LANCO AMARKANTAK POWER LIMITED (2x300 MW), Korba Chhattisgarh

Comments on Approach Paper – CERC MYT Regulations for 2024-29

Annexure-1

Clause	CERC Questions		LAPL Comments
4.3	**Capital Cost for Projects acquired post NCLT Proceedings**		
1	*Historical Cost or Acquisition Value whichever is lower should be considered for the determination of tariff post approval of Resolution Plan.*		• Regulation 19 (3) of the current CERC Tariff Regulations, 2019-24 provide that the Hon'ble Commission shall determine the capital cost of an existing project based on the capital cost admitted prior to 01.04.2019, duly trued up by the excluding liability, if any, as on 01.04.2019. Thereafter, additional capitalization and de-capitalization for the respective year of tariff is also allowed as per the conditions specified in the Regulation, after prudence check by the Hon'ble Commission. Therefore, the capital cost already approved by the Hon'ble Commission becomes the historical cost, which is a sunk cost and on the basis of which the annual fixed charges were determined for the period from the COD of the Project upto FY 2023-24. • The acquisition price of the generating company under CIRP by a Resolution Applicant (RA) depends on many factors inter alia including the cash inflows /revenue received through tariff from Procurer Discoms as well as project economics. Due to inherent under-recovery of tariff from applicable projects, whose tariff have been determined under Section 62, the generating company was not able to service its loans and consequently got admitted to CIRP. • In most of the cases, the RAs already factor in the historical cost on the basis of which the tariff were earlier determined for applicable projects and accordingly submit their resolution plans for reviving the generating company for approval first before the Committee of Creditors, who agree to it and thereafter it is filed/approved by NCLT. The RAs in some generating companies have already been finalised and in some other cases are waiting for appropriate/final approval from the NCLT. • It is rightly acknowledged in the said Approach paper and practically proven that the acquisition costs of such assets have been considerably lower than the historical value of the assets, and the creditors have to take a haircut, and so too the defaulting entities, who have had to forego their equity investments. • In case the acquisition cost which is always lower than the historical asset, is considered as the opening capital cost for the tariff period FY 2024-25 onwards, then it will surely impact the

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			resolution potential of power assets leading to even higher haircuts for financial creditors or lead to withdrawal of resolution plans by successful RAs. This will also dissuade the RAs to bid for such power generation assets and lead to flight of investments in the generation sector. Further, it would be against the value maximization principle of the assets under the IBC, which have also been upheld by the Hon'ble Supreme Court. • Additionally, a CIRP transaction under IBC is more like a secondary/distress sale by the lenders, and therefore the objective should be to ensure maximum recovery of public taxpayers money from the distress sale and Beneficiaries should not be allowed to gain any benefit from this distress sale arrangement. • Further, most of the assets would also require additional capitalization, from time to time, considering that these assets were in operation for a considerable time before being admitted to CIRP. The new investor/RA may have to make additional investments to overcome the challenges faced by the assets in question, which it may not have envisaged at the time of conducting due diligence for acquiring this asset. • In view of the above, it would be prudent to consider to continue the historical cost of asset already approved by the Hon'ble Commission as opening capital cost as on 01.04.2024 for the determination of tariff and not consider the acquisition cost due to the practical challenges of haircuts faced by the lenders and factoring of all existing revenue sources in the bids by successful RA as detailed above.
2	*Tariff provisions to be included to address the issue of the cost of debt servicing, including repayment, that were allowed as a part of the tariff during the CIRP process.*		• Regulation 18 (2) titled "Debt Equity Ratio" specifies that for generating stations declared under commercial operation prior to 01.04.2019, the debt : equity ratio allowed by the Commission for the determination of tariff for the period ending 31.03.2019 shall be considered. For the expenditure incurred on or after 01.04.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, shall be serviced in the manner specified in clause 18(1) of the Regulation. This clearly shows that the debt : equity ratio after consideration of additional capital expenditure, if any, allowed by the Commission till 31.03.2024 shall be the opening debt : equity ratio as on 01.04.2024. • Regulation 32 titled *"interest on loan capital"* of the current CERC Tariff Regulations, 2019-24 specifies that the interest on loan is paid on normative average loan (average of opening loan and closing loan of the financial year) basis without considering the actual loan availed by the generating company. • Regulation 61 titled *"Sharing of saving in interest due to re-financing or restructuring of loan"* of the current CERC Tariff Regulations, 2019-24 already provides for sharing of net savings on

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			interest after accounting for cost associated with such refinancing or restructuring between the beneficiaries and generating company in the ratio of 50:50. • Subsequent to the initiation of CIRP, moratorium as per Section 14(1) of the IBC Code, 2016 becomes applicable on the generating company and payment to lenders towards interest & principal repayment is put on hold. The generating company undergoing CIRP keeps the amount owed to its lenders in the TRA account maintained with the Consortium Bankers. The lenders of the generating company undergoing CIRP in the Committee of Creditors usually decide that after the conclusion of the CIRP, the amount available in the TRA account shall be appropriated amongst the lenders according to their claims filed with the Resolution Professional at the commencement of CIRP. • The amount pertaining to repayment of loan received under the tariff is retained temporarily by the Corporate Debtor (generating company) during the interim period and has to be returned back to the lenders after the conclusion of the CIRP. Therefore, there is no reason for creating any new provision in the Regulations for taking back the debt repayments earlier allowed to the generating company as part of interest on loan in the approved tariff. • Additionally, there could be structuring issues after completion of CIRP such as assignment of entire debt to a particular entity, its associated cost etc. Further, the existing lenders have right to recourse against the guarantors, the Beneficiaries cannot benefit from the terms and outcome of the CIRP. • Any gain to Beneficiaries at the cost of the generating company undergoing CIRP will be violation of the moratorium under the IBC Code and against the intent of the framers of the IBC Code to allow the Company to revive and run on going concern basis, without bothering for repayment of loan during the CIRP period. • In view of the above, we request the Hon'ble Commission to not frame any tariff provision in the Regulations, pertaining to debt servicing including repayment earlier allowed as part of tariff to the generating company during the CIRP period.