the Petitioner cannot approach the Commission again for the same relief through an IA based on a subsequent judgement of the higher court.

4. Aggrieved by denial of carrying cost in order dated 28.3.2018 in Petition No. 104/MP/2017 and order dated 6.6.2019 in Petition No. 214/MP/2018, the Petitioner filed Appeal No. 421 of 2019 before the APTEL challenging both the orders of the Commission. The APTEL by its judgement dated 12.8.2021 held that the Petitioner is entitled for carrying cost in respect of compensation for Change in Law event towards installation of FGD system in the Mundra Power Project. Further, the APTEL also allowed interest on carrying cost claimed by the Petitioner.

5. The Petitioner vide its affidavit dated 24.9.2021 has submitted that, pursuant to the judgment of the APTEL, the Petitioner vide letter dated 18.8.2021 submitted the details of the amount payable by Haryana Utilities, along with detailed calculations duly enclosing supporting documents, to the Commission and Haryana Utilities. The summary of claim of the Petitioner is as under:

Financial Year	Rate of Interest	Claim in reference to CERC order dated 28.3.2018 in Petition No. 104/MP/2017			Claim in reference to CERC order dated 6.6.2019 in Petition No. 214/MP/2018			Total
		Principal claim as paid by Haryana Discoms	Carrying cost till the date of CERC order	Interest on Carrying cost from date of CERC order till date of APTEL Judgement*	Principal claim as paid by Haryana Discoms	Carrying cost till the date of CERC order	Interest on Carrying cost from date of CERC order till date of APTEL Judgement*	
	%	Rs. in crore	Rs. in crore	Rs. in crore	Rs. in crore	Rs. in crore	Rs. in crore	Rs. in crore
A	B	C	D	E	F	G	H	I = D+E+G+H
2013-14	11.00%	25.95	14.61	6.54	3.50	2.73	0.74	24.61
2014-15	13.10%	152.00	87.42	48.33	29.37	24.45	8.06	168.26
2015-16	10.68%	149.24	45.44	19.64	35.66	17.21	4.50	86.79
2016-17	10.95%	142.44	25.22	11.23	32.75	11.05	2.97	50.47
2017-18	10.97%	126.69	7.68	3.43	31.79	6.51	1.76	19.37
2018-19	10.92%	-	-	-	30.99	2.38	0.64	3.02
2019-20	10.24%	-	-	-	5.59	0.06	0.01	0.07
Total		596.32	180.36	89.16	169.65	64.38	18.68	352.59

6. With regards to methodology adopted for computation of carrying cost and interest thereon, the Petitioner vide its letter dated 18.8.2021 has submitted that the interest on carrying cost is considered adopting the same principle as allowed by the Commission vide order dated 17.9.2018 in Petition No. 235/MP/2015. The Commission in the said order has allowed interest rate which would be lowest of actual interest rate paid by the Petitioner, working capital interest rate as per CERC Regulations and Late Payment Surcharge (LPS) rate as per the PPA. For the years 2015-16, 2016-17 and 2017-18, the Petitioner has stated to have adopted the same rates that have been approved by the Commission in order dated 17.9.2018. It has been further submitted that the actual interest rates paid by the Petitioner for the years 2013-14, 2014-15, 2018-19 and 2019-20 are lower than applicable rate for interest on working capital as per applicable Tariff Regulations i.e. SBI Base rate +350 basis points (during 2014-19 control period)/1 Y SBI MCLR+350 basis points

(during 2019-24 control period) and the Late Payment Surcharge (LPS) as per the PPAs, i.e. SBAR+2%.

Hearing dated 27.9.2021

7. During the course of hearing, the learned counsel for the Petitioner submitted that the present matter has been re-listed for hearing pursuant to the judgment of the APTEL dated 12.8.2021 in Appeal No. 421 of 2019, wherein the APTEL has held that the Petitioner is entitled to carrying cost and interest on carrying cost in respect of compensation for Change in Law event towards installation of FGD system approved by the Commission and has directed the Commission to determine the amount payable to the Petitioner. The learned counsel for the Respondents, Haryana Utilities requested for ten days' time to place on record the submission of the Respondents on the applicable rate of interest, type of interest i.e. simple interest or compound interest and the amount that is payable as per the Respondents. On the request of the learned counsels for the parties, Respondents were directed to file their submissions on the issue of applicable rate of interest and type of interest.

Reply of Haryana Utilities

8. Haryana Utilities vide their joint reply have submitted as under:

(a) For interest rates, APMuL has relied upon the certificates issued by Chartered Accountant instead of Auditor certificates. The yearly interest rates certified by Chartered Accountant are lower than the interest rates certified by Auditor. Therefore, the veracity of interest rates so relied upon by APMuL for computing claims is, thus, also in question.

(b) The interest applicable for working out carrying cost should be reasonable, computed on simple interest basis and prudently incurred instead of adopting the varied interest rates as claimed by the Petitioner.

(c) The Petitioner, in its computation, has compounded the carrying cost on monthly basis. There is no provision for compounding of carrying cost, either in the order dated 17.9.2018 or in the order passed by the APTEL. Such interest on compounding basis is not permissible in law, in the absence of any agreement or statutory provisions specifically providing for the same.

(d) Further, as per Article 13.2 of the PPA (computation of impact of Change in Law), there is no provision for restitution on compound interest basis. The principle of compensation is limited to the extent contemplated in Article 13 of the PPA. There cannot be any claim for compound interest and/or penal interest. Except in cases where compound interest is specifically allowed by virtue of an express stipulation contained in the agreement or provided in a statute, the charging of compound interest is usurious and penal in nature and is not permissible in law.

(e) It is settled principle that in the absence of any provision providing for levy of compound interest, it is not permissible for the Court to award compound interest. In this regard, reliance is placed on judgment dated 11.5.2017 of the APTEL in Appeal No. 250 of 2015 (*Jaigad Power Transco Limited vs Maharashtra Electricity Regulatory Commission*).

(f) The interest rate claimed by the Petitioner is in the range of 10.24% to 13.10% for the period from 2013-14 till 2019-20, compounded on monthly basis. On the other hand, Coastal Gujarat Power Limited (CGPL) in its Petition No. 157/MP/2015 has claimed interest for the period from March 2012 to January 2021 at the rate ranging from 8.76% to 10.94% on simple interest basis and not on compounding basis. There is, therefore, no justification for the Petitioner to claim such excessive rate for carrying cost when both Power Plants are of same size, located at the same place and both are multilateral industrial groups. The inability of the Petitioner to source finances and funding at reasonable and competitive rate cannot be a ground for claiming higher carrying cost at the cost of the consumers in the State of Haryana. It is settled that inefficiencies on part of generator cannot be loaded on consumers at large by the way of enhanced tariff.

(g) If the claim of the Petitioner for compounding interest is to be considered, it is appropriate to consider the rate of interest at 9%, as allowed by the Hon'ble Supreme Court (even with compounding interest) in its decision in the case of *Jaipur Vidyut Vitran Nigam Limited & Ors. -v- M/s. Adani Power Rajasthan Limited & Ors.* [2020 SCC Online SC 69] wherein it has been held that the '*rate of interest/late payment surcharge would be at SBAR, not exceeding 9 per cent per annum, to be compounded annually, and the 2 per cent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case*'.

(h) The interest has to be reasonable and, in the facts and circumstances of the case, it should not exceed the rate, as decided by the Hon'ble Supreme Court in the case of *Jaipur Vidyut Vitran Nigam Limited v. Adani Power Rajasthan Limited*, considering the interest of the consumers in the State of Haryana.

(i) Further, in any event, while computing the carrying cost, the interest rate has to be applied on the basis of the interest rate prevalent in each of the respective financial years. The Petitioner has wrongly applied the carrying cost of the year 2013-14 on the basis of the interest rate claimed alleged to be related to that year, and continued the same rate for the subsequent periods. Similar methodology of claiming higher rate of interest without factoring in the modification/ reduction in the rate of interest from time to time in the subsequent years, has been followed for the ensuing period as well. The above methodology adopted is arbitrary and capricious. The computation made by the Petitioner on this count has resulted in an inflation of the claim by about 40 crore (even as per the methodology adopted by APMuL of compound interest). This is besides the inflated rate of interest already being claimed by the Petitioner otherwise.

Rejoinder of the Petitioner to the reply filed by Haryana Utilities

9. The Petitioner vide its rejoinder affidavit dated 12.10.2021 has made the following submissions.

(a) The Petitioner met the officials of Haryana Power Purchase Centre (HPPC) between 13.9.2021 to 15.9.2021 to explain in detail about the claim and the computations. During the meetings, it was mutually agreed that there is no dispute between the parties qua calculations between the parties, except for the manner in which the computation of carrying cost is to be done i.e., whether on simple interest basis or compound interest basis.

(b) The final amount qua carrying cost, which stands agreed between APMuL and Haryana Discoms (both on the basis of simple interest and compound interest) is (i) Rs. 352.59 crore (on compound interest basis); or (ii) Rs. 277.11 crore (on simple interest basis). Therefore, the only issue which was left for consideration before the Commission was whether the carrying cost claim of the Petitioner has to be computed on the basis of simple interest or compound interest.

(c) The Petitioner has claimed the carrying cost in respect of the Change in Law compensation payable towards installation of FGD system based on monthly compounding methodology which is in line with the methodology adopted by Haryana Utilities for making payments towards carrying cost on Change in Law compensation on account of taxes and duties levied on imported coal.

(d) The Petitioner had submitted certificates from its Chartered Accountant (CA) first, followed by Auditor Certificate for rate of interest claimed. The rates of interest for the initial period of 3 years in the Auditor's Certificate were slightly higher than those claimed in the CA certificate, and that, the said interest remained same for the balance years. The Petitioner has claimed interest based on the CA certificates, being lower than the rates mentioned in the Auditor Certificate which have been duly submitted by the Petitioner before the Commission.

(e) Reliance placed by Haryana Utilities on the facts of the claims of CGPL is completely untenable since a proceeding before a Court of law has to be decided on the basis of facts and circumstances of that case. The interest rate charged by the bank depends on various factors such as credit rating,

associated risk and lending agencies, etc. The Petitioner has claimed the interest rate which has been charged by its lenders. The criteria for the interest rate to be made applicable for carrying cost has been settled by the Commission in order dated 17.9.2018 in Petition No. 235/MP/2015 which has attained finality and the Respondent cannot be permitted to suggest new criteria at this stage.

(f) The judgment of the Hon`ble Supreme Court in the case of *Jaipur Vidyut Vitran Nigam Limited v. Adani Power Rajasthan Limited*,[(2020) SCC OnLine] is of no relevance to this case as 9% interest rate was allowed to Rajasthan Discoms as a special case based on the specific facts of that case. This position has been clarified by the Hon`ble Supreme Court in a recent judgment dated 8.10.2021 passed in Civil Appeal No. 1843 of 2021, in the case of *Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission & Ors.*

(g) While the Haryana Utilities have contended that the Petitioner has not considered modification/ reduction in the rate of interest from time to time in the subsequent years, the same methodology has been followed by Haryana Utilities itself for making payments towards carrying cost on Change in Law compensation on account of taxes and duties levied on imported coal.

(h) When the Haryana Utilities have earlier agreed to a particular methodology for computing interest by way of restitutive relief, it cannot now seek a different methodology for computation of interest (i.e., on simple basis). This particular issue was specifically dealt by the APTEL vide its judgment dated 12.8.2021 in Appeal No. 421 of 2018. Referring to the conduct of the Haryana Utilities qua the earlier order dated 17.9.2018 in Petition No. 235/MP/2018, the APTEL gave a categorical finding that Haryana Utilities, being a public body, cannot adopt a different approach, and ought to take a similar approach towards all the parties. Thus, the entire averment of Haryana Utilities that the issue of compounding interest was not considered in the aforesaid judgment, is completely flawed and deserves to be rejected by the Commission.

(i) The Petitioner is entitled to claim carrying cost based on compound interest in terms of Article 13.2 of the PPAs, which contains a restitutionary principle as held by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC* [(2017) 14 SCC 80] (Para 57), and *Uttar Haryana Bijli Ultran Nigam Ltd. & Anr. v. Adani Power Ltd. & Ors.*[(2019) 5 SCC 325].

(j) The contention of Haryana Utilities that interest on compounding basis or interest on interest is not permissible in law in the absence of any agreement or statutory provisions specifically providing for the same, is denied in light of judgement dated 20.9.2021 passed by the APTEL, in Appeal No. 386 of 2019 (*MSEDCL v. MERC & Anr.*).

(k) In order to give effect to the term 'restitution', compensation ought to be granted on compound interest basis, which has also been judicially recognised by the Hon'ble Supreme Court in the case of *Indian Council for Enviro-Legal Action v. Union of India*, reported in [(2011) 8 SCC 161] and *T.N. Generation & Distribution Corpn. Ltd. v. PPN Power Generating Co. (P) Ltd.*, reported in [(2014) 11 SCC 53] and by the APTEL in the case of *Noida Power Company Limited v. UPERC* [2016 SCC OnLine APTEL 61].

10. The matter was heard on 14.10.2021. The learned counsels for the Petitioner and the Respondents advanced detailed submissions in the matter by relying upon their respective pleadings which have not been repeated for sake of brevity.

Analysis and Decision

11. We have considered the submissions made by the Petitioner and Haryana Utilities. While the Commission had allowed Change in Law relief to the Petitioner towards installation and operation of FGD system vide order dated 28.3.2018 in Petition No 104/MP/2017, the claim of the Petitioner with regards to carrying cost was disallowed by the Commission in that order. Subsequently, the Commission again disallowed the claim of carrying cost raised vide IA No. 70 of 2018 in Petition No. 214/MP/2018 (filed seeking clarification in regard to the order dated 28.3.2018 in

Petition No. 104/MP/2017) by order dated 6.6.2019. The Petitioner challenged both the orders of the Commission dated 28.3.2018 and 6.6.2019 before the APTEL in Appeal No. 421 of 2019. The APTEL vide judgment dated 12.8.2021 in the said Appeal has allowed the Petitioner's claim of carrying cost and interest on carrying cost. Relevant portion of the judgment of the APTEL dated 12.8.2021 is extracted as under:

"52. In light of above discussion and reasoning, the appeal is allowed setting aside the impugned order partly to the extent challenged in the appeal so far as Petition No.104/MP/2018 (order dated 28.03.2018). Accordingly, we pass the following order:

i) The Appellant is entitled for carrying cost in respect of compensation for change in law event towards FGD installation as approved by the Commission from the date of change in law occurrence.

ii) The Appellant is entitled for interest on carrying cost, as claimed by the Appellant.

iii) The Respondent Commission shall determine the amounts payable to the Appellant, in terms of our judgment within eight (8) weeks from today."

12. The Respondents have contended that the interest rate has to be reasonable and, in the facts and circumstance of the case, it should not exceed the rate of 9%, as decided by the Hon'ble Supreme Court in the case of *Jaipur Vidyut Vitran Nigam Limited v. Adani Power Rajasthan Limited*, considering the interest of the consumers in the State of Haryana. Haryana Utilities have also contended that the interest rate claimed by the Petitioner is excessive which is in the range of 10.24% to 13.10% for the period from 2013-14 till 2019-20.

13. As regards contention of the Haryana Utilities to charge interest rate of 9% by relying on the judgment of the Hon'ble Supreme Court in *Jaipur Vidyut Vitran Nigam Limited & Ors. -v- M/s. Adani Power Rajasthan Limited & Ors.*, [2020 SCC Online SC 69], we note that the Haryana Utilities themselves had agreed to the methodology as decided by the Commission vide order dated 17.9.2018 in Petition No. 235/MP/2015

to determine the rate of interest and on that basis, the APTEL in its judgment dated 12.8.2021 has also observed that since the Petitioner is adopting the same principle as the Respondents, there is no controversy so far as the methodology pertaining to the determination of interest rate. The relevant extract of the judgment dated 12.8.2021 in Appeal No. 421 of 2019 is as under:

“48. The other defence raised by Respondent Nos.2 and 3 is the principle applicable for determination of interest rate. The Appellant is claiming the methodology approved by CERC in its order dated 17.09.2018 in Petition No. 235/MP/2015. In this order, CERC opined that actual interest rate or working capital interest rate as per CERC Regulations, whichever is lower, for computation of carrying cost on the approved change in law events was the methodology, which the Appellant is also claiming. The Respondents also contend that the principle evolved so far as methodology to determine the interest rate in the above said petition by CERC has to be adopted. Since the Appellant is adopting the same principle, we don't see any controversy so far as the methodology pertaining to the determination of interest rate.”

14. Hence, we are of the view that the Haryana Utilities in the present case cannot now turnaround and request for the applicable rate of interest at 9%.

15. In view of the above, interest rate shall be determined as per the methodology adopted in the order dated 17.9.2018 in Petition No. 235/MP/2015 which would be lowest of actual rate of interest at which funds were arranged by the Petitioner or rate of working capital worked out as per the Regulations of the Commission or the rate of LPS (late payment surcharge) as per the PPAs. The relevant extract of the order dated 17.9.2018 in Petition No. 235/MP/2015 is as under:

“25. It is noted that the rates at which the Petitioner raised funds is lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since, the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.”

16. Admittedly, the Haryana Utilities have made payment to the Petitioner as per the order of the Commission in Petition No. 235/MP/2015 at the following rates:

Period	Carrying cost at the rate of actual interest rate paid by the Respondents in Petition No. 235/MP/2015
--------	---

2015-16	10.68%
2016-17	10.95%
2017-18	10.97%

17. The rates claimed by the Petitioner in the present Petition are as under:

Period	Rate of Interest
2013-14	11.00%
2014-15	13.10%
2015-16	10.68%
2016-17	10.95%
2017-18	10.97%
2018-19	10.92%
2019-20	10.24%

18. It observed that the Petitioner has claimed the same interest rates in the present Petition for the years 2015-16, 2016-17 and 2017-18. Further, the rates at which the Petitioner raised funds (as per certificate of Chartered Accountant) for the years 2013-14, 2014-15, 2018-19 and 2019-20 are lower than the interest rate of the working capital worked out as per the Regulations of the Commission during the relevant period and the LPS as per the PPA. Since the actual interest rate paid by the Petitioner is lower, the same is accepted as the carrying cost for the payment of the claims under Change in Law.

19. As regards the difference in rate of interest considered in the CA certificate and Auditor certificate, the Petitioner has clarified that the rates of interest for the initial period of 3 years in the Auditor Certificate were slightly higher than those claimed in the CA certificate, and that, the said interest remained same for the balance years. The Petitioner has claimed interest based on the CA certificate, being lower than the rates mentioned in the Auditor certificate. Accordingly, we consider the interest rate as lower of the interest rates submitted vide CA certificate and rates submitted vide Auditor certificate for computation of carrying cost.

20. The Haryana Utilities have contended that there is no provision for compounding of carrying cost, either in the order dated 17.9.2018 or in the order passed by the APTEL. It has been submitted that such interest on compounding basis is not permissible in law, in the absence of any agreement or statutory provisions specifically providing for the same.

21. We observe that the said contention of the Haryana Utilities was also raised in the Appeal No. 421 of 2019 and has been dealt by the APTEL in its judgment dated 12.8.2021 as under:

“49. Then coming to another objection raised by Respondents that there is no concept of payment of interest on carrying cost, according to Respondents, since no provision exists in the PPA for payment of interest on interest or compounding basis, hence it cannot be granted. However, the Appellant contends that they are entitled for such interest on carrying cost. Appellants place reliance on the orders of the Commission dated 17.09.2018 passed in Petition No. 235/MP/15. In terms of this order of CERC, the Respondents have paid carrying cost from the date of approval of change in law events and thereafter, Respondents have also paid interest on such carrying cost till subsequent order dated 17.09.2018 of CERC in the said petition.”

*50. **Though Respondents contend that the payment of interest by Haryana utilities in the said petition cannot be a ground for claiming computation of interest on carrying cost, but there is no explanation as to why Respondent utilities are taking different yardstick for different parties. The Respondent being a public utility, cannot adopt a different approach but should have same approach towards all the parties. In the absence of any explanation as to why the facts in the present appeal are different from the facts in Petition No.235/MP/2015, we are of the opinion that the Appellants are entitled for interest on carrying cost as well.***

52. In light of above discussion and reasoning, the appeal is allowed setting aside the impugned order partly to the extent challenged in the appeal so far as Petition No.104/MP/2018 (order dated 28.03.2018). Accordingly, we pass the following order:

i) XXXXX.

*ii) **The Appellant is entitled for interest on carrying cost, as claimed by the Appellant.***

22. Thus, there is a categorical finding of the APTEL that interest on carrying cost is payable which cannot be denied in the remand order by the Commission. Accordingly, the Haryana Utilities are directed to make payment of carrying cost and

interest thereon in accordance with the methodology adopted in order dated 17.9.2018 in Petition No. 235/MP/2015, as per which the payment has already been made by the Haryana Utilities.

23. The Respondent Utilities have also submitted that the interest rate has to be applied on the basis of the interest rate prevalent in each of the respective financial years. They have contended that the Petitioner has applied the interest rate allegedly used for claiming the carrying cost of the year 2013-14 for the subsequent periods as well. The Respondent Utilities have further submitted that similar methodology of claiming higher rate of interest without factoring in the modification/ reduction in the rate of interest from time to time in the subsequent years has been followed by the Petitioner for the ensuing period as well.

24. *Per Contra*, the Petitioner has submitted that the claim is premised on the restitution principles and the same methodology is being followed by Haryana Utilities for making payments towards carrying cost on Change in Law compensation on account of taxes and duties levied on imported coal.

25. We have considered the submissions of the Respondents and the Petitioner. We do not find merit in the submission of the Petitioner. We agree with the submission of the Haryana Utilities that the Petitioner ought to use the interest rate paid on actual basis for the relevant year. It is not appropriate to apply the rate of interest for a financial year and continue to apply the same rate for subsequent financial years as well. Such a methodology may lead to over-recovery in case of reduction of interest rate and under-recovery in case of increase in interest rate, which will be against the principle of restitution.

26. The Petitioner is directed to raise the claim as per the above decision of the Commission and the Respondents are directed to make payment within one month of the receipt of such claim.

27. All other terms and conditions of the order dated 28.3.2018 in Petition No. 104/MP/2017 and order dated 6.6.2019 in Petition No. 214/MP/2018 to the extent not modified and/ or set aside by APTEL in its judgment dated 12.8.2021, shall remain unaltered.

28. In terms of the above order, the directions of the APTEL in its judgment dated 12.8.2021 in Appeal No. 421 of 2019 stand implemented.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S.Jha)
Member

sd/-
(P.K.Pujari)
Chairperson