

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

**APPEAL NO. 79 OF 2018 &
IA NOS. 404, 405 & 406 OF 2018**

Dated : 18th March, 2019

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

Maithon Power Ltd. Appellant(s)

Vs.

Central Electricity Regulatory Commission & Ors Respondent(s)

Counsel for the Appellant (s) : Mr. S. Venkatesh
Mr. Somesh Srivastava
Mr. Nishtha Kumar
Mr. Rahul
Mr. Vikas maini
Mr. Samarth Kasyap

Counsel for the Respondent(s) : --

O R D E R

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

The Appellant has presented the instant Appeal seeking the following reliefs:

- a) Admit the present Appeal and set-aside the Impugned Order dated 26.12.2017 to the extent Impugned by the MPL in the present Appeal;
- b) Allow the additional 1% Interest Rate for computing the Interest during Construction and Interest on Loan during FY 2011-14 to recover fully the interest cost with actual weighted average rate of interest incurred by MPL;
- c) Allow the Weighted Average Depreciation Rate as claimed by MPL for the entire station and therefrom, revise the depreciation

on the fixed assets for FY 2014-2015 to FY 2018-19 and grant consequential relief in Annual Fixed Charges.

- d) Allow the ash disposal expenses for FY 2014-2019 as per the aforesaid submissions.
- e) Allow recovery of Refinancing Cost/Financing Charges from beneficiaries in accordance with Regulation 16 (7) of the 2009 Tariff Regulations;
- f) Set-aside the findings qua measurement of GCV on 'as received' basis from top of Truck Tipper using Hydraulic Augur or manually and allow Working Capital to be calculated based on GCV measured and billed to beneficiaries by MPL;
- g) Pass such order, further relief/s in the facts and circumstances of the case as this Tribunal may deem just and fit and equitable in favour of MPL.

The Appellant has presented this Appeal for considering the following Questions of Law:

- A. Whether the Central Commission has erred in disallowing the actual interest rate claimed by MPL for computing the IDC and the Weighted Average Rate of interest claimed by MPL for computing Interest on Long Term Loan for the period FY 2011-14?
- B. Whether the weighted average rate of depreciation applied by the Central Commission for computing the Tariff for the period FY 2014-2015 to FY 2018-2019 is incorrect?
- C. Whether the Central Commission while passing the Impugned Order has incorrectly rejected the relaxation/modification sought by MPL qua measurement of GCV of coal on 'as received' without appreciating the various operational and practical

difficulties faced by it in implementing the sampling direction issued by the Central Commission?

- D. Whether the Central Commission erred in deciding to proceed on the issue qua measurement of GCV of Coal in the present Tariff proceedings without considering the fact that a substantial Petition filed by MPL is pending adjudication before the Central Commission, wherein MPL has at length explained the extreme practical and operational difficulties/challenges including safety challenges faced by it in implementing the Order/direction of the Central Commission with regard to sampling/measuring GCV of the Coal from top of the trucks tipper on its arrival at the Generating Station of MPL?
- E. Whether the Central Commission has erred in insisting on sampling of coal from top of tipper/truck without considering that such sampling is not a preferred sampling arrangement as per the relevant Indian Standard and International practices as it would not provide a representative sample and ignoring that the sampling location suggested by MPL from a moving stream of coal would provide a representative sample of “as received” coal as per the provisions of the relevant Indian Standard?
- F. Whether the Impugned Order of the Central Commission rejecting the relaxation sought by MPL has been passed without proper adjudication?
- G. Whether the Central Commission while passing the Impugned Order has erred in not considered the claim of MPL qua reimbursement of financing charges incurred in FY 2009-14?
- H. Whether the Central Commission has failed to appreciate that the cost associated with re-financing i.e., the financing charges has to be borne by the beneficiary and hence not allowing the

same to MPL is incorrect and contrary to the mandate of Regulation 16(7) of the CERC Tariff Regulation 2009?

- I. Whether the Central Commission has erred in ignoring the prayer of MPL for grant of additional O&M expenses for ash disposal on the premise that Petition No. 172/MP/2016 filed by NTPC is pending consideration before the Central Commission?
- J. Whether the Central Commission has erroneously considered facts of the NTPC case with the claim of MPL in the Tariff petition qua ash disposal expenses?
- K. Whether the Central Commission has failed to appreciate that the claim of NTPC in Petition No. 172/MP/2016 is materially different from the claim of MPL in the present Tariff Petition?
- L. Whether the Central Commission while passing the Impugned Order has acted contrary to its own Regulations?

In the instant Appeal, Maithon Power Limited (in short, the "Appellant") is questioning the legality and validity of the Impugned Order dated 26.12.2017 passed in Petition No. 152/GT/2015 by the Central Electricity Regulatory Commission, New Delhi.

The learned counsel Mr. S. Venkatesh appearing for the Appellant at the outset submitted that the instant Appeal filed by the Appellant may be disposed of on the ground that the Review Petition is pending for adjudication before the Central Electricity Regulatory Commission reserving liberty to the Appellant in the event the Appellant could not get any relief in the Review Petition pending for adjudication before the Central Electricity Regulatory Commission, New Delhi to redress its grievances and questioning the correctness of the Impugned Order dated 26.12.2017 passed in Petition No. 152/GT/2015 by the Central Electricity Regulatory Commission, New Delhi.

The submissions made by the learned counsel appearing for the Appellant, as stated supra, are placed on record.

In the light of the statements made by the learned counsel appearing for the Appellant, the instant Appeal filed by the Appellant stands disposed of on the ground that the Review Petition is pending for adjudication before the Central Electricity Regulatory Commission reserving liberty to the Appellant in the event the Appellant could not get any relief in the Review Petition pending for adjudication before the Central Electricity Regulatory Commission, New Delhi to redress its grievances before this Tribunal and questioning the correctness of the Impugned Order dated 26.12.2017 passed in Petition No. 152/GT/2015 by the Central Electricity Regulatory Commission, New Delhi.

With these observations, the instant Appeal being Appeal No. 79 of 2018 stands disposed of.

In view of the Appeal No. 79 of 2018 being disposed of, the relief sought in IA Nos. 404, 405 and 406 of 2018 do not survive for consideration and, hence, stand disposed of.

Order accordingly.

(Ravindra Kumar Verma)
Technical Member
mk/bn

(Justice N.K. Patil)
Judicial Member