

In the Appellate Tribunal for Electricity
New Delhi
(Appellate Jurisdiction)

APPEAL NO. 308 OF 2017

Dated: 22nd May, 2019

Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Lanco Amarkantak Power Limited
Lanco House
Plot No. 397, Phase-III
Udyog Vihar, Gurgaon-122016
Haryana

... Appellant

Versus

1. Haryana Electricity Regulatory Commission
Bays No. 33-36, Sector-4
Panchkula-134112

... Respondent No.1

2. PTC India Limited
2nd Floor, NBCC Tower
15, Bhikaji Cama Place
New Delhi- 110066

... Respondent No.2

3. Haryana Power Purchase Center
(On behalf of M/s Haryana Power
Generation Corporation Ltd.)
2nd Floor, Shakti Bhawan
Sector-6, Panchkula- 134109

... Respondent No.3

Counsel for the Appellant(s) : Mr. Gopal Jain, Sr. Adv.
Mr. Deepak Khurana
Mr. Tejasv Anand

Counsel for the Respondent(s) : Mr. Nishant Ahlawat for R-1
Mr. Vishrov Mukherjee for R.2
Mr. M. G. Ramachandran, Sr. Adv.
Ms. Ranjitha Ramachandran
Mr. Shubham Arya for R-3

JUDGMENT

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. Prayer of the Appellant.

- a). Allow the present Appeal and set aside the Impugned Order dated 12.07.2016 passed by the Respondent No. 1 , the State Commission in Petition No. HERC/PRO-3 of 2016 to the limited extent the Impugned Order does not provide for /denies the grant interest to the Appellant on the principal amount of Rs.88.123 crores;
- b). Direct the Respondents to pay the overdue interest @ 1.25% per month from the date on which the payments for the power supplied (w.e.f. 07.05.2011) to the Respondents became due till the actual date of payment of the said differential amount;
- c). Pass such other or further orders as this Tribunal may deem fit and proper in the facts and circumstances of the case.

2. **Questions of Law:**

The present Appeal raises the following questions of law for adjudication by this Tribunal:-

- i) Is it permissible for the Commission to decide an issue against a party without recording any reasons for the same?
- ii) Whether the Commission erred in law in not directing payment of interest on the outstanding differential amount payable by the Respondents to the Appellant?
- iii) Once the principal amount is awarded, is the grant of interest a necessary consequence to the same?

Facts of the Appeal:

3. This present Appeal has been filed by Lanco Amarkantak Power Limited (hereinafter referred to “**Appellant**”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “**Act**”) challenging, to the limited extent, the legality and validity of the order dated 12.07.2016 (hereinafter referred to “**Impugned Order**”) passed by the Haryana Electricity Regulatory Commission (hereinafter referred to “**State Commission**”) whereby the State Commission has, while allowing the claim of the Appellant for recovery of amount on account of shortfall/differential in payment of tariff from the Respondents has not granted interest on the said amount to the Appellant.

4. The Appellant, the Lanco Amarkantak Power Limited is a generating company within the meaning of Section 2(23) of the Electricity Act, 2003.
5. The Respondent No. 1 i.e. Haryana Electricity Regulatory Commission is the Electricity Regulatory Commission in the State of Haryana discharging functions under the provisions of the Electricity Act, 2003. The Respondent No. 2, PTC India Limited is an inter-state trader of electricity under the Act (hereinafter referred to “**Respondent No.2/PTC**”). The Respondent No. 3, the Haryana Power Purchase Center (hereinafter referred to “**Respondent No.3/HPPC**”) is the entity responsible for procurement of power in the State of Haryana.
6. The Appellant and the Respondent No. 2 had entered into a PPA dated 19.10.2005 for sale of power from Appellant’s thermal power plant (Unit –II of 300 MW) at Pathadi, Korba, State of Chhattisgarh at a tariff to be determined in accordance with the applicable CERC Tariff Regulations, subject to capped levelised tariff rate of Rs.2.32 per unit, for onward sale to one or more purchasers. Subsequently, the Respondent No. 2 entered into a Power Sale Agreement dated 21.9.2006 (‘PSA’) with the Respondent No.3 for sale of entire power purchased from the Appellant.
7. In terms of the PPA, the Appellant entered into an Implementation Agreement dated 01.08.2009 with the Government of Chhattisgarh (‘GoCG’). As per the said Implementation Agreement, the Appellant was to provide 35% of the power generated from the project as home state share to the CSPTCL/Chhattisgarh.

8. Due to subsequent change in the Central Government's policy regarding distribution of coal, namely New Coal Distribution Policy ('NCDP'), the coal linkage quantity to be supplied under the Fuel Supply Agreement was substantially reduced from the quantity originally envisaged as per Letter of Assurance issued by the Coal Company. Therefore, a substantial amount of balance coal requirement had to be met by procuring coal from alternate sources such as e-auction, open market or imported coal, which significantly increased the cost of generation of power as the cost of alternate coal is three to five times higher than that of the linkage coal cost. In view of the changed circumstances of execution of the Implementation Agreement and introduction of NCDP, the Appellant communicated to the Respondent No. 2 that at capped tariff rate of Rs.2.32/kWh, the PPA was impossible to perform.
9. Pursuant to the above, the Respondent No. 2 itself, on 13.05.2010, filed a Petition before the State Commission stating that in view of the changed circumstances including *force majeure* events, introduction of NCDP and execution of Implementation Agreement by the Appellant with Chhattisgarh Govt., the tariff under the PSA needs to be revised. The Respondent No. 3 opposed the prayer of the Respondent No. 2 for revision of tariff under the PSA.
10. Simultaneously, the Respondent No.3 filed a Petition seeking *inter-alia* a direction to the Appellant and the Respondent No. 2 to comply with their purported contractual obligations and for restraining the Appellant from selling the contracted capacity under the PSA to any third party including and not limited to the State of

Chhattisgarh. The Appellant objected to jurisdiction of the State Commission on the ground that it was a generator situated in Chhattisgarh and had no *privity* of contract with the State Commission.

11. During the pendency of the said proceedings, the Appellant was constrained to terminate the PPA as the Respondent No. 2 failed to fulfil its vital condition precedent of obtaining and maintaining long term open access even after being issued a one year prior notice
12. The State Commission vide its order dated 02.02.2011 dismissed the petition filed by the Respondent No. 2, allowed the petition filed by the Respondent No. 3 and restrained the Appellant from revising its price for sale of power and further restrained the Appellant from selling the contracted power to a third party.
13. Aggrieved by the directions contained in the aforesaid Order dated 02.02.2011 passed by the State Commission, the Appellant filed an appeal before this Tribunal on 07.02.2011 being Appeal No. 15 of 2011. In the said Appeal, this Tribunal was pleased to pass an interim Order dated 23.03.2011, whereby the order dated 02.02.2011 passed by the State Commission was partially stayed, *inter alia*, in terms of the following directions:
 11. *Thus, we are inclined to grant interim stay of impugned order to the extent indicated above. Accordingly, the Appellant is permitted to supply 35% of power to Chhattisgarh Government Company and is directed to supply the balance power to the PTC (R-3) so that PTC (R-3) can discharge its obligation to the Power*

Generation Corporation (R-2) in pursuance of the PSA entered into between them.

14. Though this Tribunal directed supply of power, no price/tariff for the said supply was specified in the said Order. In terms of the interim order, the Appellant w.e.f. 07.05.2011 commenced 35% supply of power from its Unit-II to CSPTCL (host state share) and balance (65%) to the Respondent No. 2 for onward supply to the Respondent No. 3.
15. CSPTCL also challenged the Order dated 02.02.2011 of the State Commission on the ground that adverse directions were passed against it without affording any opportunity of hearing.
16. This Tribunal passed the final order/judgment on 04.11.2011 whereby the Appeal filed by the Appellant i.e. Appeal No.15 of 2011 was dismissed. It was directed that pending decision by the State Commission on the contentions raised by Chhattisgarh State Power Trading Company (the Appellant in Appeal No.52/2011), *“the interim order dated 23.03.2011 passed by us will be in force till the final order is passed by the State Commission.”*
17. The Appellant filed an appeal against the aforesaid order dated 04.11.2011 passed by this Tribunal, before the Hon’ble Supreme Court being Civil Appeal No. 10329 of 2011.

In the said Appeal, the Hon’ble Supreme Court passed an interim order dated 16.12.2011 as follows:-

“(i) The appellant will continue to supply electricity as per the interim Order of the Tribunal dated 23rd March, 2011;

(ii) Without prejudice to the rights and contentions of the parties and pending further orders, the State Electricity Regulatory Commission, Haryana will fix/approve the tariff for sale and purchase of power for the period in question about which there is a dispute between the Appellant and the Respondent No.2.

The State Electricity Regulatory Commission, Haryana will decide the dispute uninfluenced by the observations made in the impugned orders passed before today, by the Appellate Tribunal and/or any other Authority in this case. All arguments on both sides are kept open. Liberty is given to the parties to make a proper application supported by relevant documents before the State Electricity Regulatory Commission, Haryana, within four weeks.

18. In terms of the said Order of the Hon'ble Supreme Court, the Appellant filed an application to fix/approve the tariff for the period in question i.e. for the power supplied from 07.05.2011 to 31.12.2011 and for the power proposed to be supplied during the balance period of the year 2011-12 i.e. 01.01.2012 to 31.03.2012 and for the year 2012-13, before the State Commission.
19. Pursuant to the Order dated 16.12.2011 of the Hon'ble Supreme Court, the State Commission passed an Order on 17.10.2012 holding that the capped tariff of Rs 2.32/kWh in the PPA shall prevail, on the ground that the Hon'ble Supreme Court's Order did not mention in its Order, that PPA is to be ignored.
20. Aggrieved by the said Order, the Appellant filed an application being I.A. No. 7/2012 in the pending Civil Appeal being CA No. 10329/2011 before the Hon'ble Supreme Court, *inter alia*,

challenging the determination of tariff by the State Commission and seeking quashing of the Order dated 17.10.2012 passed by the State Commission. The Hon'ble Supreme Court vide Order dated 19.02.2013, while observing that the statutory remedy of filing an Appeal was available to the Appellant, granted liberty to the Appellant to file an Appeal before this Tribunal against the Order dated 17.10.2012.

21. In terms of the Order dated 19.02.2013 passed by the Hon'ble Supreme Court, the Appellant filed an Appeal against the Order dated 17.10.2012 of the State Commission being Appeal No. 65 of 2013 before this Tribunal.
22. It may be noted that admittedly the Appellant was being paid a measly low tariff of Rs.2.32/kWh for supply of power, which was not commercially viable and consequently the Appellant was constrained to shut the operations of its Unit II on 21.03.2013 for want of commercially viable tariff. Appellant has suffered huge losses on this count.
23. This Tribunal vide its Order dated 03.01.2014 allowed the Appeal No.65 of 2013 and set aside the Order dated 17.10.2012 of the State Commission. Necessary directions were issued to State Commission to re-determine the tariff (for the power already supplied) within two months from the date of communication of the judgment. Relevant portion of the Order dated 03.01.2014 is reproduced hereunder:-

"72. Summary of our findings

i) The tariff determined by the State Commission as per the levellised capped tariff of Rs.2.32/Kwh is not in consonance with the Remand order of the Hon'ble Supreme Court dated 16.12.2011. As such the tariff determination is wrong and is set aside.

ii).....

iii) The State Commission has to re-determine the interim tariff as per the directions given in this judgment, pending disposal of the Appeal before the Hon'ble Supreme Court.

73. In view of our above findings, the impugned order is set aside. The Appeal is allowed.

74. Accordingly, the State Commission is directed to re-determine the tariff within two months from the date of communication of this judgment in the light of the directions and finding given by this Tribunal in this judgment by way of interim arrangement dehors the PPA, pending disposal of the Appeal in Hon'ble Supreme Court. However, there is no order as to costs. The Registry is directed to send the copy of this judgment forthwith to the State Commission of Haryana."

24. In terms of the above referred Order dated 03.01.2014 of this Tribunal, the Appellant again made an application for re-determination of tariff before the State Commission. Although two month time was given by this Tribunal to State Commission to determine the tariff, the State Commission took more than a year to carry out the said exercise and re-determined the interim tariff vide its order dated 23.01.2015. Considerable amount of time was thus lost leading to further deterioration of Appellant's financial health. Vide Order dated 23.01.2015, the State Commission determined the tariff of Rs.2.8875/kWh for FY 2011-12 and Rs.2.9218/kWh for

the FY 2012-13 comprising of capacity charges and variable charges.

25. The above said order dated 23.01.2015 of the State Commission was challenged by the Appellant as well as by the Respondent No.3 before this Tribunal (Appeal No. 107/2015 and Appeal No. 117/2015). Vide common judgment dated 21.03.2018, Appeal No. 107/2015 was dismissed and Appeal No. 117/2015 was also dismissed except on the issue of Operation and Maintenance Expenses.
26. The Respondents did not pay the differential tariff even after the tariff order had been issued, and raised disputes.
27. The Appellant filed a Petition for execution of the Order dated 03.01.2014 passed by this Tribunal (EP No. 05/2015 in Appeal No. 65 of 2013). *Inter alia*, the following reliefs were sought in the Execution Petition:-
- “(a) Allow the present petition, execute the Order dated 03.01.2014 by directing Respondent No. 2 (HPGCL), Respondent No. 2a [HPPC] and Respondent No. 3 (PTC) to forthwith pay the amount of Rs99.30 crores to the Petitioner along with interest at 18% from the date on which the said amount became due and further pay tariff as determined by HERC for the power to be supplied by the Petitioner;
.....”*
28. The Respondents herein objected to the said Petition, *inter alia*, contending that the Order of this Tribunal cannot be executed and the Appellant has to first approach the State Commission for quantification and computation of the amounts that it is claiming and

without the said exercise being undertaken, payments cannot be made to the Appellant.

29. In view of the aforesaid stand of the Respondents, the execution petition was dismissed by this Tribunal vide Order dated 22.12.2015. The Appellant was given liberty to approach the State Commission and the State Commission was directed to decide the Petition in accordance with law.

30. On 21.01.2016, the Appellant filed Petition bearing No. HERC/PRO-3 of 2016, under Section 86(1)(b) and 86(1)(f) of the Electricity Act, 2003 before the State Commission, *inter alia*, praying as follows:-

“a) adjudicate upon the dispute between the Appellant and the Respondent No. 1 and 2 regarding the non-payment of the amount of Rs 99.30 Crores calculated in terms of the consequent tariff determined by the State Commission in case No. HERC/PRO/05/2014 as demanded by the Appellant vide letter dated 16.04.2015 in respect of the power already supplied by the Appellant to the Respondents during the period 07.05.2011 to 21.03.2013, in terms of the direction of the Hon’ble Supreme Court dated 16.12.2011 passed in Civil Appeal No. 10329 of 2011;

b) direct the Respondent No. 1 & 2 jointly and/or severally to make payment of Rs 99.30 crores to the Appellant alongwith interest @ 18% from the date on which the payment of power supplied to the Respondents became due till the date of actual payment of differential amount;

c) direct the Respondent No. 1 & 2 to pay the tariff as determined by the State Commission vide order dated 23.01.2015 in case No. HERC/PRO/05 of 2014 for the power being supplied till further orders issued by the APTEL or the Hon’ble Supreme Court;

.....”

31. The Ld. Commission vide order dated 12.07.2016 disposed of Petition No. HERC/PRO-3 of 2016. In the impugned Order, *inter alia*, the following issues were framed by the Ld. Commission:-

“.....

b) *Whether the amount of Rs.99.30 Crore calculated by the Appellant, for the period from 07.05.2011 to 21.03.2013, is correct and payable by the respondents.*

.....

d) *Whether the amount outstanding under “b” above, attracts interest @18% p.a.”*

32. In respect of issue (d), the Commission held as under:-

“The Commission, accordingly, in respect of issue at (d) above, decides that the Respondents shall make payment of the payable differential amount of Rs. 88.123 Crore for the period 07.05.2011 to 31.03.2013 in three equal monthly installments, the first installment shall be paid by 31.07.2013 1st July, 2016. Any delay in payment of installment will attract simple interest @ 1.25% per month or part thereof until the amount is cleared. The amount claimed by LAPL towards ED/Cess would also be paid by the Respondents in the similar manner in three equal monthly installments subject to submission of requisite documents by LAPL to the Respondents.”

33. Thus, despite acknowledging the entitlement of the Appellant to interest on the outstanding differential amount of Rs. 88.123 Crores payable by the Respondents and despite framing an issue to the said effect, the Commission failed to grant the interest to the Appellant without recording any reasons and in fact without returning any finding on issue (d).

Submissions by the Appellant

Non-grant of interest by the State Commission

34. The impugned order does not contain any reason whatsoever for not granting the interest to the Appellant on the principal amount payable by the Respondents.
35. The Order is in fact contrary to the observations and findings contained in the order itself, in terms whereof the State Commission has noticed and acknowledged the entitlement of the Appellant on outstanding differential amount. Once the State Commission decided to grant the said principal amount to the Appellant, granting of interest thereon was a logical *sequitur* to the same. Non-grant of interest is erroneous, illogical and absurd.
36. As regards the claim of the Appellant for interest on the outstanding amount, discussion under issue (d) namely *“Whether the amount outstanding under “b” above, attracts interest @ 18% p.a.”*, is contained in the Order. Under the said issue, the State Commission has also noticed the entitlement of the Appellant to interest on the outstanding differential amount of Rs. 88.123 Crores payable by the Respondents by observing that *“...there ought not to have been any occasion for the Appellant to run from pillar to post to realize the amount in accordance with the tariff determined by the Commission vide the ibid Order. Nonetheless, the Appellant was compelled to enter into correspondence with the respondents and also approach*

the APTEL for execution of this Commission's order." The State Commission has also observed that the Order dated 23.01.2015 itself records that the said "*Order shall be reckoned to have come into effect from the date of commencement of supply of power from LAPL Unit-2.....*". However, in the concluding portion under issue (d), the Commission mechanically reiterated its decision of grant of principal amount under issue (b) without arriving at any conclusion as far as the interest is concerned.

37. The issue regarding payment of principal amount was already decided by the State Commission under issue (b), therefore, under issue (d), which pertains to grant of interest on the principal amount for the period stated above, there was no occasion to reiterate the direction of payment of the principal differential amount. The State Commission committed an error in omitting the direction to pay interest on the principal amount [which ought to have been logically contained under issue (d)]. The Order to the above extent is palpably erroneous.
38. Payment of interest on the principal amount directly flows from the direction to pay the principal amount. Non-grant of interest on the principal amount is a patent and grave legal error, liable to be corrected by this Tribunal. Payment of interest is normal accretion to the capital and therefore grant of the same is a matter of right for the party in whose favour a sum of money is awarded.
39. The computation of interest was filed by the Appellant before the State Commission as well as in the present Appeal and the same has never been disputed by the Respondents.

40. The law in this regard is well-settled and the Appellant seeks to place reliance on the following judgments:-

(a). *SLS Power Limited V. Andhra Pradesh Electricity Regulatory Commission and Ors. in Appeal Nos. 160, 166, 168, 172, 173 of 2011 and 9,18,26,29 and 38 of 2012 (decision dated 20.12.2012).*

The relevant extract are as under:-

"1. Appeal nos. 150, 166, 168, 172 and 173 of 2011 and 9, 26, 29 and 38 of 2012 have been filed by the generating companies supplying electricity from renewable sources of energy such as biomass, bagasse and mini-hydel power plants to the distribution licensees, challenging the orders communicated to them on 12.9.2011 comprising three different and separate orders by each of the three members of the Andhra Pradesh Electricity Regulatory Commission ("State Commission") determining the tariff for the renewable energy generators for the period 1.4.2004 to 31.3.2009, in pursuance of the directions of the Hon'ble Supreme Court.

.....

21. After examining the rival contentions of the parties the following questions would arise for our consideration:

.....

iv) Whether the Project developers are entitled to interest on the amount due to them as a consequence of this judgment?

.....

34. The fourth issue is regarding interest on the amount due to the developers as a consequence of this judgment.

.....

34.3 Learned Sr. counsel for the licensees argued that since the re-determination of tariff has taken place only now there is no default or fault on the part of the distribution licensees and they cannot be penalized with interest liability.

34.4 Member-Finance in his order has stressed that interest payment is time value of money and the developers are entitled for it. The distribution licensees had also recovered the excess payment with interest after they interpreted the Supreme Court order that order of 2004 was applicable. Therefore, on the same concept the developers are entitled for interest.

34.5 The principle of carrying cost has been well established in the various judgments of the Tribunal. The carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. Therefore, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission on the principles laid down in this judgment. We do not accept the contention of the licensees that they should not be penalized with interest. The carrying cost is not a penal charge if the interest rate is fixed according to commercial principles. It is only a compensation for the money denied at the appropriate time.

34.6 As the interest rate has been decided as 12% determination of tariff, the same rate may be applied for calculation of interest/carrying cost. The interest will be due from the date the payment is due and shall be compounded on quarterly basis.

34.7 The State Commission shall also set a time period within which the payment of arrears and interest will be paid to the developers by the distribution licensees.”

41. The judgment of this Tribunal in SLS Power case has been reaffirmed recently in *Adani Power Limited v. Central Electricity Regulatory and Ors.* in Appeal No. 210 of 2017 (decision dated 14.08.2018). Relevant extract of the judgment are reproduced hereunder:-

“ix. In the present case we observe that from the effective date

of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff. In the present case after perusal of the PPAs we find that the impact of Change in Law event is to be passed on to the Respondent Nos. 2 to 4 by way of tariff adjustment payment as per Article 13.4 of the PPA.

....

From the above it can be seen that the impact of Change in Law is to be done in the form of adjustment to the tariff. To our mind such adjustment in the tariff is nothing less then re-determination of the existing tariff.”

42. The judgment in Adani case has been reaffirmed by this Tribunal in its decision dated 21.12.2018 in Appeal No. 193 of 2017- GMR Kamalanga Energy Ltd. v. CERC, observing as follows:-

“39. The contention that payment is due only after issuance of supplementary bill raised by Bihar Discoms and that payment is due only after issuance of supplementary bill and they relied upon SLS Power Limited Vs. APERC &

Others [A. No. 150 of 2011] and NTPC Vs Madhya Pradesh State Electricity Board.

40. *Similarly, contentions were considered and rejected in Adani Carrying cost judgment in Appeal No. 210 of 2017. It reads as under:*

“.....

From the above it can be seen that the Central Commission has held that there is provision of payment of late payment surcharge if the payment is not made by the Respondents 2 to 4 beyond 30 days of raising of bills. There is no provision for payment of carrying cost from the effective date of Change in Law event till the Change in Law is approved by the Central Commission. Further the Central Commission has held that in case of SECL the liability was crystallised after the enhancement of royalty by the State Government and interest became payable because of failure to pay the amount as per the liability. And hence the facts of present case are distinguishable from SECL case. In NTPC case as there was no provision in regulations or the PPA hence interest is not applicable to NTPC due to revision in tariff. Regarding judgement in SLS case the Central Commission has distinguished it from the present case as there is no redetermination of tariff in present case and there was redetermination of tariff in SLS case. Hence interest is not payable in present case.

- vii. After going through the SLS case we find that this Tribunal has held that the principle of carrying cost has been well established in the various judgments of this Tribunal and the carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time and accordingly, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission on the principles laid down in the said judgment.”*

41. *In the light of opinion already expressed by this Tribunal in the earlier Appeal, we are of the opinion Appellant GKEL is entitled for amounts under heading Carrying Cost.”*

43. Judgment of the Hon'ble Supreme Court in the case of *Enviro Legal Action v. UOI & Ors. (2011) 8 SCC 161*

“202. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of Time Value of Money, restitution and unjust enrichment noted above - or to simply levelise - a convenient approach is calculating interest. But here interest has to be calculated on compound basis - and not simple - for the latter leaves much uncalled for benefits in the hands of the wrongdoer.”

44. *Alok Shanker Pandey v. Union of India (2007) 3 SCC 545*, wherein the Hon'ble Supreme Court of India was pleased to hold as under:

“7. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

45. In the present case, there is no dispute that the Appellant supplied electricity to Respondents from 07.05.2011 onwards and therefore, the Appellant became entitled to the price (tariff) for the said power when it was supplied. The Respondents have sold this power onwards and immediately received the price for it and have enjoyed the same from the year 2011 itself. Therefore, if the differential price is being paid now after so many years, it ought to be paid with interest. This is not only in line with the legal principles laid down by

the Hon'ble Supreme Court and this Hon'ble Tribunal but also in tune with the principles of promoting and preserving business efficacy.

46. *Maharashtra State Electricity. Dist. Company Ltd. Vs. Respondent: Maharashtra Electricity Regulatory Commission through its Secretary and Ors. in Appeal No. 15 of 2007 (decision dated 05.02.2008)* wherein this Tribunal was pleased to hold as under:

"12. Interest is a natural corollary of any delayed payment. Sometimes different interest rates are prescribed so as to differentiate between the normal or compensatory rate of interest and a penal rate of interest. As mentioned earlier, the rate of interest as such has not been challenged in this appeal. What has been challenged is merely the liability to make the payment of interest on the amount falling due prior to 24.11.2003. We add, as disclosed by the appellant's counsel at the hearing, that the appellant for its borrowing has been making payment of interest at rates between 8% to 14% per annum.

13 . The Supreme Court in Central Bank of India v. Ravindra and Ors. MANU/SC/0663/2001 has quoted with approval the following part of the judgment of the Punjab High Court in the case of CIT v. Shyam Lal Narula MANU/PH/0119/1963. The same is given hereunder:

8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owned to another. In its narrow sense 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money.... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for

forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.

Thus interest is basically intended to compensate the party who was entitled for payment of amount due to it.

15. The appellant is liable to pay interest. There is no reason why the appellant should not pay interest from the date payment became due. The payment became due when the energy was received by the appellant from the members of Respondent No.2 Such date may be before or after 24.11.2003 as there was nothing to prevent such payment when the energy was received.”

47. *PTC India Limited v. Gujrat Electricity Regulatory in Appeal Nos. 47 and 62 of 2013 (decision dated 30.06.2016) - wherein this Tribunal was pleased to hold as under:*

“58. We agree that there is no provision in PPA with regard to payment of delayed payment charges on 'take or pay' liability. Gujarat Urja has sought interest on the principles of restitution and equity. Let us examine the rulings referred to by the learned counsel for Gujarat Urja.

59. In South Eastern Coalfields Ltd. vs. State of M.P. (2003) 8 SCC 648, the Hon'ble Supreme Court has held as under:

21. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (see Chitty on Contracts, 1999 Edn., Vol. II, Para 38-248 at p. 712). Interest in equity has been held to be payable on the market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be

many.

22..... The basis proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down.....

24. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest.....

60. In *Sovintorg (India) Ltd. vs. State Bank of India*: (1999) 6 SCC 406, the Hon'ble Supreme Court has held as under:

6 We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorize the Redressal Forums and Commissions to also grant interest appropriately under the circumstances of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in *Satinder Singh v. Umrao Singh* (AIR 1961 SC 908: (1961) 3 SCR 676).....

..... The power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to Section 1. This question was considered by the Privy Council in *Bengal Nagpur Rly. Co. Ltd. vs. Ruttanji Ramji* (1937-38) 65 IA 66: AIR 1938 PC 67]. Referring to the proviso to Section 1 of the Act the Privy Council observed 'this proviso applies to cases in which the court of equity exercises its jurisdiction to allow interest'.

61. In *Mahanadi Multipurpose Industries vs. State of Orissa & Anr.*: AIR 2002 Orissa, 150, it has been held as under:

11., we find that the trial Court can award interest even in the absence of a contract, if the same is equitable..... In such a situation, when the trial Court has awarded interest at the rate of

6% per annum in its discretion, it cannot be said that the Court has acted illegally or has exercised its discretion in an arbitrary or unreasonable manner. Though there was no specific agreement in pay interest, in the circumstances, we find that the award of interest from 1.11.1967 till the date of recovery can be sustained on the principle that the defendants are bound to disgorge the benefit they might have derived out of the amount advanced by the plaintiffs towards the value of the articles which they had failed to supply.....

62. We feel that on the ground of equity, interest is payable to Gujarat Urja from the date Gujarat Urja clearly informed PTC about its decision not to waive the amount of compensation. Accordingly, hold that simple interest may be paid by PTC to Gujarat Urja @ 6% alright per annum from the date at which Gujarat Urja informed PTC about its decision not to waive the compensation amount till the amount is fully paid.”

Interest was not claimed in the earlier proceedings

48. The Respondents seek to contend that in the earlier round of proceedings i.e. tariff application filed before the State Commission in the year 2012 (pursuant to the Order dated 16.12.2011 of the Hon'ble Supreme Court), in Appeal No. 65/2013 before this Tribunal and in the Petition HERC/PRO-5 of 2014 filed by Appellant before the State Commission (which led to passing of 23.01.2015 Tariff Order), the Appellant had not claimed interest on the principal amount and therefore interest is not payable.
49. The Appellant submitted that it could not have and did not claim interest in the tariff application filed before the State Commission pursuant to the Order dated 16.12.2011 of the Hon'ble Supreme Court inasmuch as the said proceeding was for tariff determination only and not for recovery of amounts. The proceeding culminated in the Order dated 17.10.2012 which upheld the capped tariff. The

scope of the proceeding and order was limited to determination of tariff.

50. Further, the Appellant could not have and did not claim interest in Appeal No. 65/2013 filed before this Tribunal against the Order dated 17.10.2012 as the Appeal was against an Order of the State Commission upholding the tariff and the prayer in the Appeal was for setting aside the Order. The Order was set aside by this Tribunal vide judgment dated 03.01.2014 and the matter was remanded back to the State Commission for tariff determination afresh.
51. Furthermore, the Appellant could not have and, did not claim interest in the second round of tariff determination before the State Commission culminating in the Order dated 23.01.2015 as the proceeding was for re-determination of tariff and not for recovery of amounts.
52. It is pertinent to note that the Appellant claimed interest for the first time in the Execution Petition filed before this Tribunal EP No. 5/2015 to which the objections taken by the Respondents (which are *ex-facie* contrary to the arguments now being raised) are captured in the Order dated 10.12.2015 passed by the Tribunal in the said Petition:-

“19. We have heard Mr. Ramachandran, learned counsel appearing for Respondent No.2 and Respondent No.2(a). Written submissions have been filed on behalf of Respondents No.2 and 2(a). Gist of the submissions is as under:

.....

(d) The claim of LANCO that the direction to re-determine also includes a direction to pay the amount re-determined is erroneous. On re-determination of the tariff by the State

Commission, there is a separate cause of action and a separate avenue for the parties to challenge or implement.

(e) Without prejudice to the above, it is submitted that amount payable by the Haryana Utilities to LANCO is yet to be computed by the Haryana State Commission. What has been re-determined are the fixed charges on the basis of Annual Revenue Requirements and normative availability and normative parameters. The proportionate reduction in the fixed charges on account of Lower Plant Availability as compared to the normative availability is yet to be decided.”

20. We have heard Mr. Amit Kapoor, learned counsel for PTC India. Written submissions have also been filed on behalf of PTC India. Gist of the written submissions is as under:

.....
(c) There is neither any order / judgment in which the amount allegedly due to LANCO has been computed nor has any direction for payment of any amount been made.

.....
(f) There is difference between tariff determination and quantification of payments due. The tariff is determined based on normative values of parameters as per the regulations, whereas the actual payment due to the generator will depend on the actual parameters of generation. While the former confers a right on the party to claim tariff, the latter would require computation of the amounts due, based on actuals. Till the time LANCO does not provide proof of the capacity made available to the buyer & actual capacity generated, the appropriate Capacity Charges cannot be calculated. Such an exercise has to necessarily be undertaken before the State Commission and not before the first appellate court i.e. this Tribunal”

53. Therefore, the Respondents' clear and unequivocal stand has been that the proceedings for determination/ re-determination of tariff is entirely different from the proceeding for payment of amounts. The Respondents are bound by the said stand. In fact the said stand of the Respondents was accepted by this Tribunal and the Execution Petition was dismissed, holding as under:-

“27. By its order dated 3/1/2014, this Tribunal has merely given a direction to the State Commission to determine the interim tariff and by order dated 23/1/2015, the State Commission has accordingly determined the interim tariff. Therefore, order dated 3/1/2014 stands implemented. No direction can now be given to execute the said order. ...

.....

34. It is the case of LANCO that an amount of Rs.99.30 crores was due from the Respondents to it, which is seriously disputed by the Respondents. It is contended, inter alia, that there is difference between tariff determination and quantification of payments due. The tariff is determined based on normative values of parameters as per the regulations, whereas the actual payment due to the generator will depend on the actual parameters of generation. While the former confers a right on the party to claim tariff, the latter would require computation of the amounts due, based on actuals. Till the time LANCO does not provide proof of the capacity made available to the buyer and actual capacity generated, the appropriate Capacity Charges cannot be calculated. Such an exercise has to be necessarily undertaken before the State Commission and not before the first appellate court i.e. this Tribunal. This submission is countered by LANCO by drawing out attention to certain paragraphs of Order dated 23/1/2015. It is submitted that all these contentions were considered by the State Commission and the interim tariff was determined. Since we are unable to grant prayer made by LANCO, because order dated 3/1/2014 stands implemented, we do not want to express any opinion on this aspect. The State Commission can decide this issue independently in case LANCO approaches the State Commission.

38. We are informed that because LANCO has not been paid for the power supplied by it, LANCO is facing financial hardship and in fact had to shut down its unit.

39. There appears to be no denial of the hardship caused to LANCO by the Respondents. We are aware that appeals carried from orders dated 3/1/2014 and 23/1/2015 are pending. We do not, therefore, want to pass any comments

on the merits of the case. LANCO has stated that Respondent Nos.2, 2(a) and 3 are Public Utilities and, hence, they are expected to be fair in their conduct. There can be no disagreement on this proposition. All issues will be decided in pending proceedings. We must, however, note that PTC India has neither challenged order dated 3/1/2014 nor challenged order dated 23/1/2015. In fact, order dated 3/1/2014 notes that PTC India did not dispute LANCO's contention with regard to the unviability of the project and, in fact, a statement was made that it had no cavil if this Tribunal allows the appeal to safeguard the viability of the project. The relevant paragraph reads thus:

“The Respondent No.3 herein has no cavil if this Hon'ble Appellate Tribunal, in the light of justice and to safeguard the viability of the Project, deems fit to allow the present Appeal.”

40. *PTC India has, however, taken a totally different stand now and it is contended that the stand taken by PTC India, which is noted by this Tribunal in paragraph 71 of the judgment quoted hereinabove pertains to the interim arrangement and the PTC India had no cavil as regards the tariff determination since no claim was made in Appeal No.65 of 2011 against PTC India for payment. On such a major issue, a Public Utility like PTC India ought to have been careful while making statements.*
41. *In the view that we have taken, we are unable to give any relief to LANCO. The petition is dismissed. However, LANCO will be at liberty to adopt such proceedings as it may be advised to redress its grievance before the State Commission. If LANCO files any proceeding, the State Commission shall decide it in accordance with law. ”*
54. The said Order of this Tribunal, having not been challenged by any of the parties, has attained finality.

55. Thus, it was in furtherance of the liberty granted by this Tribunal vide its aforesaid order dated 22.12.2015, the Appellant filed a Petition under Section 86(1)(f) of the Act (for adjudication of disputes) and prayed for principal amount as well as interest (as reproduced in Para z above). Therefore, the occasion to claim interest arose for the first time, when the Appellant filed a Petition for recovery of the principal amount. This Petition was akin to a plaint for recovery of amounts in a civil suit and the Order dated 12.07.2016 is akin to a money decree. Inasmuch as the principal amount is granted by the Order (decree) dated 12.07.2016, interest ought to have been granted as well as a logical *sequitor*.

Executing Court cannot go behind the decree and grant interest

56. Completely contrary to the stand previously taken and accepted by this Tribunal in its judgment dated 10.12.2015 in EP No. 5/2015, the Respondents have taken a somersault and now seek to argue that the Petition No. HERC/ PRO-3 of 2016 (which culminated in the impugned order) was for execution of the Order dated 23.01.2015. The Respondents further seek to argue that since the Order dated 23.01.2015, the executing court (commission) cannot go behind the decree and grant interest. T

57. Such contrary stand of the Respondent (HPPC) is evident from the reply filed by it to the Petition No. HERC/ PRO-3 of 2016 before the Commission, wherein the Respondent pleaded as under:-

“3. At the outset it may be stated that the present petition is not in nature of execution petition but for further proceedings in pursuance of the order dated 23.01.2015 passed by the Hon’ble Commission....”

Thus, *ex-facie*, the argument now being raised before this Tribunal is contrary to Respondent's own stand and pleadings and is an argument of convenience, apart from being legally untenable and misconceived.

58. It is further pertinent to note the specific pleading of the Appellant with regards to the nature and scope of the Petition No. HERC/PRO-3 of 2016:

"4. As such, the Respondents having disputed the quantification/ calculation of amounts due and payable to the Petitioner towards difference between the tariff of Rs. 2.8875 per kWh for FY 2011-2012 and of Rs. 2.0218 per kWh for FY 2012-2013 determined by this Hon'ble Commission vide order dated 23.01.2015 and the tariff of Rs. 2.32/- per kWh paid by the Respondents, the Petitioner has been constrained to approach this Hon'ble Commission to have the said disputes (though frivolous and untenable) raised by the Respondents, adjudicated and settled by this Hon'ble Commission and to seek consequent direction to the Respondents to implement the order of this Hon'ble Commission by way of making payment of the amounts due and payable to the Petitioner."

59. The Respondent's (HPPC) response to the aforesaid Para in its reply is also reproduced hereunder:-

The contents of Para 3 and 4 are wrong and denied. It is denied that HPPC is not paying the tariff to the Lanco. The tariff i.e, 2.32 per kWh, determined in terms of the order-dated 17.10.2012 passed by the Hon'ble Commission in Petition No. HERC/PRO/01 of 2012, has been paid by HPPC.

Whereas the tariff payable by HPPC to Lanco after providing for adjustment i.e. pro-rata reduction of the fixed charges in terms of Regulation 16(2) of the Tariff Regulations, 2008 as well as the adjustment restricting the coal cost to the linked

coal from the SECL, on determination is likely to be much less.

The amount now being claimed by Lanco is the differential amount, which has not been computed by the Hon'ble Commission. HPPC craves leave to refer to the Preliminary Submissions made hereinabove. All allegations to the contrary are wrong and denied."

60. Arguments now being made are contrary to the Respondent's own pleadings, which is wholly impermissible.
61. The prayers made by the Appellant in its Petition before the Commission would make it amply clear that the Appellant sought adjudication of disputes under Section 86(1)(f) of the Act, as according to the Respondents, the amounts payable were disputed and were to be adjudicated and quantified. (Para z above).

Re: Judgments relied upon by the Respondents

The Respondents have placed reliance on the following judgments:

- A. *Nabha Power Limited v. Punjab State Power Corporation Limited and Anr. (2018) 3 SCC 716*

- (i). The Respondents rely upon Para 71 of the judgment, which reads as under:-

"71. Last but not the least is the claim for interest. It is undisputed that no such claim has been laid so far, at any stage. The appellant claims to rely upon clause 11.3.4 read with clause 11.6.8. We have extracted the relevant clause aforesaid. No doubt there is a provision for a late payment surcharge in the

event of delay in payment of a monthly bill but in the present case it is not as if there are undisputed bills remaining unpaid. There were serious disputes regarding the interpretation of the contractual clauses itself. We do not think that the present one is a fit case where the principle of compensation for deprivation should enure for the benefit of the appellant as a measure of restitution. More so as it has not been claimed by them at any stage. It does appear that this inclusion in the written synopsis does seem to arise as canvassed by the learned Senior Advocate for the first respondent on account of the Tribunal not finding favour with such claim in the remand proceedings by reason of no claim being laid towards the same. We are, thus, not inclined to grant this claim.”

62. Firstly, it is clear that the Hon’ble Supreme Court has not laid down any principle of law. The Hon’ble Supreme Court itself has qualified by stating *“in the present case”*. Thus, the said para does not have any precedential value. In any event, interest was refused because it was claimed for the first time before the Hon’ble Supreme Court that too in the written synopsis (and not in the Civil Appeal) and was not claimed at any stage (i.e. in the original proceeding before the State Commission – Petition u/s 86(1)(b) and (f) of the Act [Please see Para 9 of the judgment], or in the first Appeal before the Tribunal). In the present case, the Appellant has claimed interest in the original proceeding (i.e. its Petition u/s 86(1)(b) read with Section 86(1)(f) before the State Commission), which according to the Respondents’ own stand in EP No. 5/2015 before this Tribunal was the appropriate proceeding where such claim for interest could have been made. Thus, the judgment is clearly distinguishable on facts.
63. On a reading of Para 21 of the said judgment and more specifically *“The absence of separate prayer for the payment, it has been pleaded, cannot deny the appellant such benefit.....”* it is

clear that interest was claimed for the first time and that too in the written synopsis and not even in the Civil Appeal.

64. National Thermal Power Corporation Limited v. Madhya Pradesh State Electricity Board (2011) 15 SCC 580

The Respondents have relied upon Paras 24-31 of the said judgment to argue that Appellant's contention that once interest should be allowed is devoid of any merit. It is submitted that the reference and reliance on the judgment placed by the Respondents are erroneous and misconceived for the following reasons:

65. In NTPC case, the issue of grant of interest on the differential amount between the provisional tariff previously notified by the CERC and the final tariff subsequently determined by the CERC. Such provisional tariff was being paid pursuant to notifications issued by the CERC in terms of Regulation 79(2) of the CERC (Conduct of Business Regulations), 1999. (Paras 3, 4 and 11 of the judgment). It is submitted that there is no provisional or final tariff in the present case. The present case is of re-determination of tariff. It is further submitted that facts of the present case are peculiar and cannot be regulated by the Regulations, in as much as there was re-determination of tariff because of the change in circumstances as enumerated above, thus the NTPC judgment is wholly inapplicable in the facts of the present case.
66. The Court found that interest on such differential amount would not be covered under Section 62(6) of the Act inasmuch as existing (provisional) tariff was being continued by a statutory notification

and no such provision of interest was made. The Court found that Section 62(6) would apply if there is deliberate over-recovery of price. (Para 17 of the judgment).

67. The Court further found that the amended (Regulation 5-A) for granting interest on the differential amount between provisional tariff and final tariff namely CERC (Terms and Conditions of Tariff) Regulations, 2004 was introduced subsequently on 01.06.2006 (Para 19 of the Judgment). The judgment in Para 21 takes note of the fact that prior to 01.06.2006 there was no specific provision for claiming interest for the intervening period (between provisional and final tariff) and the amendment, fortifies the need of such regulation, however, the same cannot be made applicable by retrospective effect (to the transactions already happened). Thus, the Hon'ble Supreme Court in the above circumstances came to a conclusion that since there was no enabling regulation to award interest, which was brought in subsequently, therefore, the Tribunal could not have granted interest in such circumstances, as the amendment in the regulations was not retrospective. Most importantly, the Court in Para 25 of the judgment specifically holds that *"In the present matter, we have the second proviso to Regulation 79(2) of the 1999 Regulations which permitted the generating company to continue to charge the existing tariff for such period as may be There was no provision for interest therein."* Therefore, clearly, in a case of provisional and final tariff, the payment of tariff including any interest thereon is solely governed by the said Tariff Regulations. The Court in fact found an implied bar in Regulation 79(2) for granting any interest on the differential tariff in the absence of any specific regulation for granting interest. It is in that context the Hon'ble

Supreme Court held that interest could not have been granted on the ground of equity and justice. The question before the Hon'ble Supreme Court was absolutely different from the present case.

68. It is further submitted that interpretation and application of the aforementioned case recently came before this Tribunal in Appeal No. 210 of 2017 (*Adani case- supra*), while adjudicating the claim of carrying cost (interest). This Tribunal affirmed the principles of laid down in the SLS matter and held that NPTC judgment would not apply. The Tribunal thus held as under:-

"i..... The Central Commission by relying on its Order dated 6.2.2017 in Petition No. 156/MP/2015 (actually the Petition No. is 156/MP/2014) has decided that carrying cost on the principle of restitution from the date of occurrence of Change in Law till the date of billing cannot be allowed to the Appellant as there is no such provision in the PPAs.

- v. *The Appellant has also relied on the judgement of Hon'ble Supreme Court in case of Indian Council for Enviro-Legal Action vs. Union of India & Ors. (2011) 8 SCC 161 on principle of restitution and time value of money. After perusal of the said judgement we find that the Hon'ble Court has held importance of time value of money and with restitution so long the derivation of other party is not fully compensated for, injustice to that extent remains. The Hon'ble Court has held that to do complete justice the convenient approach is to calculate interest.*
- vi...*There is no provision for payment of carrying cost from the effective date of Change in Law event till the Change in Law is approved by the Central Commission. Further the Central Commission has held that in case of SECL the liability was crystallised after the enhancement of royalty by the State Government and interest became payable because of failure to pay the amount as per the liability. And hence the facts of present case are distinguishable from SECL case. In NTPC case as there was no provision in regulations or the PPA hence*

interest is not applicable to NTPC due to revision in tariff. Regarding judgement in SLS case the Central Commission has distinguished it from the present case as there is no re-determination of tariff in present case and there was re-determination of tariff in SLS case. Hence interest is not payable in present case.

- vii. After going through the SLS case we find that this Tribunal has held that the principle of carrying cost has been well established in the various judgments of this Tribunal and the carrying cost is the compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time and accordingly, the developers are entitled to interest on the differential amount due to them as a consequence of re-determination of tariff by the State Commission on the principles laid down in the said judgment.*
- viii. After perusal of the NTPC case we find that the interest was not payable as there was no enabling provision either through Regulations or in terms of the PPA. In the SECL case the Hon'ble Supreme Court has also gone into the principle of Restitution and has held that in Law, the term 'restitution' is used in three senses (i) Return or restoration of some specific thing to its rightful owner or status (ii) compensation for benefits derived from wrong done to another (iii) compensation or reparation for loss caused to another. Further, after perusal of the SECL case we find that the matter was related to payment of interest for the period after the expiry of date fixed by the State Government for payment of royalty till the actual payment. Here the case is regarding payment of interest from the effective date of Change in Law till the approval of Change in Law by the Central Commission and not from the date of payment of raising of bill till the actual payment of bill after the expiry of the payment date. In our view both the cases viz SECL case and NTPC case are not applicable to the present case in view of their facts and circumstances.*
- ix. In the present case we observe that from the effective date of Change in Law the Appellant is subjected to incur additional expenses in the form of arranging for working capital to cater the requirement of impact of Change in Law event in addition to the expenses made due to Change in Law. As per the provisions of the PPA the Appellant is required to make application before the Central Commission for approval of the*

Change in Law and its consequences. There is always time lag between the happening of Change in Law event till its approval by the Central Commission and this time lag may be substantial. As pointed out by the Central Commission that the Appellant is only eligible for surcharge if the payment is not made in time by the Respondent Nos. 2 to 4 after raising of the supplementary bill arising out of approved Change in Law event and in PPA there is no compensation mechanism for payment of interest or carrying cost for the period from when Change in Law becomes operational till the date of its approval by the Central Commission. We also observe that this Tribunal in SLS case after considering time value of the money has held that in case of re-determination of tariff the interest by a way of compensation is payable for the period for which tariff is re-determined till the date of such re-determination of the tariff.

69. In Adani case, the Tribunal granted interest for the reason that losses/ expenses are suffered/ incurred by a party in the time lag between the entitlement of the relief and passing of an order. This Tribunal while relying on the principles laid down in the SLS case held that Change in law event leads to adjustment of tariff which is nothing less than re-determination of tariff and thus Appellant therein was awarded interest from the effective date of change in law event till the date of approval by the appropriate authority. In the present case, there has been a re-determination of tariff and thus, applying the principles of the Adani Case, the Appellant is entitled for the interest on the differential amounts as explained above. Thus, in light of the legal position, the Appellant needs to be compensated towards the said time lag between the supply of power till the actual date of payment of the said differential amount.
70. Thus, the judgment of the Hon'ble Supreme Court in the NTPC case (*Supra*) is only restricted to the specific issue as explained above. The judgment of this Tribunal in SLS (*supra*) affirms the entitlement

of the interest to the Appellant in the facts and circumstances of the present case, principles of which have been affirmed by this Tribunal in its recent judgment in Adani matter.

71. State of Punjab v. Krishan Dayal Sharma (2011) 11 SCC 212

- (i). The Respondents have relied upon Paras 6 and 7 of the said judgment.
- (ii). The said case pertains to the powers of executing court and is therefore not applicable at all. The Commission has not passed the impugned order as executing court.
- (iii). Respondents reliance on this judgment is wholly contrary to the stand taken by it before this Tribunal as recorded in the Order dated 22.12.2015 in EP No. 5/2015. Order for determination of tariff cannot be treated as a decree, as it only determines the tariff and nothing more. It is further submitted that an order ascertaining the amount is a separate consequential order after the aforesaid determination. In the present case it is Order dated 12.07.2016 which determines the amount payable. Thus, the above judgment operates in a totally different field and thus, the principles enunciated therein can by no stretch of imagination be applied in the facts and circumstances of the present case.
- (iv). The Respondent has further sought to place reliance on the Judgment in *Sarup Singh v. Union of India (2011) 11 SCC 198*, following judgment in *State of Punjab v. Krishan Dayal Sharma*

(2011) 11 SCC 212. As explained above the said judgment has no relevance in the present case.

Difference between the Amounts Claimed and awarded

72. The Appellant claimed an amount of Rs. 99.30 crore in the Petition filed before the State Commission. The amount awarded was Rs. 88.123 crore. Thus, there is a difference of Rs. 11.1 Crores in the amount claimed and the amount granted. The reason for such difference is recorded in the Order itself, as follows:

“The difference has arisen as the amount already paid by the HPPC for the FY 2011-12 and FY 2012-13 has been taken as Rs. 201.41 Crore and Rs. 145.17 Crore respectively by LAPL. Whereas @ Rs. 2.32 / kWh, this works out to Rs. 203.71 Crore and Rs. 147.73 Crore respectively. As regards the additional amount of Rs. 6.28 Crore, as claimed by LAPL towards ED/Cess, the same shall be separately claimed by LAPL along with submission of requisite documents to HPPC as already stated....”

The amount of difference is tabulated below:

Amount Already Paid (in Crores)		Corrected Amount (in Crores)	
FY 2011-12	FY 2012-13	FY 2011-12	FY 2012-13
Rs. 201.41	Rs. 145.17	Rs. 203.71	Rs. 147.73
Total Differential Amount (Rs. 203.71 minus 201.41 Crores [Rs. 2.3 Crores) plus (Rs. 147.73 Crores minus Rs. 145.17 Crores [Rs. 2.56 Crores])			Rs. 4.86 Crores

73. In addition to the above amount, there was an additional claim made by the Appellant towards the Electricity Duty (ED)/ Cess

amounting to Rs. 6.28 crore, which was not awarded by the State Commission. The State Commission held that this amount is to be claimed separately.

Submissions by the Respondent No.2/PTC:

74. The learned counsel appearing for the Respondent No.2/PTC submitted that it is denied that the Impugned Order does not contain any reason whatsoever for granting the interest to the Appellant on the principle amount payable by the Respondents. It is denied that the Impugned Order is sans reason to any extent and therefore it is denied that the same is liable to be set aside. It is submitted that after considering all submissions of the parties, the State Commission found an amount of Rs. 88.123 Crores payable by the Respondents to the Appellant. The State Commission had specifically framed an issue regarding interest and accordingly rendered a corresponding finding in the Impugned Order. Hence, the contrary to the averments of the Appellant, the Impugned order is reasoned and warranting no interference from this Tribunal. Notwithstanding the foregoing, and without prejudice to the submissions that the Impugned order is well reason qua the issue of interest, it is also relevant to note that it is a settled principle of law that even if a definite finding is not given by the Court, if the same is noted as an issue and not granted, the same is deemed to have been rejected thereof.

75. It is denied that specifically granting interest, in addition to the amounts found due to the Appellant, was a sequitur to the same. It is denied that non-grant of interest is erroneous and illogical and

absurd. It is denied that the State Commission has mechanically reiterated its decision of grant of principal amount without arriving at any conclusion as far as interest is concerned. It is denied that the Impugned Order suffers from a patent and palpable error and is liable to be set aside to the extent that it does not grant interest. It is submitted that while passing the Impugned Order dated 12.07.2016, the State Commission had specifically framed the following five issues for consideration:-

- (a) "Whether the present petition preferred by LAPL is admissible"
- (b) Whether the amount of Rs. 99.30s calculated by the Petitioner, for the period from 07.05.2011 to 21.03.2013 is correct and payable by the respondents.
- (c) Whether the respondents should pay the tariff determined by the Commission for the power being supplied/to be supplied beyond the FY 2012-13
- (d) Whether the amount outstanding under "b" above, attracts interest @ 18% p.a.
- (e) Whether the Petitioner be allowed the use of blended coal comprising linkage coal and alternate coal viz e-auction/open market coal due to shortage of linkage coal for supply of power to the respondents.

76. The learned counsel appearing for the Respondent No.2 submitted that from a perusal of the Impugned order it is evident that the State Commission had duly analysed and dealt with the issue of interest. After considering the facts and circumstances of the case, the State Commission quantified and crystallised the claim by way of a money decree. It is relevant to note that prior to the date of the Impugned

Order, no amounts were liable to be paid to the Appellant. Only once the amount was crystallised in the Impugned Order, a liability was thereupon cast on the Respondents. The question of payment of interest for a period prior to the Impugned Order, when all payments had been timely made and no additional amount was due, is without any merit. That the same has been rightly not granted by the State Commission, after due consideration. The Hon'ble Supreme Court in a catena of cases has observed that interest should not be awarded as a matter of right, without crystallisation of amounts payable and the same cannot be claimed only on the ground of equity.

Submissions by the Respondent No.3/HPPC:

Interest is not admissible in a proceeding held for computation.

77. The amount of Rs. 88.123 crores is the tariff determined/computed by the State Commission, as admissible to The Appellant. The above amount, as determined by the State Commission, has been paid by HPPC to Lanco within the stipulated time as provided in the impugned order (3 months from the passing of the impugned order).
78. In the proceedings leading to the said order dated 23.01.2015, Lanco did not claim any interest. It claimed only the tariff.
79. In the earlier order dated 23.01.2015, the State Commission had not considered the grant of any interest. The operative part of the order dated 23.01.2015 reads as under:

“In view of the above, the tariff worked out by the Commission at generator’s bus for the disputed period beginning 7th May, 2011, for supply of power from LAPL Unit – 2 to Haryana based on the norms approved in this Order is as under (till further Order is passed in the matter by the Hon’ble Supreme Court).

<i>Tariff Tariff (Rs./kWh)</i>	<i>Tariff Tariff (Rs./kWh)</i>
<i>7 th May, 2011 to 31st March, 2012</i>	<i>2.8875</i>
<i>FY 2012-13</i>	<i>2.9218</i>

Implementation of the Tariff Order:-

This Order shall be reckoned to have come into effect from the date of commencement of supply from LAPL Unit – 2 in compliance of the Interim Order dated 03.01.2011 of the Hon’ble APTEL for the period FY 2011-12 and FY 2012-13. For the subsequent period of dispute, tariff shall be worked out based on cost parameters and norms approved in this Order till further Order is passed in the matter by the Hon’ble Supreme Court.

The details of tariff calculations are given in Annexure A to E of this Order. The tariff petition filed by LAPL in pursuance of the Hon’ble APTEL’S judgment dated 3.01.2014 is accordingly disposed of.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 23rd January, 2015.”

80. The proceedings leading to the impugned order is by way of execution/implementation of the order dated 23.01.2015 and in such execution proceedings, there cannot be an additional claim made for interest, particularly, when there is no default or failure.
81. The relevant facts for consideration of this Tribunal are as under:
- a. The Appellant filed the Petition HERC/PRO-3 of 2016 leading to passing of the impugned order for implementation of the

order-dated 23.01.2015 passed by the State Commission in HERC/PRO-5 of 2014.

- b. In the Petition HERC/PRO-5 of 2014 filed by The Appellant, there was no claim made by The Appellant regarding interest to be paid by HPPC on the principal amount.
- c. The order-dated 23.01.2015 passed by the State Commission in HERC/PRO-5 of 2014 while re-determining tariff has not awarded any interest to The Appellant. The order-dated 23.01.2015 was passed by the State Commission pursuant to the order dated 03.01.2014 passed by this Tribunal in Appeal No. 65 of 2013 remanding the matter back to the State Commission. It is submitted that The Appellant had not prayed for interest in Appeal No. 65 of 2013 also.
- d. The order dated 23.01.2015 did not compute the amount payable to The Appellant and only decided on the tariff to be payable to The Appellant. The order dated 23.01.2015 was challenged both by The Appellant in Appeal No. 117 of 2015 and by HPPC in Appeal No. 107 of 2015 filed before this Tribunal. It is submitted that The Appellant has also not prayed for interest in Appeal No. 117 of 2015 filed before this Tribunal.
- e. The Appeal Nos. 117 of 2015 and 107 of 2015 has been decided by this Tribunal on 21.03.2018 wherein this Tribunal has upheld the order dated 23.01.2015 passed by the State Commission, except on the issue of Operation & Maintenance expenses.

82. In view of the above, it is submitted that the decision of the State Commission in not granting any relief for interest in the impugned order is correct and challenge made by the Appellant is not sustainable. Reference in this regard may be made to:

- a. Order dated 05.10.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 179 of 2017 in the case of Nabha Power Limited – v- Punjab State Power Corporation Limited and Anr. wherein the Hon'ble Court (2018) 3 SCC 716 has denied the claim of interest made by Nabha Power Limited in view of the fact that (a) the claim of interest was being made for the first time before the Hon'ble Court and (b) it was not the case where undisputed bills remained paid. The relevant part of the order is as under:

“71. Last but not the least is the claim for interest. It is undisputed that no such claim has been laid so far, at any stage. The appellant claims to rely upon Clause 11.3.4 read with Clause 11.6.8. We have extracted the relevant clause aforesaid. No doubt there is a provision for a late payment surcharge in the event of delay in payment of a monthly bill but in the present case it is not as if there are undisputed bills remaining unpaid. There were serious disputes regarding the interpretation of the contractual clauses itself. We do not think that the present one is a fit case where the principle of compensation for deprivation should enure for the benefit of the appellant as a measure of restitution. More so as it has not been claimed by them at any stage. It does appear that this inclusion in the written synopsis does seem to arise as canvassed by the learned Senior Advocate for the first respondent on account of the Tribunal not finding favour with such claim in the remand proceedings by reason of no claim being laid towards the same. We are, thus, not inclined to grant this claim.”

- b. The judgment dated 27.08.1990 passed by the Hon'ble Supreme Court in State of Punjab –v- Krishan Dayal Sharma reported in (2011) 11 SCC 212, wherein, it was held as under:

“6. There is no dispute between the parties that the decree which was put to execution did not contain any order or direction for the payment of any interest on the amount which was payable to the decree-holder consequent to the declaration made by the court decreeing the respondent's suit. There is further no dispute that no relief for interest had been claimed by the respondent in the suit nor any such claim was discussed or awarded by the court decreeing the suit.

7. In the absence of pleadings and directions in the judgment or decree which was under execution, it was not open to the executing court to award interest. The executing court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice.

8. The right of the decree-holder to obtain relief is determined in accordance with the terms of the decree. The executing court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The executing court failed to appreciate that in those decisions direction for payment of interest had been issued by the court while granting relief for reinstatement or payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the executing court. No doubt the courts have power to award interest on the arrears of salary or pension or other amounts to which a government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the executing court in the absence of any direction in the decree.

9. In this view the executing court in the instant case acted in excess of its jurisdiction in awarding interest to the respondent decree-holder. In the result, we allow the appeal, set aside the order of the executing court awarding interest to the decree-holder. There will be no order as to costs.”

- c. The judgment dated 25.11.2010 passed by the Hon'ble Supreme Court in Sarup Singh –v- Union of India (2011) 11 SCC 198

following the above judgment passed in Krishan Dayal Sharma's case (supra).

Interest cannot be claimed

83. As mentioned above, in the present case, the amount payable got crystallized only with passing of impugned decision of the State Commission.
84. The interest claimed by The Appellant is otherwise not admissible until the determination of the amount, in the absence of any application of statutory or contractual provisions providing for payment of any interest otherwise for any failure or default on the part of the other party.
85. It is further submitted that interest is payable even in equity only if there are circumstances attracting equitable jurisdiction. Another ground on which interest can be claimed before the decision on the liability if the Interest Act applies. It is submitted that none of the above circumstances for the claiming the interest has any application to the present case.
86. The reliance of The Appellant on the judgment passed by the Hon'ble Supreme Court in South Eastern Coalfields Limited –v- State of Madhya Pradesh (2003) 8 SCC 648 is not applicable to the facts of the present case. In the said case, the issue was payment of royalty to the Government. In the South Eastern case (supra), the liability had already been crystallized and the interest became payable because of failure to pay the amount as per the liability.

Further the claim was covered under Section 61 of Sale of Goods Act, 1930.

87. The above decision in South Eastern case (supra) has been distinguished by the Hon'ble Supreme Court in National Thermal Power Corporation Limited –v- Madhya Pradesh State Electricity Board (2011) 15 SCC 580 in the context of interest claim under payment under the Electricity Act,2003 by a generating company to the procurers. In the said decision, the Hon'ble Supreme Court had held that no interest was payable by NTPC to the Electricity Boards after determination of final tariff which was in excess of the provisional tariff charged by NTPC. The Hon'ble Supreme Court, besides differentiating the decision in South Eastern Coalfields Limited -v- State of Madhya Pradesh (supra), has referred to various other decisions in support of non-applicability of interest. The relevant extracts of the judgment passed by the Hon'ble Supreme Court in National Thermal Power Corporation Limited –v- Madhya Pradesh State Electricity Board (2011) 15 SCC 580 is as under:

“24. The counsel for the Electricity Boards laid stress on the judgment of this Court in South Eastern Coalfields Ltd. v. State of M.P. [(2003) 8 SCC 648] wherein this Court had held that a party finally found to be entitled to a relief in terms of money, would be entitled to be compensated by the award of interest which would also be payable in equity. In this matter, the appellants were operating coal mines in the State of Madhya Pradesh. The Central Government enhanced the royalty payable on coal, and the State Government was entitled to recover the same from the appellant who would pass on the burden to their purchasers. The appellant, however, challenged the hike in royalty in the High Court of M.P. Initially an interim order was passed and subsequently the notification was quashed. On appeal, the order of the High

Court was set aside. Subsequently, the State Government claimed interest from the appellant at the rate of 24% per annum in regard to the period when the enhanced royalty was delayed. The appellant passed on this claim to their consumers who challenged the same and succeeded in the High Court in reducing the interest from 24% to 12%. While dismissing the appeal filed by the appellant, this Court held that the interest would be payable even in equity and on the basis of the principle of restitution which is recognised in Section 144 of the Code of Civil Procedure.

25. *In this connection, it is material to note that the claim in South Eastern Coalfields[(2003) 8 SCC 648] was essentially covered under Section 61 of the Sale of Goods Act, 1930, and the interest by way of damages was payable as per this statutory provision itself. The liability had been crystallised and the interest had become payable because of the failure to pay the amount as per the liability. Besides, there was nothing in the agreement between the parties to the contrary on the issue of grant of interest. In the present matter, we have the second proviso to Regulation 79(2) of the 1999 Regulations which permitted the generating company to continue to charge the existing tariff for such period as may be specified in the notification by the Commission, and the notifications permitted continuation of the existing tariff as on 31-3-2001, until the final tariff was determined. There was no provision for payment of interest therein. The very fact that interest came to be provided subsequently by a notification under the Regulations of 2004 is also indicative of a contrary situation in the present matter viz. that interest was not payable earlier.*

26. *Union of India v. A.L. Rallia Ram [Union of India v. A.L. Rallia Ram, AIR 1963 SC 1685] was one of the earliest cases where the principles concerning payment of interest by way of restitution came up for consideration. In August 1946, the Government had entered into a contract with the respondent for sale of a stock of American cigarettes lying at different places. After some deliveries were taken by the respondent, he found part of the stock unfit for use. The Government cancelled the contract and asked the respondent to return the cigarettes which were unfit for use. An arbitration followed and compensation was awarded for the loss suffered by the*

supplier along with interest. This Court noted that there was no provision for interest in the contract or in the Act, and set aside the award to the extent it granted interest. The Court laid down the proposition that interest is payable in equity only if there are circumstances attracting equitable jurisdiction or under the Interest Act and quoted with approval the propositions laid down in *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji* [(1937-38) 65 IA 66 : AIR 1938 PC 67] .

27. In *Union of India v. Watkins Mayor and Co.* [*Union of India v. Watkins Mayor and Co.*, AIR 1966 SC 275] the plaintiff had entered into a contract with the defendant Union of India for supply of drums made out of iron sheets to be supplied by the latter. Though the iron sheets were initially supplied to the plaintiff, subsequently the defendant cancelled the contract and removed the iron sheets in small quantities from time to time for a period of nearly five years. The plaintiff claimed the compensation under various heads, claiming that they had acted as bailee for the defendants. This included (a) godown rent, (b) chowkidar's salary, (c) terminal tax, (d) cartage, (e) unloading charges, (f) cooliage and (g) interest. This Court accepted the claim of the plaintiff with regards to Items (a) to (f) but rejected the claim with respect to interest.

28. The Court in *Watkins Mayor* [*Union of India v. Watkins Mayor and Co.*, AIR 1966 SC 275] relied upon the observations of the Judicial Committee of the Privy Council in *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji* [(1937-38) 65 IA 66 : AIR 1938 PC 67] to the following effect: (IA p. 72)

“... As observed by Lord Tomlin in *Maine and New Brunswick Electrical Power Co. v. Hart* [1929 AC 631 : AIR 1929 PC 185] AC at p. 640: AIR at p. 188

‘In order to invoke a rule of equity it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the non-performance of a contract of which equity can give specific performance.’”

It also referred to the judgment and ratio in *Union of India v. A.L. Rallia Ram* [*Union of India v. A.L. Rallia Ram*, AIR 1963 SC 1685] and then held that interest would be claimable only if there is an agreement or when the interest is

payable by the usage of the trade having force of law or there is some substantive statutory provision. Thus, the rule of equity could not be brought in to justify the claim of interest.

29. *In CST v. Hindustan Aluminium Corpn. [(2011) 15 SCC 596 : (2002) 127 STC 258] the dispute was regarding the classification of certain products of a dealer for payment for sales tax. After the dispute was resolved by this Court, the dealer made the payment of the differential amount of tax. The department claimed interest only from the date of filing of return. This Court held that there was no liability on the dealer for the amount of tax unpaid which was the subject-matter of dispute until the dispute was resolved. Ideas of equity could not be brought in such manner and there could be no liability for interest until assessment was finalised.*

30. *It is true that the power to make restitution is inherent in every Court as observed by this Court in Kavita Trehan v. Balsara Hygiene Products Ltd. [(1994) 5 SCC 380] which was relied upon by the Council for the Electricity Boards. Thus, restitution will apply even where the case does not strictly fall under Section 144 CPC. However, we must note that Kavita Trehan [(1994) 5 SCC 380] was a case where the submission was made to the effect that termination of the contract was wrong and an injunction was sought in a civil suit to restrain the respondent from interfering with the disposal of goods. It was in this context that the principle of restitution was applied. It is, therefore, difficult to appreciate as to how the Appellate Tribunal could bring in either the principles of justice, equity and fair play or that of restitution in the present case. What is important to note is that in Para 16 of its order the Appellate Tribunal has specifically observed in terms that this was not a case where the beneficiaries were made to pay the excess tariff at the instance of NTPC through force, coercion or threat. This being the position the principles of equity, justice and fair play could not have been brought in to award interest to the Electricity Boards.*

31. *It is true that there was delay in the process of determination of the tariff. We are informed that the Commission became functional only on 15-5-1999. NTPC had filed the tariff petitions duly as required by the Central Commission. The delay in the case of Kawas and Gandhar*

Power Stations was because of the Commission requiring them to appropriately devise norms and parameters. As far as Rihand Station is concerned, one of the beneficiaries, namely, Rajasthan Rajya Vidyut Vitaran Nigam Ltd. had obtained stay of proceedings before the Commission from the High Court of Rajasthan. NTPC was not in any way responsible for these factors. Ultimately, the tariff was reduced, but the tariff charged by NTPC in the meanwhile was in accordance with the rates permitted under the notifications issued by the Commission. It cannot, therefore, be said that NTPC had held on to the excess amount in an unjust way to call it unjust enrichment on the part of NTPC, so as to justify the claim of the Electricity Boards for interest on this amount.”

88. In view of the above, the contention of The Appellant that once the principal amount is claimed and allowed, the grant of interest is a logical sequitur to the same is devoid of any merits and is contrary to the principles laid down in the above decisions.

89. The contention of the Appellant that the State Commission has not applied its mind to the question of interest is baseless. The State Commission, in the impugned order, has formulated the issue for consideration as:

“d) Whether the amount outstanding under ‘b’ above, attracts interest @ 18% p.a.”

90. The State Commission has, thereafter, discussed and analysed the said issue framed and has held as under:

“The Commission has examined the issue framed at d) and observes as under:-

The respondents have argued that the petitioner's claim of Rs. 99.30 Crore includes interest @ 18% per annum. It has been argued that the petitioner had neither claimed interest in any petition nor has any interest been granted to the petitioner in the Commission's Order dated 23.01.2015. Hence, interest claim is not tenable as the same is extraneous, impermissible and contrary to the *ibid* Order of the Commission. The Commission has examined the above averment of the respondents and is of the view that this Commission, in its Order dated 23.01.2015, had explicitly held as under:- "This Order shall be reckoned to have come into effect from the date of commencement of supply from LAPL Unit -2 in compliance of the Interim Order dated 03.01.2011 of the Hon'ble APTEL for the period FY 2011-12 and FY 2012-13". In view of the above, there ought not to have been any occasion for the petitioner to run from pillar to post to realize the amount in accordance with the tariff determined by the Commission *vide* the *ibid* Order. Nonetheless, the petitioner was compelled to enter into correspondence with the respondents and also approach the Hon'ble APTEL for execution of this Commission's Order. The Commission observes that the respondents had disputed the payable amount of Rs. 99.30 Crore as claimed by LAPL for the period 07.05.2011 to 31.03.2013 on the plea that required computation of payable amount corresponding to actual PLF achieved was required to be done by the Commission. The respondents, as is apparent from their submission, were of the view that LAPL cannot claim any payment in pursuance of the Order dated 23.01.2015, as LAPL has itself challenged the Order dated 23.01.2015 in the Hon'ble APTEL and besides respondent no. 2 has also filed an appeal against the said Order in the APTEL. It was stated that both the appeals stand admitted, pleadings have been completed and are listed for final hearing and any payment in pursuance of Order dated 23.01.2015 can be claimed by LAPL only after these appeals are decided by the APTEL. Now that all these issues have settled/ addressed in this Order, the respondents are directed to make payment for the period 07.05.2011 to 31.03.2013 as worked out in this Order and in the manner as provided herein.

The Commission, accordingly, in respect of issue at (d) above, decides that the respondents shall make payment of the payable differential amount of Rs. 88.123 Crore for the period 07.05.2011 to 31.03.2013 in three equal monthly installments, the first installment shall be paid by 31st July, 2016. Any delay in payment of installment will attract simple interest @ 1.25% per month or part

thereof until the amount is cleared. The amount claimed by LAPL towards ED/Cess would also be paid by the Respondents in the similar manner in three equal monthly installments subject to submission of requisite documents by LAPL to the Respondents.”

91. The State Commission has, thus, considered the entire aspect and has not allowed the interest for the period till the impugned order, granting time to make payment in future and in case of a default, a direction to pay interest for the future if the amount is not paid within the time stipulated as per the impugned order.
92. We have heard the learned counsel for the Appellant and the learned counsel for the Respondent No.1, 2 and 3 at considerable length of time and after careful consideration of the Impugned Order passed by the State Commission and after going through the written submission and rejoinder filed by the counsel appearing for both the parties and after critical analysis of entire relevant material available on records and the pleadings available on the file, the only issue which arises for our consideration in the instant Appeal is:-

“Whether the State Commission erred in law in not directing payment of interest on the outstanding differential amount payable by the Respondents to the Appellant?”

93. Our findings and analysis

- i) There was a change in law and as a result of which the Appellant had to buy coal which was three to four time costlier than the linkage coal resulting into increased cost of generation.

- ii) Under these circumstances the Appellant was forced to arrange additional funds to keep the plant in operation and generate electricity to supply power as per its commitment. The State Commission has accordingly redetermined tariff and has given enhanced tariff from the date of commencement of supply.
- iii) The payment of interest was a issue framed by the State Commission, however, the State Commission did not record any reason for not granting the same. The most important aspect in this Appeal is that the Appellant incurred additional expenditure over and above the capped tariff of Rs. 2.32/kWh and accordingly the State Commission redetermined it to Rs.2.8875/kWh for FY 2011-12 and Rs.2.9218/kWh for the FY 2012-13. Though the differential amount have been paid by the Respondent No.3 to Appellant. No carrying cost/interest was paid.

However, it is pertinent to note that the differential amount between the capped tariff and the redetermined tariff was payable in the FY 2011-12 and FY 2012-13 but was actually paid subsequently after a gap of several years. It is a well established fact that money not paid in time but paid subsequently at a much later stage after lapse of several years, losses its real money value to a great extent and is effectively less money paid.

- iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.

- v) The Appellant has placed reliance on several judgments passed by this Tribunal in several similar matters wherein it has been clearly brought out that the developers are entitled to interest on the differential amount due to them as a consequences of redetermination of tariff. It has been clarified in various judgments that the interest is not a penal charge if it is fixed according to commercial principles. It is only compensation for the money denied at the appropriate time. The Appellant has also relied on the judgment by this Tribunal in the following:
- i. *SLS Power Limited V. Andhra Pradesh Electricity Regulatory Commission and Ors. in Appeal Nos. 160, 166, 168, 172, 173 of 2011 and 9,18,26,29 and 38 of 2012*
 - ii. The judgment of this Tribunal in SLS Power case has been reaffirmed recently in *Adani Power Limited v. Central Electricity Regulatory and Ors. in Appeal No. 210 of 2017*
 - iii. The judgment in Adani case has been reaffirmed by this Tribunal in its decision dated 21.12.2018 in Appeal No. 193 of 2017- GMR Kamalanga Energy Ltd. v. CERC
 - iv. The judgment in Adani case has been reaffirmed by this Tribunal in its decision dated 21.12.2018 in Appeal No. 193 of 2017- GMR Kamalanga Energy Ltd. v. CERC
 - v. *Alok Shanker Pandey v. Union of India (2007) 3 SCC 545*, wherein the Hon'ble Supreme Court of India
- vi) In view of the above it emerges that the State Commission committed an error by not taking these aspects into consideration

while deciding on the matter and not granting interest to the Appellant.

- vii) The Respondent No.3 have submitted that interest cannot be paid until the amount is crystallized. It is pertinent to note here that though the amount was crystallized by the State Commission vide their Impugned Order but the most important fact to be kept in mind is that the State Commission redetermined the tariff from the date of commencement of supply which clearly shows that the due date is the date of commencement of supply. In such matters the crucial point for consideration is that interest is not a penalty or punishment at all. But, it is the normal accretion on capital. Equity demands that the paying party should not only pay back the principal amount but also the interest thereon to the recipient and therefore the argument of the Respondent does not hold any ground and needs to be rejected.
- viii) The Respondent No.3 has however submitted that the interest was not claimed by the Appellant in their earlier proceedings. The Appellant have submitted that it cannot have and did not claim interest in the tariff application filed before the State Commission as the said proceedings was for tariff determination only and not for recovery of amount as such the scope of proceedings and the order was limited to determination of tariff.

ORDER

For the foregoing reasons, as stated supra, the instant Appeal filed by the Appellant is allowed in part.

The Impugned Order dated 12.07.2016 passed in Petition No. HERC/PRO-3 of 2016 by the first Respondent/the State Commission to the extent regarding not granting interest as indicated above is hereby set aside.

The matter stands remitted back to the first Respondent/the State Commission with the direction to pass the order in the light of the observations made in the preceding paragraphs above in accordance with law as expeditiously as possible within a period of three months after receiving the copy of this judgement.

The Appellant and the Respondents are hereby directed to appear before the 1st Respondent/the State Commission personally or through their counsel on 01.07.2019 without further notice.

No order as to costs.

Pronounced in the Open Court on this 22nd day of May, 2019.

(Ravindra Kumar Verma)
Technical Member

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REPORTABLE/NON-REPORTABLE

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(Justice Manjula Chellur)
Chairperson