Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE NO. 316 of 2018

In the matter of
Case of Adani Electricity Mumbai Ltd. (Generation Business) for review of Mid Term Review Order dated 12 September, 2018 in Case No. 202 of 2017

Coram

Anand B. Kulkarni, Chairperson
I.M. Bohari, Member
Mukesh Khullar, Member

Adani Electricity Mumbai Limited (Generation Business) : Petitioner

Appearance

For the Petitioner : Ms. Deepa Chavan (Adv.)

ORDER

Date: 7 December, 2018

1. M/s. Adani Electricity Mumbai Limited-Generation Business (AEML-G) filed a Petition, on 26 October 2018 under Section 94 of the Electricity Act, 2003 **(EA)** and Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 seeking review on certain aspects of the Commission's Mid-Term Review (**MTR**) Order dated 12 September, 2018 in Case No. 202 of 2017 ('**impugned Order'**) in the matter of the Mid Term Review (MTR) Petition filed by RInfra-G for Truing Up of FY 2015-16 and FY 2016-17, Provisional Truing Up of FY 2017-18 and Revised Projections of ARR and Determination of Tariff for FY 2018-19 and FY 2019-20.

2. **The main prayers of the Petitioner are as follows**:-

a. *Review the order dated 12.09.2018 passed in Case No. 202 of 2017 and consider the issues addressed in paragraphs 5 to 8 hereinabove;*

b. *That this Hon'ble Commission be pleased to re-instate the IoWC treated as efficiency gains for FY 2016-17;*

c. *That this Hon'ble Commission be pleased to re-instate the PBT for FY 2015-16 & 2016-17 by considering the actual expenses in the items of ARR & reduce the efficiency gain retained by the Generator from the Revenue to work out the Regulatory PBT and consequentially revise the Income Tax for FY 2015-16 & FY 2016-17. Since in the Order, the Income tax for FY 2017-18 to FY 2019-20 is considered based on the approved Income tax for FY 2016-17, the reworked Income tax for FY 2016-17 may also be considered for FY 2017-18 to FY 2019-20.*

d. *(i) That this Hon'ble Commission be pleased to accept and approve the rate of coal purchase for emergency purpose during FY 2017-18;*

(ii) That this Hon'ble Commission be pleased to allow the rate of imported coal as discovered through competitive bidding and hold that the same shall be considered at the time of final truing-up of FY 2017-18;

e. *That this Hon'ble Commission be pleased to allow the cost of DPR schemes (as submitted in the Petition in respect of cost overrun as well as part capitalisation);*

3. AEML-G, in its Petition has stated that pursuant to a Scheme of Arrangement, which has been approved by the Hon'ble High Court of Bombay vide its Order dated 20 November, 2017 read with earlier Order dated 19 January, 2017, the Mumbai Generation, Transmission and Distribution business ("GTD Business") of Reliance Infrastructure Limited (RInfra) has vested in M/s. Adani Electricity Mumbai Limited (formerly known as Reliance Electric Generation and Supply Limited). The Commission vide its Order dated 28 June, 2018 passed in Case Nos. 139 and 140 of 2017, has approved the assignment of the Transmission and Distribution Licence of RInfra to Adani Electricity Mumbai Limited. Subsequently, on 29 September, 2018, the Commission has assigned the Transmission Licence and Distribution Licence to M/s. Adani Electricity Mumbai Ltd. Accordingly the Review Petition is filed in the name of 'Adani Electricity Mumbai Limited' (AEML).

4. The hearing was conducted on 27 November, 2018 wherein AEML-G reiterated the issues raised in the Petition.

5. AEML-G has sought the review of the Order in Case No. 202 of 2017 on four issues, and the grounds and submissions of AEML-G are elaborated in the following paragraphs:-

6. **Issue 1: Consideration of difference between Normative Interest on Working Capital and "Nil" actual Interest on Working Capital as Efficiency Gains: (For FY 2016-17)**

AEML-G's submission

6.1 The Petitioner in the MTR Petition had claimed interest on working capital on normative basis as per Regulation 31.1 of the MYT Regulations, 2015 by applying the norms to the actuals. Also, the Petitioner had further submitted that in line with the judgments of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 203 of 2010 and Appeal Nos. 17, 18 and 19 of 2011, no efficiency gains have been considered on the Interest on Working Capital (IoWC) and entire interest on working capital as worked out above has been claimed in the truing-up.

6.2 While passing the impugned Order, the actual IoWC has been considered as nil thereby considering the entire normative IoWC as Efficiency Gain. The Petitioner is seeking review on the above issue.

6.3 The Petitioner's business, being an integrated business, the cash flows of individual business segment cannot be segregated from one another, making it impossible to actually allocate any interest cost of short-term loans or working capital loans towards any particular business segment.

6.4 In an integrated business, the presence of Working Capital can only be inferred, but not directly seen from any loan or dedicated working capital funding. The inference has to be drawn from the cycle of payables and receivables in the business. There can be no denial of the fact that working capital is required for carrying on the business through borrowed funds.

6.5 It was submitted in the MTR Petition that the working capital funding is through internal accruals of Corporate treasury and hence no interest is booked in Accounts, whereas in Petition, interest is computed normatively as per MYT Regulations.

6.6 The Petitioner demonstrated by documentary evidences, that it gets no credit from its coal supplier or transporter and also submitted details of its actual coal stock, etc. and it was evident that due to absence of any credit on purchase side and the necessity to maintain stock, there was no way to manage cash inflows and outflows in such a manner so as to subvert the need for bridge funds or working capital.

6.7 APTEL Judgment in Appeal No. 111 of 2008 dated 28 May, 2009 has specified that even when working capital has been funded through internal accruals of the Licensee (being an integrated entity), cost of such internal funds should be considered. Accordingly the said decision is applicable to the present case also and efficiency gain cannot be denied merely because there are no external borrowings.

Relevant extract is given below:

"The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on working capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as working capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards interest on working capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals and the cost of generating such accruals. The cost of such accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on working capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on working capital as per Regulation 19 has merit."

6.8 It is submitted that the said decision is applicable on all force to the present case and efficiency gain cannot be denied merely because there are no external borrowings. It is submitted that the said judgment which has been followed by the Commission in various Orders was also required to be given effect to in the Order which has not at all been considered therein and thus there is a clear error apparent on the face of the Order. The Judgment of the Hon'ble Tribunal is to be made applicable, regardless of the MYT Regulations.

6.9 Accordingly, there is an error apparent on the face of the Order, since the binding decision of the Hon'ble Tribunal clearly holds that working capital funded through by internal sources carries a cost.

6.10 Therefore, the Commission is requested to restore the share of efficiency gains, which was deducted from the ARR of the Review Petitioner for FY 2016-17.

Commission's Analysis and Ruling

6.11 Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004 governing review specifies as follows:

" Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the

discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."

Therefore, the ambit of review is limited. The issues raised in this Review Petition are evaluated accordingly.

6.12 The Commission notes that in the impugned Order, sharing of Efficiency Gains / Losses on Interest on Working Capital for FY 2016-17 has been undertaken as per clause 31.6 of MYT Regulations,2015 which states that the actual interest on working capital incurred and substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss. The relevant Regulation is reproduced below:

"31.6 For the purpose of Truing-up for each year, the variation between the normative interest on working capital computed at the time of Truing-up and the actual interest on working capital incurred by the Generating Company or Licensee or MSLDC, substantiated by documentary evidence, shall be considered as an efficiency gain or efficiency loss, as the case may be, on account of controllable factors, and shared between it and the respective Beneficiary or consumer as the case may be, in accordance with Regulation 11:

6.13 It is an admitted fact, both in the MTR Petition as well as the review Petition, that the actual interest on working capital is "NIL". Also, the audited Accounting Statement Format submitted by the Petitioner for FY 2016-17 for its generation business, highlighted no short term loans for generation business. Therefore, there was no actual documentary evidence submitted by the Petitioner which indicated the actual cost incurred against the Interest on Working Capital Loan. Hence in line with the above Regulations, the entire normative IoWC has been considered for sharing in the impugned Order.

6.14 The Petitioner contends that the APTEL Judgment has held that in the event, working capital has been funded through internal accruals of the Licensee (being an integrated entity), cost of such internal funds should be considered. In accordance with the above ATE Judgment, the Commission, in the impugned Order has allowed the normative interest on working capital in line with Clause 31.1 of MYT Regulations, 2015. Therefore, the requirement of working capital has been assessed by the Commission in the said Order based on cycle of payables and receivables in the business which is applicable to Petitioner on normative basis in line with the clause 31.1 of MYT Regulations, 2015.

6.15 Also, as regards to the applicability of the referred Hon'ble APTEL Judgment, the Commission, in the impugned Order, has already stated that the earlier ATE Judgement was with reference to the earlier MYT Regulations, 2011 and is not applicable to the current MYT Regulations, 2015 as the current Regulations clearly states that actual interest on working capital needs to be demonstrated through documentary evidence.

6.16 In line with Clause 31.6 of MYT Regulations, 2015, the Commission has undertaken the sharing of efficiency gains and losses on IoWC, primarily because there was no documentary evidence which brought out the actual cost incurred for the Interest on Working Capital.

6.17 In view of the foregoing, the Commission is of the view that there is no error apparent on the face of the record and no ground has been made out for review of the impugned Order on this aspect which would satisfy the requirements of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004.

7. Issue 2: Consideration of normative cost for calculation of Profit before Tax (PBT) : (For FY 2015-16 and FY 2016-17)

AEML-G's submission

7.1 The Petitioner in the MTR petition had computed income tax for FY 2015-16 and FY 2016-17 considering stand-alone Regulatory Profit before Tax (PBT) for its Generation business in line with APTEL Judgement.

7.2 APTEL in its judgement dated 2 December 2013 in Case No. 138 and 139 of 2012 has stated that the income tax assessment of the licensee must be done on standalone basis and to compute the income tax entitlement by replacing RoE by Regulatory Profit Before Tax i.e. income less permissible expenses.

"41. Summary of findings:-

a. The Tribunal in Review Petition No. 251 of 2006 has laid down the ratio that the income tax assessment of the licensee must be done on standalone basis. In Review Petition No. 173 of 2011 the Tribunal has provided the methodology for assessing the income tax liability of the licensee…

*…The Commission is directed to reassess the income tax liability on stand-alone basis a*nd issue the *consequential relief to the Appellant…*"

7.3 The Petitioner in the MTR Petition had computed income tax for FY 2015-16 and FY 2016-17 considering stand-alone Regulatory Profit before Tax (PBT) for its Generation business.

7.4 While passing the impugned Order, the efficiency gains on fuel cost, working capital and O&M cost is wrongly adjusted while determining the Regulatory PBT, which resulted in a reduced PBT and Income Tax.

7.5 Income Tax on Efficiency Gains earned by the Licensee or Generating Company is not allowed as per the Regulations. If there is Efficiency Gains, but not earned by virtue of passing on the entire amount back to consumers in the form of revenue surplus, then no incentive or efficiency gains is earned by the Generating Company or Licensee and the corresponding Income Tax is also required to be borne by the consumers, who are benefitted by passing on of the efficiency gains as revenue surplus.

7.6 Alternatively, if entire efficiency gains is earned by the Generating Company or Licensee itself, i.e. no amount out of this efficiency gains is passed on to the benefit of consumers in tariff, then the entire Income Tax corresponding to such Efficiency Gains should also be borne by the Generating Company or Licensee.

7.7 The correct way of determining Income Tax liability should have been to reduce the "earned" (or retained) portion of Efficiency Gains from the Revenue or add it to the Cost, so as to reduce the Regulatory PBT to that extent and correspondingly reduce the Income Tax as well and same is followed as in MTR Order dated 12 September, 2018 in Case No. 200 of 2017.

7.8 Further, the worked out Regulatory PBT is lower than the allowed RoE which means that despite performing better than the norms specified and earning efficiency gains, the Commission has penalized the Petitioner by reducing the PBT lower than the RoE allowed. Therefore, the Regulatory PBT arrived is lower than approved RoE is alone a sufficient ground to review the Order.

7.9 Also, the Commission should have considered normative cost and revenue for working out PBT and added back the efficiency gain as shared with consumers to the PBT in order to compute the correct PBT for tax workings.

7.10 Also, the Commission in the earlier Order dated 18 August, 2016 in Case No. 14 of 2016 has adopted, the approach which is in line with the submission of Petitioner whereby the actual expenses has been considered while working the PBT and has reduced the PBT further by the efficiency gain retained by the Generator.

7.11 Further, the Commission, while approving the MTR Order dated 12 September, 2018 in Case No. 200 of 2017 pertaining to the Distribution business of the Petitioner has considered the net entitlement of IoWC on the expenditure side.

7.12 Accordingly, there has been an error apparent on the face of the Order in not only considering the normative revenue and normative expenses, thereby reducing the efficiency gains to zero, but also, further reduced the retained portion of efficiency gains from the Revenue side thereby suppressing revenue and PBT even further and it has filed the present Review Petition seeking review of the same.

Commission's Analysis and Ruling

7.13 The Commission in the impugned Order has computed Income Tax for FY 2015-16 and FY 2016-17 considering normative Revenue and Cost as approved in the MTR Order and reducing efficiency gain and PLF Incentive in line with applicable MYT Regulations 2011 and 2015 for FY 2015-16 and FY 2016-17 respectively.

7.14 As per Hon'ble APTEL Judgment dated 2 December 2013 in Case No. 138 and 139 of 2012, the tax payable needs to be in line with the Regulatory business on a standalone basis and is stated as follows:

"41. Summary of findings:-

a. The Tribunal in Review Petition No. 251 of 2006 has laid down the ratio that the income tax assessment of the licensee must be done on standalone basis. In Review Petition No. 173 of 2011 the Tribunal has provided the methodology for assessing the income tax liability of the licensee…

…The Commission is directed to reassess the income tax liability on stand-alone basis and issue the consequential relief to the Appellant…"

7.15 Accordingly, in line with the said judgment, Regulation 34.1 of MYT Regulations, 2011 for FY 2015-16 and Regulation 33.1 of the MYT Regulations 2015 for FY 2016-17, the tax payable has been computed on the basis of standalone basis on the Regulatory Profit Before Tax (PBT). Accordingly, whereby all the items of ARR and Revenue considered on normative basis for tariff purpose has been considered for the calculation of income tax in line with the following judgment of Hon'ble APTEL in para 55 of the same order:

"55. ……

Hence, any notional or actual income even within regulated business that is not permissible to be considered as regulatory taxable income cannot be allowed as it would amount to allowance of more than warranted regulatory tax liability/profits.

……..

As such, there is no conflict in the above two Judgments and both can be implemented simultaneously with regulated business being treated separately on a standalone basis and tax liability computed as per applicable tax laws for that business only considering

notional regulatory taxable income. ***This concept is followed by regulators for all items of ARR/Revenue which are considered on normative basis, where irrespective of actual expense/revenue normative expense/revenue is considered for tariff purposes."***

7.16 Also in line with Regulation 34 of MYT Regulations, 2011 and Regulation 33 of MYT Regulation 2015, no Income Tax shall be considered on the amount of efficiency gains and incentive approved by the Commission and accordingly the efficiency gain has been reduced from Revenue for computation of Tax on PBT basis.

7.17 With regards to the submission of Petitioner that the correct way of determining corresponding Income Tax liability should have been to reduce the "earned" (or retained) portion of Efficiency Gains of the Petitioner from the Revenue so as to reduce the Regulatory PBT to that extent and correspondingly reduce the Income Tax as well, the similar methodology has been adopted in computation whereby the efficiency gain of the Petitioner only allowed by Commission to be retained is considered for deduction from Revenue.

7.18 Also, with regards to submission of Petitioner that the Regulatory PBT arrived is lower than approved RoE is alone a sufficient ground to review the Order, it has been analyzed that based on the methodology adopted by the Commission in the Case No. 202 of 2017, the Regulatory PBT approved is higher than RoE approved in FY 2015-16 and lower in FY 2016-17 and hence the argument that the methodology adopted for calculation of PBT results in amount lower than approved RoE cannot be considered right.

Particulars	FY 2015-16	FY 2016-17
RoE Approved (Rs. Crs)	88.23	90.26
Regulatory PBT (Rs. Crs) claimed by Petitioner	157.98	166.36
Regulatory PBT (Rs. Crs) approved in 202 of 2017	100.73	81.77

7.19 Therefore, the approach adopted in the Order is in line with the Order of Hon'ble APTEL and relevant regulations of MYT Regulations 2011 and 2015.

7.20 In view of the foregoing, the Commission is of the view that there is no error apparent on the face of the order and no ground has been shown for review of this aspect such as would satisfy the requirements of Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004.

7.21 As regards the inconsistency in the approach adopted in MTR Order dated 12 September, 2018 in Case No. 200 of 2017 for RInfra-Distribution (Now AEML-Distribution), the

Commission will examine and take its appropriate view at the time of next tariff determination of AEML-D.

8. **Issue 3:- Disallowance of Cost of Imported Coal for FY 2017-18**

AEML-G's submission

8.1 The Petitioner, in the MTR Petition had submitted the details of procurement of coal including the requirement of purchase of 1 vessel of imported coal during FY 2017-18 on emergency basis. Thereafter, imported coal was purchased on competitive bidding and the process adopted was explained in the Petition.

8.2 A complete justification for procuring only one vessel on an emergency basis in FY 2017-18 was provided in the MTR Petition. A notice had been issued by (South Eastern Coalfields Ltd.) SECL on 4 July 2017 highlighting low coal availability due to logistical constraint from July, 2017 onwards and since coal stock at Dahanu Thermal Power Station (DTPS) started depleting rapidly owing to the reduced supply from SECL and had reached alarming levels, it was considered prudent to procure one vessel on emergency basis to avoid loss of generation.

8.3 The Petitioner immediately initiated steps for inviting tenders, but had to resort to emergency purchase, because the process of competitive tendering itself takes time and the power plant of the Petitioner could not be made to wait for the conclusion of the process, signing of contract and purchase and delivery thereafter, as that would have amounted to another few months, when the coal stock level was rapidly depleting. Since the said emergency was not foreseen and in view of urgency, verbal enquiry was made whereby almost all the suppliers declined to offer quoting non-availability of coal in the near future. M/s Avra Commodities Pvt. Ltd responded with its offer for supply of one vessel and accordingly order was placed.

8.4 Since no further details were sought, the Petitioner presumed that the submission has been accepted which clearly brought out the immediate requirement for importing coal. Despite there being a tie-up with SECL, SECL was not in a position to honor the FSA. If given a further opportunity, the Petitioner would have brought to the notice that during FY 2017-18, total 7 vessels of imported coal were procured and out of which only 1 vessel was procured under emergency situation. All the fundamental requirements/prerequisites of a competitive bidding as mentioned by the Commission were fully adhered to except procurement of 1 vessel of coal in emergency situation.

8.5 Non-consideration of the emergency situation explained in the MTR Petition is a clear error apparent on the face of the Order.

8.6 It is further submitted that no trade takes place on HBA Index and only Newcastle and Richard Bay Indices are used. The Petitioner only used the rate of USD 49.04/MT based on HBA Index to justify its contract of USD 68/MT, which was based on Newcastle and Richards Bay Indices of CFR rate. Even in case of competitive bidding, the bidding essentially happens on the discount to the Index value provided by different vendors. In case of emergency, when no bidding could have possibly been carried out, the rate, as linked to internationally accepted indices should have been considered and allowed. Therefore, consideration of HBA rate by the Commission is an error apparent on the face of the record.

8.7 Also, in the MTR Order, the said rate for emergency coal purchase has been disregarded but also has proceeded to consider the same rate even for imported coal that was purchased through proper process of competitive bidding which is an error apparent on the face of the Order.

8.8 With regard to the direction given to initiate the steps for more participation of bidders in competitive bidding, it is submitted that competitive bidding process has been followed and remains undisturbed, any such direction which is futuristic in nature, cannot be a ground, for disallowance of cost of FY 2017-18.

8.9 There is an error apparent on the face of record for considering the price of imported coal on the basis of HBA Indices rate for October 2017 on the premise that competitive bidding was not undertaken when it has indeed done so and all documentary evidences in support of the same were provided.

Commission's Analysis and Ruling

8.10 The MTR Petition had been filed by the Petitioner for True-up of ARR for FY 2015-16 and FY 2016-17, Provisional True up of ARR for FY 2017-18, Revised ARR and Determination of Tariff for FY 2018-19 and FY 2019-20.

8.11 It has been observed that in line with MYT Regulations 2015, the Petitioner, during the initial submission of the Petition, had submitted the data for FY 2017-18 for H1 (April to September 2017) on actual basis and for H2 (October 2017 to March 2018) on estimated basis. However as the year was completed, the Petitioner, on 17 July 2018, submitted only the actual performance parameters and other related ARR components such as O&M cost without any supporting documents for FY 2017-18.

8.12 Also, the imported coal procurement on emergency basis as well as under competitive bidding have been undertaken in H2 of FY 2017-18 and therefore, even the Petitioner, in its MTR Petition had submitted the fuel cost for H2 on projection basis. Relevant extract is given below:

"5.2.2. Transit Loss and Landed Cost of Fuel for FY 2017-18

……..

The landed cost for both the coal purchased in emergency and that which is likely to be determined via competitive bidding, after converting US$ to INR, is expected to be about Rs. 5500 per MT. The rate of imported coal purchased through competitive bidding is also linked to New Castle Index / Richard's Bay Index and shall accordingly vary. ***For the purposes of this Petition, Rs. 5500 per MT is considered for projections of H2 of FY 17-18, exclusive of transit loss"****.*

8.13 Accordingly, based on the above submission in MTR Petition, the projection of the imported fuel cost was considered based on the blending ratio as submitted by the Petitioner with only difference of fuel cost as estimated and specified in the said Order. The Fuel cost has been approved on the provisional basis for FY 2017-18 based on the HBA indices and therefore, the fuel cost incurred through competitive bidding process will be allowed subject to prudence check at the time of true-up of FY 2017-18.

8.14 The consideration of HBA indices is to benchmark the cost and also in line with the explanation provided by Petitioner in their submission against the break-up sought by the Commission on the reliability of the cost of imported coal. The same can be revalidated at the time of true-up.

8.15 With respect to emergency procurement, the Commission, in the MTR Order, has stated that such emergency situation in normal business may arise from time to time and this may not be considered as a normal practice to procure such coal highlighting the emergency event without any competitive bidding.

8.16 The Commission shall separately examine its prudence, considering further details to be submitted during next Tariff Petition. Consequently, there is no ground for raising this issue for review with regards to consideration of rate of imported coal as discovered through competitive bidding in respect of supplies other than emergency supplies.

8.17 Since the events of procurement of imported coal through competitive bidding as well as under emergency procurement pertains to H2 of FY 2017-18 which was purely under projection at the time of filing of MTR Petition, the same may be considered at the time of true-up whereby actual fuel cost may be revalidated based on the prudence check and Petitioner has to justify the cost as compared to the market rate during that point of time with documentary evidence.

9. **Issue 4:- Disallowance of cost of DPR Schemes**

AEML-G's submission

9.1 The Commission disallowed the capitalization on the following aspects:

i. Cost Over-run (FY 2015-16, FY 2016-17)

ii. Part capitalization:- The capitalization for certain schemes has been differed in subsequent years on the "asset put to use" concept.

9.2 On the issue of cost over-run, the Commission has disallowed the capitalization of the following schemes:

a. Procurement of CCTV system and Up gradation of existing LAN network for CCTV and Data management:

The approved cost was Rs. 2 Cr. The claimed capitalization was Rs. 1.546 Cr. for FY 2015-16 and Rs. 0.014 Cr. for FY 2016-17. For FY 2015-16, the Commission allowed Rs. 0.69 Cr. disallowing Rs. 0.86 Cr.

However, the total capitalized cost of Rs. 1.560 Cr. was less than the approved cost of Rs. 2 Cr. Hence there is no cost overrun. The Commission has erred in considering the amount of Rs. 1.14 Cr. as the capitalization till start of FY 2015-16 while computing the cumulative capitalization. This amount is actually the opening CWIP and capitalization till FY 2015-16 is actually zero. Thus, there is no cost overrun and the Commission is requested to allow the capitalization of Rs. 1.546 Cr. for FY 2015-16 and Rs. 0.014 Cr. for FY 2016-17.

b. Strengthening of Plant roads for smooth vehicular movement:

The approved cost was Rs. 2.2 Cr. The claimed capitalization was Rs. 1.15 Cr. for FY 2015-16, Rs. 0.44 Cr. for FY 2016-17 and Rs. 0.24 Cr. for FY 2017-18. Thus the total capitalization of Rs. 1.921 Cr. was less than the approved capitalization. For FY 2016-17, the Commission allowed Rs. 0.14 Cr. disallowing Rs. 0.30 Cr.

The total capitalization is less than the approved cost and hence, there is no cost overrun. The Commission has erred in considering the capitalization till start of FY 2015-16 as Rs. 0.9 Cr. while computing the cumulative capitalization. This amount is actually the opening CWIP and the capitalization till start of FY 2015-16 is actually zero. Therefore, the Commission is requested to allow the capitalization of Rs. 0.44 Cr. for FY 2016-17.

As regards the cost disallowed for FY 2017-18 on the premise of cost overrun, it is submitted that same may be considered by the Commission at the time of truing up for FY 2017-18 as the said cost submitted in the MTR Petition was provisional cost and not the actual cost.

9.3 The Commission has also disallowed the capitalization of the following schemes on the issue of Part capitalization holding that since capitalization is only part, it could not be allowed:

a. Procurement and installation of New CW pump outlet valve:

At DTPS, there are 4 nos. of Cooling Water (CW) pumps. Each CW pump has individual outlet valves, which requires 4 nos. outlet valves and 1 no. of Inter connecting outlet valve. All these valves are in operation individually all the time to cater to condenser cooling water requirements of both units of 2x250 MW. In this project, valves were procured in a phased manner and capitalized accordingly. Different outlet valves were procured during different years and installed at respective CW Pumps. These pumps, along with the respective valves, have been in use from their installation. Installation and use of one pump is independent of the other and hence to say that the assets can only be put to use in FY 2017-18 and to disallow capitalisation in FY 2015-16 and FY 2016-17 on the basis of that, is an error apparent on the face of the Order.

b. Procurement of Online & Wireless vibration monitoring System:

Under this Project, in FY 17-18, online monitoring analyser for all four CW pumps was procured and put in service. In next phase, online monitoring analyser for other equipments will be procured and installed in phased manner as per requirement.

Installation and use of online monitoring analyser for all four CW pumps is independent of online monitoring analyser to be installed for other equipments in subsequent years and hence to say that the assets can only be put to use in FY 2019-20 and to disallow capitalisation in FY 2017-18 on the basis of that, is an error apparent on the face of record.

Further, the capitalization of the scheme for Procurement of Online & Wireless vibration monitoring system, was submitted on the provisional basis. Hence, the same may be considered at the time of final truing-up of FY 2017-18 based upon the actual cost details and the reasons submitted therein regarding partial capitalization.

Commission's Analysis and Ruling

9.4 The Commission has examined the submissions made by the Petitioner on the issue of disallowance of the cost of DPR schemes. The Commission has gone through the format for capitalization plan submitted by the Petitioner alongwith the MTR Petition. In respect of cost over run of following two schemes, Commission's Analysis and Rulings are as below:

a. Procurement of CCTV system and Up gradation of existing LAN network for CCTV and Data management

(Rs. Crore)

Actual Capex till 2015-16	Physical progress	Capitalization					
		till 2015-16	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
1.14	57.19%	0.00	1.546	0.014	0.00	0.00	0.00

The approved cost for the scheme is Rs. 2 Cr. The claimed capitalization is Rs. 1.546 Cr. for FY 2015-16 and Rs. 0.014 Cr. for FY 2016-17. The capitalization till 2015-16 is Nil. However, the capital expenditure/Capex till FY 2015-16 of Rs. 1.14 Cr. had been inadvertently considered as the capitalization till start of FY 2015-16. Acknowledging the error, the Commission allows the additional capitalization of Rs. 69,04,001 for FY 2015-16 and Rs. 1,41,992 for FY 2016-17 as the cumulative capitalization incurred till FY 2016-17 is within the approved cost.

b. Strengthening of Plant roads for smooth vehicular movement

The Commission notes similar error in respect of the scheme for "Strengthening of Plant roads for smooth vehicular movement". The approved cost was Rs. 2.2 Cr. The claimed capitalization was Rs. 1.15 Cr. for FY 2015-16, Rs. 0.44 Cr. for FY 2016-17 and Rs. 0.24 Cr. for FY 2017-18. Thus the total capitalization of Rs. 1.921 Cr. was less than the approved capitalization. Accordingly, the Commission allows the additional capitalization of Rs. 30,58,688 for FY 2016-17. As regards, the cost overrun in respect of FY 2017-18, since the Commission has undertaken provisional truing up for FY 2017-18 through the impugned Order, the Commission would consider the same at the time of final truing-up of FY 2017-18 based upon the actual cost details.

9.5 The Commission has gone through the Petitioner's submissions on the issue of part capitalization for following two schemes :

a. Procurement and installation of New CW pump outlet valve.

The Commission notes that the scheme involves installation of CW pump outlet valves. These valves have been procured and installed for operational Generating Unit in phased manner in different years. These pumps, along with the respective valves, have been put to use immediately after the corresponding Generating Unit has been taken into service after completion of outage period. Installation and use of one pump is independent of the other. Therefore, the justification given by the Petitioner seems to be

acceptable as individual components have been "put to use" in different years and therefore, the Commission allows the capitalization of Rs. 54,13,925 for FY 2015-16 and Rs. 92,01,300 for FY 2016-17.

b. Procurement of Online & Wireless vibration monitoring System

The Commission notes that the scheme involves installation of online monitoring analyzers for different equipments. Since these analyzers pertain to different equipments, these can be put to use in an independent manner and therefore part-capitalization is possible which needs to be allowed. The capitalization towards this scheme has been disallowed for FY 2017-18. Since, through the impugned Order, the Commission has undertaken provisional truing up for FY 2017-18, the Commission would take an appropriate view at the time of final truing-up of FY 2017-18 based upon the actual cost details.

9.6 The additional capitalization being approved under this Order is tabulated below:

(Rs.)

Name of the scheme	**Additional capitalization approved in this Order**	
	FY 2015-16	**FY 2016-17**
Procurement of CCTV system and Up gradation of existing LAN network for CCTV and Data management	69,04,001/-	1,41,992/-
Strengthening of Plant roads for smooth vehicular movement	-	30,58,688/-
Procurement and installation of New CW pump outlet valve	54,13,925/-	92,01,300/-
Total	**1,23,17,926/-**	**1,24,01,980/-**

9.7 The Petitioner is directed to incorporate the impact of this additional capitalization (i.e Rs. 1,23,17,926/- for FY 2015-16 and Rs. 1,24,01,980/- for FY 2016-17) while submitting its forthcoming Tariff Petition. Hence the following Order:

ORDER

1) The Case No. 316 of 2018 is partly allowed.

2) Since the events of procurement of imported coal through competitive bidding as

well as the emergency procurement pertain to H2 of FY 2017-18 which was purely under projection at the time of filing of MTR Petition, the same may be considered at the time of true-up whereby actual fuel cost may be revalidated based on the prudence check and Petitioner has to justify the cost as compared to the market rate during that point of time with documentary evidence.

3) **The Petitioner is directed to incorporate the impact of the additional capitalization (i.e Rs. 1,23,17,926/- for FY 2015-16 and Rs. 1,24,01,980/- for FY 2016-17) approved in this Order while submitting its forthcoming Tariff Petition.**

Sd/-	**Sd/-**	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**	**(Anand B. Kulkarni)**
Member	**Member**	**Chairperson**

(Abhijit Deshpande)
Secretary