

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 40/RP/2022**  
in  
**Petition No. 192/GT/2020**

**Coram:**

**Shri I. S. Jha, Member**  
**Shri Arun Goyal, Member**  
**Shri Pravas Kumar Singh, Member**

**Date of Order: 21<sup>st</sup> March, 2023**

**In the matter of**

Review of Commission's Order dated 4.8.2022 in Petition No. 192/GT/2020 in respect of revision of tariff of Bhilai Expansion Power Plant (500 MW) for the period 2014-19, after truing-up exercise.

**AND**

**In the matter of**

NTPC-SAIL Power Company Limited,  
4<sup>th</sup> Floor, 15, Bhikaiji Cama Place,  
New Delhi – 110066

**.... Review Petitioner**

Vs

1. DNH Power Distribution Corporation Limited,  
UT of DNH, Silvassa – 396230
2. Electricity Department,  
Administration of Daman & Diu,  
Daman – 396210
3. Chhattisgarh State Power Distribution Company Limited,  
Vidyut Sewa Bhawan, Dagonia,  
Raipur – 492001
4. Steel Authority of India Limited  
Ispat Bhawan, Lodhi Road,  
New Delhi – 110003

**.... Respondents**

**Parties Present:**

Shri Venkatesh, Advocate, NSPCL  
Shri Abhishek Nangia, Advocate, NSPCL  
Shri Dilip Kumar Tiwari, Advocate, NSPCL



## **ORDER**

The Review Petitioner, NTPC Sail Power Company Limited, had filed Petition No. 192/GT/2020 for truing up of tariff of Bhilai Expansion Power Plant (2 x 250 MW) for the period 2014-19, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and the Commission vide its order dated 4.8.2022 (in short 'the impugned order') had revised the tariff of the generating station. Aggrieved by the impugned order, the Review Petitioner has filed this Review Petition on the ground that there is error apparent on the face of the record on the following issues:

- A. Difference in the rate of interest on loan;*
- B. Disallowance of additional capital expenditure of Rs. 34.80 lakh (i.e., Rs. 3.01 lakh in 2015-16 and Rs. 31.79 lakh in 2016-17) incurred towards Lab instrument for NABL certification;*
- C. Erroneous consideration of the Weighted Average Rate of Depreciation by the Review Petitioner.*

### **Hearing Dated 2.11.2022**

2. The Review Petition was heard on 'admission' on 2.11.2022. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions and prayed that the review on the aforesaid issues may be allowed. The Commission, after hearing the learned counsel, 'admitted' the review petition, on the issues raised in paragraph 1 above. Notice was ordered on the Respondents with directions to complete the pleadings in the matter. None of the Respondents have filed their replies.

### **Hearing Dated 24.1.2023**

3. The Petition was heard through video conferencing on 24.1.2023. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions in the matter and prayed that the error apparent on the face of the impugned order dated 4.8.2022, may please be corrected. None appeared for the Respondents despite notice.



However, the Commission, as a last opportunity, permitted the Respondents, to file their replies and subject to this, order in the petition was reserved. None of the Respondents have filed their replies in the matter.

4. Based on the submissions of the parties and documents on the record, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs.

**(A) RE- Difference in the rate of interest on loan;**

The Review Petitioner has submitted that, the Commission, while passing the impugned order dated 4.8.2022, has inadvertently applied the Weighted Average Rate of Interest on loan as 9.1914% in 2015-16 and 9.1631% in 2016-17, instead of 9.2011% in 2015-16 and 9.1639% in 2016-17. The Petitioner has further submitted that in paragraph 58 of the impugned order, the Commission has categorically recorded the Weighted Average Rate of Interest on loan as 9.2011% in 2015-16 and 9.1639% in 2016-17, but while calculating the same in paragraph 59 of the said impugned order, different Weighted Average Rate of Interest of loan for the periods 2015-16 and 2016-17 was inadvertently applied. Accordingly, the Review Petitioner has submitted that the error may be rectified and the correct weighted average rate of interest on loan of 9.2011% in 2015-16 and 9.1639% in 2016-17 may be applied.

**Analysis and Decision**

5. The matter has been examined. Regulation 26(5) of the 2014 Tariff Regulations provide as under:

*“26(5) The rate of interest shall be weighted average rate of interest calculated on the basis of actual loan portfolio after providing appropriate accounting of the interest capitalized.”*

6. It is observed that the difference in the interest rate allowed in the impugned order had arisen on two counts. Firstly, the interest rate on Union Bank of India loan-II was inadvertently considered by the Commission, as 10.820% for 2015-16 and 10.430% for



2016-17, instead on 10.830% for 2015-16 and 10.440% for 2016-17. Secondly, the difference in the rate of interest considered in the impugned order as against those claimed by the Petitioner is due to the capitalisation of interest for Rs. 6.78 lakh in 2015-16. The methodology of adjusting IDC, while working out WAROI, is consistently being followed since the tariff period 2004-09, although no provision, similar to Regulation 26(5) of the 2014 Tariff Regulations existed. This methodology appears to have attained finality, as the Review Petitioner had never challenged the same. The grievance of the Review Petitioner is with regard to the change in the actual rate of interest on loan. The Commission in its order dated 19.9.2022 in Petition No. 393/GT/2020 (revision of tariff of Mauda STPS-I (1000 MW) for the period 2014-19) had considered the issue of IDC capitalization and has provided appropriate accounting adjustment, in the interest amount, while carrying out true-up exercise. In view of the above, there is merit in the submissions of the Review Petitioner with regard to the error apparent on the face of the order dated 4.8.2022, on these counts. Accordingly, review on this ground is fit to be allowed and the impugned order dated 4.8.2022 is to be rectified by considering the adjustments (as carried out in order dated 19.9.2022 in Petition No. 393/GT/2020). Based on this, prayer for the interest on loan as allowed in paragraph 59 of the impugned order dated 4.8.2022, is being revised in this order. Issue (A) is disposed of accordingly.

**(B) RE-Disallowance of additional capital expenditure of Rs. 34.80 lakh (i.e., Rs. 3.01 lakh in 2015-16 and Rs. 31.79 lakh in 2016-17) incurred towards Lab instrument for NABL certification;**

7. The Petitioner has submitted that the Commission, while passing the Impugned order dated 4.8.2022, had, in paragraph 36 of the said order, erroneously disallowed the additional capital expenditure of Rs. 34.80 lakh (i.e., Rs. 3.01 lakh for 2015-16 and Rs. 31.79 lakh for 2016-17) incurred towards Lab instrument for NABL certification, on the ground that the reliance placed by the Review Petitioner on the circular dated



9.9.2013 of the Vigilance Department, has not been furnished, in order to justify the claim that the same is based on the advice or direction of the Appropriate Government agency for safety and security of the plant. The Review Petitioner has further submitted that the Commission while passing the impugned order has inadvertently overlooked the fact that the circular dated 9.9.2013 was already filed and formed part of the original petition. It has also submitted that the obligation to install the Lab instrument for NABL certification first arose vide CVD circular dated 23.5.2013, which provides that “testing labs of all NTPC project should be accredited by NABL’. The Review Petitioner has also submitted that:

- (a) The equipment’s/apparatus required for the said accreditation should be purchased by project/stations. The Review Petitioner being joint venture company of NTPC derives operational and functional practices of NTPC.
- (b) All operational, technical, financial, contractual and HR norms are in line with NTPC or as directed by NTPC keeping in mind the requirement of the Review Petitioner units. The standards for practices are determined by specialised wings of NTPC to be applicable on JV/subsidiary.
- (c) The vigilance circular issued by Corporate Vigilance Department (CVD), NTPC dated 9.9.2013 is applicable to the Review Petitioner as the Review Petitioner being considered is a JV/subsidiary of NTPC and is considered as part of the NTPC station. For that reason, the said circular was specifically marked to CEOs of NTPC group which includes the Review Petitioner. All the more, the purpose of the circular apart from being laudable is also in accord with prescription of accountability and transparency as mandated by vigilance commission, which is a statutory authority.
- (d) It is pertinent to note that the Review Petitioner is also within jurisdiction purview of CVO of the NTPC as it is considered as NTPC station, and all the circulars and vigilance practices are applicable to the Review Petitioner *stricto sensu*.

8. Accordingly, the Review Petitioner has prayed that the review on this ground may be allowed and the error apparent on the face of the order may be rectified.

### **Analysis and Decision**

9. The matter has been examined. The Commission in paragraph 36 of the impugned order had observed the following:



*“36. The Petitioner has claimed total additional capital expenditure of Rs.34.80 lakh (i.e Rs.3.01 lakh in 2015-16 and Rs.31.79 lakh in 2016-17 after deduction of un-discharged liabilities amounting to Rs.0.13 lakh in 2015-16 and Rs.23.74 lakh in 2016-17) towards procurement of lab instruments for NABL certification under Regulation 14(3)(iii) of the 2014 Tariff Regulations. In justification of the same, the Petitioner has submitted that the correct measurement and analysis of coal received at the generating station is important and thus as per circular dated 9.9.2013 from the Vigilance Department, it is mandatory to get the NABL accreditation for the lab. Thus, in order to comply with the statutory directions, the additional expenditure has been incurred for NABL accreditation of Lab. It is observed that though the Petitioner has relied upon the circular dated 9.9.2013 of the Vigilance Department, it has not furnished the same, to justify that the additional expenditure claimed is based on the advice or direction of the Appropriate Government agency for safety and security of the plant in terms of Regulation 14(3)(iii) of the 2014 Tariff Regulations. Accordingly, the additional capital expenditure towards Lab Certification is not allowed.”*

10. It is evident from the above, that the claim of the Review Petitioner for total additional capital expenditure of Rs 34.80 lakh (after deduction of un-discharged liabilities) towards Procurement of Lab instruments for NABL certification, under Regulation 14(3)(iii) of the 2014 Tariff Regulations, was not allowed on the ground that the circular dated 9.9.2013 of the CVD had not been furnished by the Review Petitioner and also the same needs to be based on the advice or direction of the Appropriate Government agency for safety and security of the plant. We, however, notice from records that the Petitioner, in the original petition, had furnished a copy of the said circular dated 9.9.2013 issued by the CVD, NTPC, in page 145 of the original petition. Admittedly, the Commission, while passing the impugned order had not considered this circular dated 9.9.2013. We find that the circular dated 9.9.2013 is issued by CVD, NTPC, which is an internal department of NTPC. These types of circular are issued for streamlining the process within the generating stations. Accordingly, the circular from internal department of its own organization cannot be considered advice or direction of the Appropriate Government agency for safety and security of the plant. In view of above, the review of the Petitioner is not tenable and rejected.



**(C) RE- Erroneous consideration of the Weighted Average Rate of Depreciation:**

11. The Review Petitioner has submitted that the Commission while passing the impugned order dated 4.8.2022, had considered the 'weighted average rate of depreciation' for the period 2014-19, due to the error committed by the Review Petitioner, by submitting the wrong Form-11, in the true up petition. The Review Petitioner has further submitted that the Commission, while passing the impugned order had considered the weighted average rate of depreciation as 5.0385% in 2014-15, 5.0397% in 2015-16, 5.0076% in 2016-17, 4.9669% in 2017-18 and 4.9589% in 2018-19. Further the review petitioner has also submitted the following: -

(a) The Form-11 submitted while filing Petition No. 257/GT/2014 and approved by this Commission vide its order dated 2.8.2016 was having 90 asset items, having different account codes assigned against each item. The Commission had considered these individual asset items and applied depreciation rates as per Appendix-II of the 2014 Tariff Regulations, and resultantly arrived at the weighted average rate of depreciation of 5.1466% for the period 2014-19, subject to truing up exercise.

(b) Subsequently the petitioner had migrated their accounting records to a new ERP system wherein the 90 asset items were grouped into 21 asset groups having 21 account codes, assigned against individual groups. However due to inadvertent wrong grouping of assets, assets attracting different rates of depreciation were grouped together. It resulted in wrong calculation of depreciation in the data submitted in Form 11 for true up though there was no change in the total assets as on 31.3.2014 vis a vis the original Tariff petition No.257/GT/2014 and the Gross Block and depreciation should have been the same as was already approved by the Commission vide its order dated 2.8.2016 in petition No.257/GT/2014.

(c) The Review Petitioner is not setting up any new case but only placing on record the correct Form-11 which clearly demonstrates the case of the Review Petition. It would be contrary to interests of justice and the principles of Section 61 and 62 of the Electricity Act, 2003 to deny the legitimate claim of the Review Petitioner only on technicalities and due to an inadvertent mistake in filling of a Form.

(d) The Hon'ble Supreme Court of India vide Judgment dated 5.5.2000 titled as Lily Thomas v. Union of India, (2000) 6 SCC 224 has recognised that if the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous



assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error

(e) This Commission in its order dated 12.8.2022 in Petition No. 16/RP/2021 (*PGCIL vs. KPTCL & Ors*). has recognised a similar situation whereby PGCIL has submitted the wrong form while filing the Petition. By the said order, this Commission has held that the inadvertent mistake in filing a form by the parties is a ground for review and revised the capital cost, interest on loan, depreciation etc.

(f) The Commission may take on record the correct Form-11 submitted along with review petition to prevent the miscarriage of justice.

12. Accordingly, the Review Petitioner has prayed that the Commission may consider the correct weighted average rate of depreciation in terms of the Form-11 submitted in the present Petition and render justice.

### **Analysis and Decision**

13. We have examined the matter. The Commission in paragraph 61 of the impugned order dated 4.8.2022 had decided as under: -

*“61. The cumulative depreciation amounting to Rs.63347.79 lakh as on 31.3.2014, as considered in order dated 29.12.2015 in Petition No. 220/GT/2013 & Petition No. 132/GT/2014, has been considered as on 1.4.2014. Further, as noted in order dated 2.8.2016 in Petition No. 257/GT/2014, cumulative depreciation has been adjusted with Rs.0.01 lakh towards unserviceable asset of Rs.0.05 lakh, de-capitalized as on 1.4.2014. The value of freehold land has been considered as nil. Accordingly, the net cumulative depreciation and the balance depreciable value, before providing depreciation for 2014-15 works out to Rs.63347.78 lakh and Rs.185099.06 lakh, respectively. As on 1.4.2014, the used life of the generating station i.e. 4.69 years, which is less than 12 years from the effective station COD of 22.7.2009. Accordingly, depreciation has been calculated by applying the weighted average rate of depreciation for the 2014-19 tariff period, as per calculations enclosed in Annexure-I to this order*

14. The powers of the civil court in regard to review are contained in Section 114 read with Order 47, Rule 1 of the Code. According to these provisions, any person feeling aggrieved by an order passed by the Commission, may seek review under the following circumstances, namely:

(a) *On discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made;*



*(b) An error apparent on the fact of the record; and*

*(c) For any sufficient reason.*

15. The grievance of the Review Petitioner is that Form 11 filed by the Review Petitioner in the present petition (which was the truing up petition to the tariff petition No.257/GT/2014), was incorrect as the same did not depict the correct depreciation of assets of gross block and was in variance with the approved assets and depreciation as on 31.3.2014, considered in Petition No.257/GT/2014. The petition No.257/GT/2014 had 90 asset items, having different account codes assigned against each item, against which the Commission had considered these individual asset items and applied depreciation rates as per Appendix-II of the 2014 Tariff Regulations, and weighted average rate of depreciation of 5.1466% for the period 2014-19 was arrived at subject to truing up exercise. Subsequently the petitioner had migrated their accounting records to a new ERP system wherein the 90 asset items were grouped into 21 asset groups having 21 account codes, assigned against individual groups wherein due to inadvertent wrong grouping of assets, assets attracting different rates of depreciation were grouped together, resulting in wrong calculation of depreciation, though there was no change in the total assets as on 31.3.2014 as approved in the original Petition No.257/GT/2014.

16. The Hon'ble Supreme Court, in plethora of cases, has held that the expression "any other sufficient reason" used in Order 47, Rule 1 of the Code, means a reason sufficiently analogous to those specified in the earlier part of the rule. We notice from the submissions in the present case that the revised Form-11 furnished by the Review Petitioner, provides for the weighted average rate of depreciation, in line with those approved by the Commission in its order dated 2.8.2016 in Petition No.257/GT/2014. Further, it is observed that though there was no change in value of Gross Block as allowed in order dated 2.8.2016 in Petition 257/GT/2014 and in the order dated 4.8.2022 in Petition 192/GT/2020, there was significant change in the amount of depreciation at



the time of truing up, which should have been noticed by the Commission during prudence check. This fact was also overlooked by the Commission while issuing the impugned order. Thus, in our considered view, there is sufficient reason to review the impugned order, on this count, as the non-consideration of the same, which in line with our earlier order dated 2.8.2016 in Petition No.257/GT/2014, may cause uncertainty in our regulatory practice. Accordingly, review on this count is allowed and the weighted average rate of depreciation as in Form -11 furnished by the Review Petitioner has been considered for calculation of the depreciation. Issue (C) is disposed of accordingly.

17. Consequent upon the review being allowed, on the issues (A), and (C) above, the impugned order dated 4.8.2022, shall stand revised as under:

**Interest on loan**

18. Also, the net interest on loan, as allowed in the table under paragraph 59 of the impugned order dated 4.8.2022 is rectified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Gross opening loan	196131.06	196314.87	196535.63	196433.78	196447.71
Cumulative repayment of loan upto previous year / period	63347.78	77553.68	91746.88	105868.46	120103.97
Net Loan Opening	132783.28	118761.20	104788.75	90565.33	76343.74
Addition on account of additional capital expenditure	183.81	220.75	(101.84)	13.93	283.26
Repayment of loan during the year	14207.77	14225.56	14234.30	14236.05	14250.06
Less: Repayment adjustment on account of de-capitalization	1.88	32.35	112.72	0.53	15.28
Net Repayment	14205.89	14193.20	14121.58	14235.52	14234.78
Net Loan Closing	118761.20	104788.75	90565.33	76343.74	62392.21
Average Loan	125772.24	111774.97	97677.04	83454.53	69367.98
Weighted Average Rate of Interest on Loan	9.2204%	9.2011%	9.1639%	8.4527%	8.2396%
Interest on Loan	<b>11596.71</b>	<b>10284.55</b>	<b>8950.98</b>	<b>7054.14</b>	<b>5715.64</b>
Less: Interest Capitalized	0.00	6.78	0.00	0.00	0.00
<b>Net Interest on Loan</b>	<b>11596.71</b>	<b>10277.77</b>	<b>8950.98</b>	<b>7054.14</b>	<b>5715.64</b>



## Depreciation

19. The depreciation, as allowed in the table under paragraph 61 of the impugned order dated 4.8.2022 is rectified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Average Capital Cost	276052.05	276341.03	276425.96	276363.17	276575.44
Value of freehold land included above	0.00	0.00	0.00	0.00	0.00
Aggregated depreciable value	248446.85	248706.92	248783.36	248726.85	248917.90
Remaining aggregate depreciable value at the beginning of the year	185099.06	171153.25	157036.49	142858.39	128813.92
No. of completed years at the beginning of the year	4.69	5.69	6.69	7.69	8.69
Balance useful life at the beginning of the year	20.31	19.31	18.31	17.31	16.31
Weighted Average Rate of Depreciation (WAROD)	5.1468%	5.1478%	5.1494%	5.1512%	5.1523%
<b>Depreciation during the year</b>	<b>14207.77</b>	<b>14225.56</b>	<b>14234.30</b>	<b>14236.05</b>	<b>14250.06</b>
Cumulative Depreciation at the end of the year (before adjustment for de-capitalization)	77555.55	91779.23	105981.18	120104.50	134354.03
Less: Depreciation adjustment on account of de-capitalization	1.88	32.35	112.72	0.53	15.28
<b>Cumulative depreciation at the end</b>	<b>77553.68</b>	<b>91746.88</b>	<b>105868.46</b>	<b>120103.97</b>	<b>134338.75</b>

## Interest on Working Capital

### **Working capital for Receivables**

20. The Receivable component of working capital in the table under paragraph 118 of the impugned order dated 4.8.2022 is modified as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Variable Charges - for two months	9450.46	9476.36	9450.46	9678.19	9678.19
Fixed Charges - for two months	9919.41	9864.63	9785.20	9648.23	9742.19
<b>Total</b>	<b>19369.87</b>	<b>19340.99</b>	<b>19235.66</b>	<b>19326.42</b>	<b>19420.38</b>

21. Accordingly, the interest on working capital, as allowed in paragraph 121 of the impugned order dated 4.8.2022 is modified as under:



(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Working Capital for Cost of coal towards stock (30 days)	4580.82	4580.82	4580.82	4691.20	4691.20
Working Capital for Cost of coal towards generation (30 days)	4580.82	4580.82	4580.82	4691.20	4691.20
Working Capital for Cost of Secondary fuel oil (2 months)	159.13	159.57	159.13	162.97	162.97
Working Capital for Maintenance Spares @ 20% of O&M expenses	2732.34	2902.51	3066.38	3265.65	3616.36
Working Capital for Receivables – 2 months	19369.87	19340.99	19235.66	19326.42	19420.38
Working Capital for O&M expenses – 1 month	1138.48	1209.38	1277.66	1360.69	1506.82
<b>Total Working Capital</b>	<b>32561.46</b>	<b>32774.09</b>	<b>32900.47</b>	<b>33498.12</b>	<b>34088.91</b>
Rate of Interest	13.5000%	13.5000%	13.5000%	13.5000%	13.5000%
<b>Interest on Working Capital</b>	<b>4395.80</b>	<b>4424.50</b>	<b>4441.56</b>	<b>4522.25</b>	<b>4602.00</b>

### Annual Fixed Charges

22. Based on the above, the annual fixed charges, as approved in the table under paragraph 123 of the impugned order dated 4.8.2022 stands revised as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	14207.77	14225.56	14234.30	14236.05	14250.06
Interest on Loan	11596.71	10277.77	8950.98	7054.14	5715.64
Return on Equity	15654.48	15747.40	15752.42	15748.71	15803.65
Interest on Working Capital	4395.80	4424.50	4441.56	4522.25	4602.00
O&M Expenses	13661.70	14512.56	15331.91	16328.24	18081.79
<b>Total</b>	<b>59516.46</b>	<b>59187.79</b>	<b>58711.18</b>	<b>57889.38</b>	<b>58453.14</b>

23. The difference between the tariff determined by this order and the tariff order recovered by the Review Petitioner in terms of the order dated 4.8.2022 in Petition No. 192/GT/2020, shall be adjusted in terms of Regulation 8(13) of the 2014 Tariff Regulations.

24. Review Petition No. 40/RP/2022 in Petition No. 192/GT/2020 is disposed of in terms of the above.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

