



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN THE MATTER OF

CASE NO: OA-392/21-22

**PETITION FOR IMPLEMENTATION OF JUDGEMENT DATED 16TH
DECEMBER, 2021 OF THE HON'BLE APPELLATE TRIBUNAL FOR
ELECTRICITY (APTEL) IN APPEALS NO. 70 OF 2014 AND 329 OF 2021.**

PRESENT:

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 22.07.2022



CASE IN BRIEF

- 1.0 India Power Corporation Limited (IPCL), erstwhile DPSC Limited, has applied for fresh consideration and decision of the Commission in respect of five claims viz., i) Rental Income, ii) Other Finance Charges (NCD issue expenses), iii) Legal and Professional Charges, iv) Capacity Charge for Dishergarh Power Station determined by the Commission in tariff order dated 14.02.2013 of IPCL for the years 2011 – 2012, 2012 – 2013 and 2013 – 2014 and v) the Quality and Quantity assurance incentive (paid to the coal transporter) rejected by the Commission in FPPCA order dated 30.06.2010 of IPICL for the year 2008 – 2009 and order dated 04.06.2012 for the year 2009 – 2010. This application dated 29th December 2021 has been submitted by IPCL in terms of order dated 16th December 2021 passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeals no. 70 of 2014 and 329 of 2021. In the same application, IPCL has also prayed before this Commission to condone the delay of 6 days (with reference to the direction given in the order dated 16th December 2021 passed by the Hon'ble APTEL) in submitting the petition.
- 2.0 The contention of the petition submitted by IPCL is that the Commission had passed Orders dated 30.06.2010 and 04.06.2012 pertaining to determination of Fuel and Power Purchase Cost Adjustment (FPPCA) for FY 2008-09 and FY 2009-10 respectively. Being aggrieved by the said Orders, in as much that the same lead to the disallowance of genuine costs incurred, IPCL preferred appeals before the Hon'ble APTEL, New Delhi being Appeal no. 217 of 2012 & Appeal no. 7 of 2013 against Orders passed by the Commission in determining the Fuel and Power Purchase Cost Adjustment for the FY 2008-2009 and 2009-2010 respectively. The issue in these Appeals was limited to the disallowance of the expenses of quality and quantity assurance incentive claimed to have been paid by IPCL to its transporters of coal during the respective years.
- 3.0 The Commission also passed Order pertaining to Multi Year Tariff (MYT) Determination for FY 2011-12 & 2012-13 on 14.02.2013 and Annual Performance Review (APR) for FY 2011-12 on 10.09.2013. Being aggrieved by the said Tariff



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order, the Petitioner had preferred Appeal, being Appeal No 287 of 2013 before the APTEL, New Delhi, in part, against disallowance of legitimate O&M expenses in MYT Order dated 14.02.2013 & Review Order dated 08.05.2013.

- 4.0 The Hon'ble APTEL New Delhi, allowing the appeals in part with directions had remanded all the matters for adjudication by the Commission.
- 5.0 In the meantime, the Commission issued the Annual Performance Review (APR) Order for FY2011-12 on 10.09.2013 which was also challenged by IPCL before the APTEL, New Delhi being Appeal No 70 of 2014 on the disallowances with respect to Legal & Professional Charges, R&M and A&G expenses, Capacity Charges for DPS, Interest on Working Capital, Other finance charges (NCD issue expense) and Rental Income from Corporate Office.
- 6.0 IPCL appealed before the Commission for compliance of APTEL judgments dated 01.04.2014, 23.05.2014 and 27.10.2014 vide Case No. OA-293/18-19 in respect of – i) Coal Quality & Quantity Assurance incentives paid during FY 2008-09 & 2009-10, ii) Legal & Consultancy Charges for Tariff Order FY 2011-12 and iii) Coal Transportation cost for FY 2010-11 & 2011-12. The Commission vide order dated 16.04.2021, dismissed the matter with respect to Coal Quality & Quantity Assurance Incentives paid during FY 2008-09 & 2009-10 and the Legal & Professional Charges paid during FY 2011-12.
- 7.0 Being aggrieved by the said order dated 16.04.2021, IPCL preferred Appeal, being Appeal No 329 of 2021 before the APTEL, New Delhi. Since one of the issues in Appeal No. 329 of 2021 were common with Appeal No. 70 of 2014, the Hon'ble APTEL was pleased to club both the appeals and issued a common judgment on 16.12. 2021, allowing remand on issues of – i) Rental Income, ii) Other Finance Charges (NCD issue expenses), iii) Legal and Professional Charges, iv) Capacity Charge for Dishergarh Power Station determined by the Commission in tariff order dated 14.02.2013 of IPCL for the years 2011 – 2012, 2012 – 2013 and v) the Quality and Quantity assurance incentive (paid to the coal transporter) for DPS &



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CPS rejected by the Commission in FPPCA order dated 30.06.2010 of IPCL for the year 2008 – 2009 and order dated 04.06.2012 for the year 2009 – 2010.

- 8.0 Accordingly, IPCL has applied annexed with necessary documents to justify its prayer as is made in the application under consideration. It has also filed separate application for condoning delay stating that it took time to analyze the order of Hon'ble APTEL and delay was also due to unavoidable circumstances for pandemic situation.
- 9.0 Upon going through the application, the Commission felt that IPCL may be heard before issuing any order and accordingly, an e-hearing was held on 5th May, 2022 when the representatives from IPCL were present.
- 10.0 During the hearing, the Ld. Advocate, on behalf of IPCL, presented his submission and upon hearing, the Commission felt that detailed justifications / clarifications are required on some of the submissions, and therefore, an opportunity was given to IPCL to submit notes on arguments with such justification.
- 11.0 Accordingly, the Commission passed an interim order dated 30.05.2022 directing IPCL to submit a written note of argument giving detailed justifications / clarifications on their claims as well as the queries raised by the Commission during the course of hearing within 10 days from the date of receipt of the order.
- 12.0 Based on the above direction, IPCL has submitted the written notes of arguments vide their letter No. RA/II/002/22-23/25 dated 10th June, 2022, which, inter-alia states as under:
- 12.1 **Issue No. 1: Rental Income from Corporate Office should not be considered under Miscellaneous Income:**

The contention of the petitioner is that if the cost of the asset building is not considered by the Commission, then the income out of the said asset should also not be considered by the Commission. The Commission in APR order dated 10.09.2013 for FY2011-12 in case No. APR-33/12-13 (Paragraphs 2.7.2 and 2.15.2) has not considered the expenses such as depreciation, interest and ROE of the Corporate Office and its three floors at Sector-V, Salt Lake, but, has



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considered the rent revenue earned through the said building as other miscellaneous income from the regulated segment of the distribution licensee and deducted from gross ARR of the licensee as indicated in para 2.23.1 of the said APR order.

As per Para 2.22 of APR FY 2009-10 order dated 24.08.2012 in case No. APR-19/10-11, the miscellaneous receipts derived by the Petitioner during the year excluded the amount towards rental income derived from three additional floors constructed at the corporate building at Salt Lake, Kolkata being income from investment made out of fund exclusively meant for non-core business.

In this connection IPCL has referred a judgement dated 10th April, 2008 passed by the Hon'ble APTEL in the case of Maharashtra State Power Generation Co. Limited -vs- Maharashtra Electricity Regulatory Commission wherein the Hon'ble APTEL opined that –

“...We feel that in cases where the Commission allows a cost to be recovered after prudent check, any deviation in the amount of such expenditure or recovery of income relating to such expenditure would be eligible to be taken up for truing up. In our view the objective of the Tariff Regulations is broadly to ensure a pre-determined return on the investments made by the utility on the one hand and to ensure availability of electricity with reasonable operational efficiency to the consumer. If in the process the utility is subjected to losses beyond its control or earns extra profits, the Commission has inherent powers to take necessary steps after prudence check. However, if the income cannot be reasonably linked to any cost item allowed by the Commission as part of the ARR, the same should not be adjusted against the ARR of the Appellant, in the absence of specific Regulations....”

In light of the above submissions, it is prayed before the Commission to exclude the rental income of Rs 86.89 Lakhs from other miscellaneous income for FY 2011 - 12 as approved in the APR Order dated 10.09.2013 for FY 2011-12.



12.2

Issue No. 2: Non-Convertible Debentures (NCD) issue expenses to be allowed under other Finance Charges for FY 2011 – 12:

The Petitioner had issued Non-Convertible Debentures (NCD) on 03.11.2010 for raising low cost funding for bridge financing the various capital projects till such time loans for specific projects are disbursed by the Banks and ensuring working capital availability. The tenure for these NCDs were 10 years with redemption in 5 instalments starting from the end of 6th year and ending at the end of 10th year. In view of the NCD tenure of 10 years, the expenses towards issuance of these NCDs were amortized over 10-year period instead of considering all the expenses in FY2010-11 alone. But, the Commission has not considered the NCD issue expenditure in APR order dated 10.09.2013 with comments that the said expenditure is not allowable as the expenditure has not been justified.

It is submitted that other finance charges, particularly towards issuance of Non-Convertible Debentures (NCD) is a necessary adjunct to a borrowing and nonpayment of the same adversely impacts the ability of the licensee to borrow. It is also submitted that the other loans availed of during the concerned period were much higher than the 10.75% coupon rate of the NCD. The benefit of such low-cost funding is enjoyed by the consumer in form of timely commencement of operations and projects without waiting for specific loan disbursement from banks.

The regulation 5.6.4 (iv) specifies that "the Commission shall also allow all financing charges relating to loan capital viz. front-end fees, bank charges, commitment charges, foreign exchange rate variations in case of loan repayments, guarantee fees, etc.," which allows the petitioner to borrow through NCD.

In the APR order dated 10.09.2013, the Commission had commented that "it is not clear to the Commission whether such drawal of loan is related to its core business and will serve the interest of consumers in the long run". The petitioner confirmed that such drawal of loan through NCD is related to its core business and will serve the interest of consumers in the long run. In this connection, the petitioner has submitted a list of disbursements from NCD proceeds during FY 2011-12 by dint of which it is established that entire proceeds of Rs. 100 crores of NCD have been



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utilized for various ongoing projects and working capital requirement for core business of the petitioner.

The petitioner submitted that it is a prudent practice to amortize the expenses related to issuance of NCD or cost of obtaining a loan across the entire term of the loan or NCD rather than front loading the expenses in a single year at the start of the term. This helps in minimizing the impact across the years rather than huge impact in a single year. Therefore, the petitioner has amortized the expenses related to issuance of NCD across the entire term period of NCD starting from FY 2010-11, when the NCD was actually issued. Thus, the amortized amount for NCD issue expense for FY 2011-12, i.e. Rs 53.36 Lakhs is a part of the total NCD issue expense amortized over 10-year period from FY 2010-11 onwards.

In light of the above submissions, it is humbly prayed before the Commission to approve the NCD issue expense of Rs 53.36 Lakhs under other financing charges in addition to Rs. 23.13 lakh towards bank charges for FY 2011-12 as approved in the APR Order for FY 2011-12 dated 10.09.2013.

12.3 Issue No. 3: Re-determination of legal and consultancy / professional charges (under the major head of O&M expenses) for the year 2011 – 2012:

It is submitted that as a matter of fact the tariff order for FY 2011-12 was issued much after the end of FY 2011-12 and adoption of annual accounts of the IPCL. Therefore, the expenses were already incurred and it was not possible for IPCL to know as to what benchmark expenses will be fixed for IPCL in the year FY 2011-12. However, the expenses were justified and prudent.

It is also submitted that post disinvestment of DPSC Limited, the new management had taken over the charge during the late 2009-10 and filing of MYT petition for 3rd control period fell due and other strategic plan formulation for activities like preparation of MYT, land acquisition for setting up power plant/distribution sub-station, construction of lines, distribution system study, exploration of imported coal mining opportunities, other allied activities such as financial restructuring, financial advisory, etc. were considered of utmost importance, the new management decided to take assistance of consultants/experts in such activities.



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Corporate restructuring required specialized services, expertise and experience and hence, the services of DBD-Business Solutions-Financial advisory services were utilized. Valuation too, was required for merger related purpose and since specialized services and expertise was not available within the organization, services of Stellant Capital, Novara and Shyamsukh Amit & Associates were taken. The reliance on consultants/experts during the said period helped the new management to streamline its filings, success in few important litigations in the interest of its consumers, etc. The expenses have been largely incurred to benefit the consumers' long-term interests at large. A summary of all the consultancy charges incurred by the Petitioner has been placed on record along with short description of such expenses. The auditor certificate indicating the description of legal expenses was already submitted with the petition.

Further, as the execution of Fuel Supply Agreement with Eastern Coalfields Limited was getting delayed and in view of the projected requirement of coal for existing generating plants and proposed generation projects, there was a dire need to look for coal sourcing from various sources. The consulting services of NORTON ROSE South Africa and IMC-SRG consulting (P)Ltd was used basically to evaluate the sourcing of imported coal / owning coal mine at Mozambique for utilization in the licensed area, however, after due diligence, the proposition of Mozambique coal mining was not found economical. However, it is further mentioned that professional / consultancy fees paid to professional/experts generally do not guarantee result every time for the purpose it is envisaged.

It is submitted that consulting activities were awarded to external agencies, whenever specialized services, expertise and experience were required. This has also indirectly helped the internal staff to get trained and have hands on experience while assisting the consultants. This was also envisaged to help in capacity building of internal team.

Although the APTEL judgment dated 16.12.2021 does not mention anything specific regarding re-determination of other items of O&M expenses, however, the Petitioner takes liberty to apply the said judgment to all the items of O&M



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expenses as the financial year 2011-12 was already over when the Tariff order for FY2011-12 was issued. As per WBERC (Terms and Conditions of Tariff) Regulations, 2011, Operation & Maintenance expenses also include expenses in Repair & Maintenance Expenses (R&M) the details of which have been submitted with the Petition.

It may be observed from the details of R&M expenses that Software maintenance cost related to SAP alone constitute around 35% of the total R&M expense. These expenses were important, as the new management found out that the technology which was employed in the business was getting obsolete. In view of huge expenses towards SAP implementation and other recurring costs associated with its license renewal and software maintenance, it can be established that the plain linear increase of 5% in R&M expense over earlier years is not adequate for FY2011-12 and subsequent years. The migration to SAP ISU system resulted in increase in Efficiency, Prompt Regulatory Compliance and Better Consumer Service. Some of the other factors for increase in the R&M expenses were as follows:

- i) *The expenses of ageing network;*
- ii) *Increased dependence on IT implementation such as SAP ISU billing module etc. Further, the administration charges and renewal of SAP license, etc. also have significant impact on R&M expenses;*
- iii) *LT network expansion, which has enhanced the R&M expenses since 2011-12 after taking over by new management. This has not only increased the line length, but also no. of DTs and associated sub-stations;*
- iv) *Impact of voltage wise distribution line length;*
- v) *Area of supply;*
- vi) *Spread of consumer base at all voltage levels etc.*



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vii) Periodic maintenance of new assets /installations

The total R&M expenditure on account of software maintenance cost is itself to the tune of Rs 125.38 Lakhs during FY2011-12. The details of actual expenses for FY 2011-12 were already available with the Commission before issuance of Tariff order dated 14.02.2013. The Commission ought to undertake prudence check in such a scenario.

On the other front, Contractual Employee Cost which was considered as part of employee cost till 2008-09 and O&M expenses were considered separately. Suddenly from APR FY2009-10 onwards, the Hon'ble Commission started citing that contractual employee cost should be considered under O&M expenses. The impact of shifting of contractual employee cost from employee cost to R&M expense segment is not evident from the figures approved in Tariff Order. Therefore, R&M expense being a controllable expense, is always getting approved at a lower rate than actuals.

Since, the Hon'ble Commission had erred in literally not considering the contractual employee cost in R&M expense during MYT determination stage, therefore, it has approved only to the extent of MYT approved R&M expense during APR stage as well. Further the entire contractual employee cost was disallowed from the claim of total employee cost also. Thus, the Petitioner's contractual employee cost was not allowed in either employee cost side or at R&M expense side. This may also be considered during the re-visit on the issue of re-determination of O&M expenses.

Further, for maintaining an efficient distribution system, various types of stores materials like conductor, cables, insulator, polls, switches, etc., are consumed with varying consumption pattern. Therefore, maintaining an inventory of critical stores items is essential for maintaining an efficient distribution system covering 618 Square Kilometer area. Moreover, the Petitioner has to supply power to critical consumers like ECL mines and hospital where continuous supply is extremely important. The expenditure on consumption of such stores is to some extent uncontrollable in nature but very critical for efficiently



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maintaining a distribution. Therefore, expenditure under this head should be considered outside the scope of controllable expenditure and should not have been clubbed under normal O&M expenditure.

Further, with addition of new assets including substation and distribution lines, the requirement of appropriate quantum of spares in stores is also increasing. The petitioner had therefore shown it separately not forming part of the O&M Cost as per Form 1.15 of the MYT submission. However, the Commission has grouped it into R&M expense and eventually disallowed by virtue of approval of lower R&M expense to the extent of amount approved under MYT order.

In view of the aforesaid change in focus, there was a disruption in the trend of expenses being incurred under O&M segment in pre - disinvestment era and post disinvestment since 2011-12. Hence, there was a spike in the O&M expenses from FY2011-12 onwards.

Commission continued to approve O&M expenses in MYT orders since 2011-12 based on the trend up to FY2009-10. It is observed that the increase in approved O&M expenses is not in line with the actual O&M expenses, despite the tariff order for FY2011-12 being approved after the completion of the said financial year.

In light of the above submissions, IPCL prayed before the Commission to re-determine the Legal & Consultancy charges, contractual employee cost and consumption of stores and spares (as a major head under O&M expenses) for FY2011-12 in Tariff order as well as APR order based on actual details subject to prudence check in this matter.

12.4 Issue No. 4: Re-determination of capacity charge for Dishergarh Power Station for FY 2011-12:

It is submitted that as per APR order of 2009-10 in Para 2.23.1, it is clear that both Dishergarh Power Station and Chinakuri Power Station were not connected to SLDC online monitoring and hence covered under PLF mode for capacity charge as per regulation 6.4.2 of Tariff regulation 2011.



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However, the Commission has considered the actual PLF on normative basis with shortage of coal for determining the shortfall in PLF and hence, no capacity charge disallowance has been done for Chinakuri Power Station as its actual PLF on normative basis with shortage of coal (83.42%) was more than Targeted PLF (80%) although actual PLF achieved was 68.92%. The same has not been done for the Dishergarh Power Station.

The old Dishergarh power station was envisaged to be shut down on account of environmental norms and generation was intermittent due to outdated technology and lack of suitable quality of coal. In fact, DPS unit was in dead throes and therefore it was impossible to achieve the PLF set in Regulations. IPCL prayed before the Commission to sympathetically re-determine the capacity charges for old Dishergarh Power Station unit for 2011 – 2012, whose actual PLF was very low than normative PLF but more than approved target PLF.

Further, during FY 2011-12, there was also non-availability of coal from Eastern Coalfields Limited, due to which the Petitioner had to make arrangement for procuring additional power to meet the shortfall in supply from West Bengal State Electricity Distribution Company in order to meet its power supply commitments to consumers which incidentally includes Eastern Coalfields Limited too.

In addition to coal shortage it had received coal of much inferior quality than B and C grade. Several complaints have been lodged regarding grade slippages but it did not yield any result. Since, the annual requirement is less than four lakhs ton the Petitioner has been denied the facility of joint sampling of coal. The copies of correspondences in this regard with ECL are placed. The generation has also suffered due to poor quality of coal and grade slippages.

Similar precedence can be observed in the case of Badarpur TPS, wherein it had a consent to operate from Ministry of Environment, Forest and Climate Change, Government of India. However, during the validity of the same, for certain periods it was required to stop generation due to the pollution levels in Delhi. For those periods when the TPS could not declare availability, it sought



payment of full capacity charges on the ground that it was ready and available for generation. The Discoms contended that since it was legally prevented from generation, it could not declare any availability and hence no capacity charges were at all payable. The CERC took a mid-point view and allowed Badarpur TPS to recover capacity charges commensurate to O&M etc. Hence in peculiar situations which are not business as usual conditions, the Regulator should ordinarily not judge such situations by the same standards as if everything was normal.

Hence, in this situation where the Petitioner's plant was in the throes of a closure, the recovery of capacity charges for that period could not be likened to a business as usual condition.

12.5 Issue No. 5: Approval of quality and quantity assurance incentive for FY 2008-09 and quantity assurance incentive for FY 2009-10:

During the FY 2008-09 and 2009-10, the Petitioner used to pay incentives to Coal Transporter for arranging better quality (GCV) and better quantity of coal with respect to the benchmark indicated in the Coal Transporter Agreement. Despite receiving better GCV of coal and higher quantum of coal during FY 2008-09 and 2009-10, the Commission did not allow the Quality & Quantity assurance incentive for FY 2008-09 and Quantity Assurance incentive paid in FY 2009-10 in FPPCA orders for 2008-09 & 2009-10 respectively. In this connection, IPCL presented the position of minimum weighted average heat value of coal received (5623 Kcal/Kg) as against the minimum weighted average heat value of coal (5551.44 Kcal/Kg) as per regulation 4.8 of the Tariff Regulations, which substantiate that the Heat Value of coal actually received at Dishergarh has been more than the minimum value as per the Regulations 4.8. Similarly, it is evident from the table presented during the hearing that the Coal Transporter could arrange higher quantity of coal as compared to guaranteed quantity and minimum requirement. But, the Commission did not allow the Quality assurance incentive for FY 2008-09 in case of Dishergarh and Quantity assurance incentive for 2008-09 and 2009-10 for both Dishergarh and Chinakuri Units.



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It is also submitted that the minimum guaranteed quantity of coal supply was fixed at 8000 MT per month based on the requirement of coal i.e., 60% of the monthly requirement of 13395 MT coal as per the guidelines of Eastern Coalfields Limited given in their letter bearing reference no. ECLHQ:S&M:13347 dated 10.11.2008. It is apparent from the table presented that during the year 2008 – 2009 and 2009 – 2010, coal transporter supplied the coal much more than the guaranteed quantity of coal supply. The cost benefit analysis has been produced by IPCL to substantiate the fact that in both the years, cost of fuel (including quality/quantity assurance incentive) was beneficial from consumer benefit point of view compared to additional power purchase cost or e-auction coal cost, which justifies payment of quantity and quality incentive to transporter considering market situation prevailing during 2008 – 2009 and 2009 – 2010.

In view of the availability of coal with Eastern Coalfields Limited and to ensure end consumers benefit by maximizing generation from the power plants, the Petitioner had to make efforts to negotiate with the transporting/ handling agency appointed by the Petitioner with the primary objective of coal handling and transportation agency to liaison with Eastern Coalfields Limited on behalf of the petitioner to ensure additional quantity of coal along with desired quality. In order to ensure the additional quantity and quality of coal from Eastern Coalfields Limited, the transporting agency was incentivized /penalized as per the contract or, else the Petitioner had to opt for procurement of balance 40% of ACQ coal through e-Auction. The terms and conditions of the contract agreement with the transporter agency and details of the incentives paid to the transporter agencies are submitted with the petition.

The Petitioner has also submitted letter dated 26.11.2019, marked as "Annexure" in the Petition, which includes the documentary proof for the value addition. The Commission has been requested to consider the claim on the basis of the available documents as per the said Annexure.

Moreover, according to the regulation 4.8.1 (iv) read with definition of 'Fuel Cost' of the Tariff Regulations, Fuel cost would include the fuel quality assurance service cost and fuel delivery assurance cost. Therefore, IPCL is entitled to claim the



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expenses incurred on these services, subject to prudence check by the Commission.

In light of the above, IPCL prayed before the Commission to re-determine the quality and quantity assurance incentive for both Dishergarh and Chinakuri Power Stations for the years 2008 – 2009 and 2009 – 2010.

OBSERVATIONS OF THE COMMISSION

13.0 Prayer for condonation of delay as is made in the petition under consideration is allowed considering the circumstances under which the said prayer is made.

13.1 Keeping in view the direction of the Hon'ble APTEL, this Commission took all the issues for consideration afresh and heard the representative of the petitioner (IPCL) at length and also, has gone through the written arguments submitted by the utility. The observations and considerations of the Commission on the issues are discussed below:

13.2 **Issue No. 1: Rental Income from Corporate Office should not be considered under Miscellaneous Income:**

As it appears from the arguments of IPCL made through their submissions, the Rental income arises from three floors in Corporate Office building at Salt Lake which has not been recognized as Asset related to core business of IPCL by the Commission while determining ARR for 2011-12. The same asset has accordingly been excluded for computation of admissible depreciation. The issue lies whether the income derived out of an asset which is not considered for admission of an expense i.e. depreciation in this case, should be considered as income in this case, the rent. The Commission has reviewed the matter further and conclude that when expenditure out of an asset not related to core business of Power is not considered for servicing through tariff, any income arising out of the same asset should also not be considered for determination of ARR. Accordingly, such rental income from Corporate Office shall be excluded from the admissible income while determining ARR. Thus Rs 86.89 lakh rental income is considered to be excluded out of other income for the year 2011-12.



13.3

Issue No. 2: Non-Convertible Debentures (NCD) issue expenses to be allowed under other Finance Charges for FY 2011 – 12:

The disallowed amount of Rs 53.36 lakh in 2011-12 towards NCD issue expenses as stated to be amortised by IPCL over 10 years stems out of issuance of NCD worth Rs 100 crs in 2010-11. Such 10.75 % Secured Redeemable non convertible Debentures (Privately placed) as issued in 2010-11 were redeemable in five installments at the end of 6th, 7th, 8th, 9th and 10th year from the date of allotment i.e. 3rd November 2010 Secured by mortgage of immovable properties consisting of 1.0749 acres of land and four storied building measuring 1190 sqm along with conference hall measuring 359 sq mtr at Plot X-1,2&3, Block EP, Salt lake, Kolkata and land, building, office, bungalow and guesthouse at Sanctoria and Asanboni at Asansol (Burdwan) and 1731.82 sq mtr land at Iswarpura (Gujarat). IPCL did not submit any details of NCD utilization either with the petition of MYT 2011-12 or APR 2011-12. However, IPCL submitted NCD utilization details vide their submission dt 29.12.2021 supported by affidavit. It is observed from such information that :

1. The NCD amount was utilized mainly for the following purposes:

- i. 12 MW Dishergarh Power Station (DPS) for Rs 403.09 lakhs net of Rs 2000 lakh drawn from IDBI Bank as term loan drawn for 12 MW DPS against a original sanction of Rs 4000 lakh in 2011-12 (as per Form C of APR 2011-12 petition) .
- ii. J K Nagar Substation for Rs 1430.13 lakhs
- iii. 2 X 270 MW Project at Raghunathpur for 5138.75 lakhs
- iv. Construction of Dhasaldanga Sub-station for Rs 133 lakhs
- v. Working capital for Rs 1905.03 lakhs
- vi. Held as fixed deposit for Rs 990.00 lakh

2. It is also observed that :

- i. in case of 1 X 12 MW Dishergarh Power station a sum of Rs 2000 lakhs was availed from IDBI Bank in 2011-12 substituting the NCD. Further amount of Rs 1500 lakh was drawn in 2012-13 followed by Rs 500 lakh in



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- 2013-14 as evident from submission of IPCL in the respective petitions of APR 2012-13 and APR 2013-14.
- ii. in case of J K Nagar Sub station, a sum of Rs 5000 lakhs was availed from South Indian Bank substituting the NCD in 2012-13 as evident from submission of IPCL in the petition of APR 2012-13.
 3. 2*270 MW project at Raghunathpur, West Bengal has not been approved by the Commission.
 4. As it appears prima facie from the above, that IPCL has utilized the NCD proceeds partially as bridge finance for some projects and partially for working capital besides holding cash of Rs 990 lakh under fixed deposits.
 5. On further scrutiny it appears that IPCL has also provided interest free advances to a Body Corporate against Power Purchase Agreement and advances to suppliers and others for Rs 6475 lakh in 2011-12 as reported in note 14 of Annual Accounts 2011-12 and further Rs 5323 lakh in 2012-13 totaling upto Rs 11798 lakh as reported in note 16 of Annual Accounts 2012-13. Further, capital advances have been made for Rs 5563.74 lakh in 2011-12. IPCL has not provided any clarification on such interest free advances given to body corporates and suppliers.
 6. Under the Regulatory framework, for any loans /borrowings, the purpose needs to be specified by the licensee and it is expected to be used for the same purpose. It is also observed from para 21 of submission text of APR 2011-12 petition submitted by IPCL that they have been facing 'severe cash crunch' in 2010-11. Given such facts, Advance to a Body Corporate for Rs 6475 lakh in 2011-12 and further Rs 5323 lakh in 2012-13 totaling upto Rs 11798 lakh vis-à-vis issuance of NCD for Rs 10000 lakh read in sequence of the event of loan drawal of Rs 2000 lakh against a sanction of Rs 4000 lakh does not appear to be justified.
 7. In view of the above, the claim of IPCL that, NCD was borrowed for meeting capex requirement for projects is not found justified, from doctrine of prudence perspective.



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8. IPCL has, as stated in their petition, amortised the NCD issue expenses over a period of 10 years. As stated in their petition they have amortised such expenses under the head of Finance Charges in Annual Accounts. One of the cardinal principles of amortization is that the unamortised part will be reported in the balance sheet under current assets. No such reporting is visible in the balance sheet of IPCL. The other option left is to capitalize it under fixed assets and then charge depreciation on such assets. As per Annual Accounts the total depreciation as reported against the fixed assets in the fixed asset schedule to the Balance sheet have been charged in the profit and loss account under the head of depreciation. So, the question remains as to where such expenses have been booked on incurrence. If such expenditure has taken place in cash mode in the year of occurrence, the unamortised part should have found a place in the Balance sheet of IPCL till the last tranche of amortization is booked in accounts. This has not been clarified by IPCL in their submission.
9. The standard accounting for amortization calls for uniform distribution of the expenditure to be amortised over the amortization period which in this case is 10 years. However, such amount was Rs 53.36 lakh as claimed by IPCL in para 21 of their submission text of APR 2011-12 petition, Rs 53.91 lakh in form C of APR 2012-13 petition, Rs 52.44 lakh in Form C of APR 2013-14 petition, Rs 52.01 lakh in Form C of APR 2014-15 Petition, Rs 50.61 lakh in APR 2015-16 petition. Such irregular amortization of NCD issue expenses does not fairly clarify the base amount for amortization to be covered in 10 years and further, does not meet the test of 'prudent practice' as stated in the petition of IPCL.
10. As observed from the above, the issuance of NCD does not appear to be justified when read harmoniously with the transactions of advance to a body corporate and partial drawal of loan for Rs 2000 lakh against sanction of Rs 4000 lakh. Since the issuance of NCD does not stand the test of justification and purpose against objectives of issuance of such NCD mentioned by IPCL in their different petitions, the same is not considered for the purpose of determination of ARR and tariff. Since the base event of issuance of NCD is not justified, NCD issuing expenses adjunct to such NCD are not allowable either. It is also evident from the above, that the treatment of amortization



adopted for NCD issue expenses are also not clarified fairly. Accordingly, Commission views that there is no scope for admission of Rs 53.36 lakh as NCD issuance expense amortised in 2011-12.

13.4 Issue No. 3: Re-determination of legal and consultancy / professional charges (under the major head of O&M expenses) for the year 2011 – 2012:

IPCL has submitted information details relating to legal expenses and consultancy charges separately for the year 2011-12 in their different petitions in different manners of segregation of such expenses. The Commission have gone through all such details itemwise and the following were observed while applying prudence.

1. Legal Expenses- Rs 52.10 lakh: The Legal Expenses of Rs 52.10 lakh were incurred broadly under the following heads :

- a. Tariff related matter
- b. Consumer related cases
- c. Income Tax related matter
- d. Other matters

Other matters include legal expenses incurred for Title Suit 21 of 2008 related to land matters, Legal notice to Mr. Amit Gupta for Rs 0.79 lakhs altogether and legal expenses for Rs 5.30 lakh incurred in connection with coal property exploration in Mozambique. Out of the above, Rs 0.79 lakh could not be identified with any subject in the absence of requisite information. IPCL was given ample opportunity to furnish the same. However, such information has not been furnished by them. Accordingly, Commission does not admit such legal expenses for Rs 0.79 lakh. The Commission also does not admit Rs 5.30 lakh incurred in connection with coal property to be acquired in Mozambique which cannot be attributed to distribution business of IPCL. The Commission, in compliance to the judgement of the Hon'ble APTEL, had given opportunity to IPCL to substantiate the said expenses; but it failed to justify the same. Accordingly, Commission considered all the items of legal expenses incurred except Rs. 0.79 lakh and Rs. 5.30 lakh elaborated above.



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Admissible legal expenses come to **Rs. 46.01 lakh** (52.10 - 0.79 - 5.30) prior to allocation between generation and distribution function.

2. Consultancy charges: Rs. 471.00 lakh: The Consultancy Charges of Rs. 471.00 lakh were incurred broadly under the following heads :

SI No	Item of Consultancy Charges	Amount Rs lakh
A	Corporate Restructuring & Financial Projection (DPS 12 MW & Raghunathpur 540 MW) - Financial Advisory Services-DBD Business Solutions	163.82
B	Tax Advisory services - Direct and Indirect Taxation-D B Desai Associates	52.23
C	Consultant for MYT Filing- Fy 11-12 to 13-14-KPMG	34.15
D	Assets and Share valuation work	19.74
E	Internal Audit Fees-Protiviti Consulting	16.20
F	Annual Surveillance Report for Bank Rating-CARE Ltd	12.68
G	For Service relation matters (Public Relation Branding, Advertisement, Gist Publication, etc) Adfactor	12.42
H	Credit Rating-Brickwork Ratings India Pvt Ltd- NCD Rating	11.03
I	Detailed project Report Preparation for proposed Generation Project of 1x80 MW at CPS, Chinakuri- Tata Consultancy	9.94
J	RV Briggs - Coal Sample Analysis, Envirotech-Environmental Impact assessment, soil investigating and testing etc-1*25 MW Plant at Seebpore	9.87
K	Advisory on Land Matters- D K Chowdhury	6.05
L	Advisors on Regulatory Matters and Advisor on Legal matters	13.95
M	Medical duty of Doctors for attending employees	4.53
N	Occupational Health Hazard and Safety Audit of Plants (as per directive in Tariff Order)- National Productivity Council	1.89
O	Actuarial Valuation- Retben Actuarial Service	1.65
P	Cost Audit Fees- Mani & Co	0.62
Q	Physical verification of Assets and Stock Audit	0.92
R	Exploring coal mine acquisition opportunities at Mozambique with the perspective to secure coal for existing and proposed thermal power plants (TPP) of DPSC .	30.89
S	Other miscellaneous matters	22.16
T	Consultancy Service charges (for amalgamation & authorised capital increase) - Fee for Competition Commission, listing agreement for Bonus issue, Fee for NSE, Share split processing fee	46.26
U	Total Consultancy Charges	471.00

Further item wise details of the above were furnished by IPCL in different petitions made in this regard which were duly reconciled with the above broad heads of Consultancy Charges. Prudence was exercised itemwise while considering



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admission of the items. Accordingly, It is observed that Items at **SI. B, C, F, G, K, L, M, N & O** in the table above are fully admissible considering the nature of expenses covering purposes of Tax Advisory, MYT Filing, Annual Surveillance Report for Bank Rating, Public relation branding, Land matters, Regulatory matters, Medical duty of Doctors for attending employees, Safety audit of plants, Actuarial valuation respectively. Such admissible amount comes to Rs. 139.55 lakh.

For the residual items, the matter is observed itemwise as below with SI no as mentioned in the above table:

SI A related to Restructuring & Financial Projection (DPS 12 MW & Raghunathpur 540 MW) - Financial Advisory Services-DBD Business Solutions involving Business Restructuring towards Scheme of Reconstruction/Arrangement, **SI D** related to Assets and Share valuation work involving merger of DPSC & IPCL and **SI T** related to amalgamation & authorised capital increase involving Fee for Competition Commission, listing agreement for Bonus issue, Fee for NSE, Share split processing fee are attributable to both DPSC Division and Other than DPSC Division.

In this regard it may be mentioned that Hon'ble Calcutta High Court in course of disposal of writ petition no 22561 (W) of 2014 observed that ***"the Commission is directed to treat the application filed by IPCL as the application of DPSC and consider the same on the basis of assets and liabilities reflected in the balance sheet of IPCL pertaining to DPSC division alone, and no other assets and liabilities. This direction is given as in the balance sheet of IPCL's revenue is shown in respect of two divisions-one is DPSC division and the other is other than DPSC division. Let only assets and liabilities under the DPSC division be considered by the Commission, while considering not only the fuel and power purchase costs adjustment application filed for the year 2012-2013 but any other application that may have been filed by IPCL with the Commission."***



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IPCL was accordingly requested vide letter dt 27.6.2022 to segregate the claims item wise as made under Legal expenses and Consultancy charges as attributable to the DPSC division in 2011-12 so as to assess the admissible claims in this regard. However, IPCL has stated in their letter dt 4.7.2022 that the total claim of legal expenses for Rs 52.10 lakh and Consultancy charges for Rs 471.00 lakh as made under this petition relates to DPSC division only.

Commission observed that the nature of expenditure involving merger/amalgamation, Scheme of Reconstruction/Arrangement, Share valuation, increase in Authorised share capital, Asset valuation towards business restructuring pertains to the organisation as a whole comprising all divisions and accordingly the same is allocable to both DPSC division and other than DPSC Division instead of DPSC division alone. However, IPCL has allocated such amount to DPSC division only which does not meet the prudence criteria given the nature of transaction as elaborated above. In the absence of specific allocation of such expenses into DPSC division and Other than DPSC Division such expenditure as under **SI A,D,T** are not admissible.

SI. E, SI. P & SI. Q in the table above involves expenditure incurred for Internal Audit, Cost Audit and stock audit respectively. Regulation 5.7.2 of WBERC Tariff Regulations, 2011 lists out the following specific heads for consideration in Tariff:

- (i) Rent and lease charge for asset
- (ii) Legal Charges
- (iii) Auditor's expenses, which include auditor's fees, auditor's expenses and payment to auditors in any other capacity or for any work which is necessary to be got done from them and audited.
- (iv) Consultancy charges for work which cannot be done in-house or is uneconomical in doing in-house or is essential to be done from outside sources except payment to Auditors.
- (v) Other expenses necessary and arising from and ancillary or incidental to the business of electricity except penalty etc. levied under this Act or any other Act.



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Since the Regulation 5.7.2. (iv) as stated above does not accommodate consideration of payment to Auditors under Consultancy charges expenditure incurred on internal audit, cost audit and stock audit are to be excluded from consideration under Consultancy charges. Commission already considered expenditure under the head of Auditing in MYT 2011-12 as well as APR 2011-12 which has not been contested by IPCL and are not subject of the present specific remand from APTEL for consideration. Accordingly, **SI. E, P and Q** in the above table are not admissible.

SI. H of the above table involves expenditure incurred for Credit Rating-by Brickwork Ratings India Pvt Ltd for NCD Rating towards issuance of NCD. Commission has not admitted issuance of NCD and any related expenditure associated with the same as already elaborated while disposing of the claim related to NCD issuance expenditure dealt with in this order earlier. Accordingly, such expenditure of rating of NCD for issuance of NCD being associated with NCD issuance is not admissible.

SI. I of the above table involves expenditure incurred for Detailed project Report Preparation in respect of proposed Generation Project of 1x80 MW at CPS, Chinakuri by- Tata Consultancy . Such project is not approved by the Commission. Hence such project related expenditure at **SI. I** is not admissible.

SI. J of the above table involves expenditure incurred for Coal Sample Analysis, Environmental Impact assessment, soil investigating and testing etc. of 1 X 25 MW Plant at Seebpore. Such project is not approved by the Commission. Hence, such project related expenditure at **SI. J** is not admissible.

SI. R of the above table involves expenditure incurred for Exploring coal mine acquisition opportunities at Mozambique with the perspective to secure coal for existing and proposed thermal power plants (TPP) of DPSC. Such project is not related to distribution business of IPCL. Accordingly, such expenditure at **SI. R** is not admissible.

SI. S of the above table involves expenditure incurred for other miscellaneous matters. While applying itemwise prudence for such items under this head it is observed that the nature of such expenditure relates to (i) VAT Audit, (ii) Sale Tax consultancy, (iii)



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MIS retainership, (iv) Land retainership, (v) Fees related to Mutation, (vi) Processing & Application, (vii) NCD related expense, (viii) National Full Data base Access service, (ix) Tax Retainership, (x) Liability Reversal-Liability in 2011-12 reversed in 1.4.2012, (xi) Certification of Form 23 AC & 23 ACA, (xii) Register & share transfer, (xiii) Audit fees for Gratuity & Superannuation fund, (xiv) Due diligence report for cash credit facility, (xv) Valuation report on building, (xvi) Sharepro Services (I) Pvt Ltd- Processing Fees, (xvii) Central depository services (I), (xviii) National Security Depository, (xix) ESI Return filing, (xx) Ashika Capital Limited-Advisory services, (xxi) D B Desai-Audit & Certification service for return, (xxii) Remuneration-S Bane, (xxiii) P Chakrabarty-Retainership, (xxiv) Coal linkage application fee.

Out of the above listed miscellaneous items, SI nos (ii) Sale Tax consultancy, (iii) MIS retainership, (iv) Land retainership, (v) Fees related to Mutation, (viii) National Full Data base Access service, (ix) Tax Retainership, (xi) Certification of Form 23 AC & 23 ACA, (xiv) Due diligence report for cash credit facility, (xix) ESI Return filing, (xxiv) Coal linkage application fees are found admissible in full. Such admissible amount comes to Rs 5.65 lakh.

Expenditure for the SI nos (i) VAT Audit, (xiii) Audit fees for Gratuity & Superannuation fund, (xxi) D B Desai-Audit & Certification service for return, being in the nature of Audit Fees are not admissible under the head of Consultancy Charges as per Regulation 5.7.2.(iv) as elaborated earlier in this order.

Expenditure for SI no (vii) NCD related expense being associated with issuance of NCD is not allowed since NCD is not admitted by the Commission as elaborated earlier in this order.

Expenditure for SI no (x) Liability Reversal-Liability in 2011-12 reversed in 1.4.2012 is not admitted as this is an accounting adjustment without any cashflow.

Expenditure for SI no. (xii) Register & share transfer, (xv) Valuation report on building, (xvi) Sharepro Services (I) Pvt Ltd- Processing Fees, (xvii) Central depository services (I), (xviii) National Security Depository, (xx) Ashika Capital Limited-Advisory services,



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are not properly clarified by IPCL as regards the nature of such expenditure whether such expenditure are associated with share transfer, asset valuation, securities etc. related to scheme of Restructuring/Arrangement as part of any Business restructuring which will involve both the divisions of DPSC division and Other than DPSC division. Such items as may be required to be segregated between DPSC division and Other than DPSC division are accordingly not admissible.

Expenditure for SI no. (xxii) Remuneration-S Bane, (xxiii) P Chakrabarty-Retainership are not clarified as regards the purpose of remuneration and retainership. Accordingly, such expenditures are not admissible.

Commission also observes that, IPCL has, while clarifying the reasons of increase in Consultancy charges for 2011-12, mentioned at page 34 against SI V of their submission dt 16.12.2021 that "post disinvestment of DPSC Limited, the new management had taken over the charge during the late 2009-10 and given the MYT filing for 3rd control period was due and other strategic plan formulation for activities like preparation of MYT, land acquisition for setting up of power plant/distribution sub-station, construction of lines, distribution system study, exploration of imported coal mining opportunities, other allied activities such as financial restructuring, financial advisory, etc. was considered to be of utmost importance, the new management decided to take assistance of consultants/experts in such activities". "The reliance on consultants/experts during the said period helped the new management to streamline its filings, success in few important litigations in the interest of its consumers etc."

Commission further observes that, IPCL has, while clarifying the reasons of increase in Legal Expenses for 2011-12, mentioned at page 31 against SI III of their submission dt 16.12.2021 that "Due to a series of ongoing and new legal cases, arbitration, title suits, matters before APTEL, consumer related matters, Income Tax related matters, etc. the new management focused on expeditious resolution of disputes, grievances, etc, and therefore, the available legal forums were pursued, which led to increase in the legal expenses as compared to the period under the old management."

It may be concluded from the above that such legal expenses and consultancy Charges were incurred due to change of management in late 2009-10 post



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disinvestment of DPSC Ltd to formulate a strategic plan for different activities and due to immediate necessity of tariff filing for the 3rd control period. Such reasons as occurred due to change in management in late 2009-10 post disinvestment of DPSC Ltd are specific to the year 2011-12 and cannot be carried over beyond 2011-12. Such increase is accordingly considered to be limited to the year 2011-12.

Based on the above, the admissible Consultancy charges come to **Rs 145.20 lakh** in MYT 2011-12. The itemwise admission is furnished below:

SI No Reference in the Table at Page 20	Item of Consultancy Charges	Rs Lakh
		Admitted
B	Tax Advisory services - Direct and Indirect Taxation-D B Desai Associates	52.23
C	Consultant for MYT Filing- FY 11-12 to 13-14-KPMG	34.15
F	Annual Surveillance Report for Bank Rating-CARE Ltd	12.68
G	For Service relation matters (Public Relation Branding, Advertisement, Gist Publication, etc) Adfactor	12.42
K	Advisory on Land Matters- D K Chowdhury	6.05
L	Advisors on Regulatory Matters and Advisor on Legal matters	13.95
M	Medical duty of Doctors for attending employees	4.53
N	Occupational Health Hazard and Safety Audit of Plants (as per directive in Tariff Order)- National Productivity Council	1.89
O	Actuarial Valuation- Retben Actuarial Service	1.65
S	Other miscellaneous matters	5.65
	Total	145.20

3. Allocation of admissible expenses:

IPCL has furnished their claim as per allocation furnished below:

SI No	Head of Expenditure	Generation	Distribution	Rs lakh
				Total
1	Legal expenses		52.10	52.10
2	Consultancy Charges	1.17	469.83	471.00
3	Total	1.17	521.93	523.10



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As evident from the above, 0.22% of the total expenses are attributable to generation function and 99.78% are attributable to distribution function. It is however observed that such expenditure includes claim for Detailed project Report Preparation for proposed Generation Project of 1 X 80 MW at CPS, Chinakuri- Tata Consultancy for Rs 9.94 lakh, Coal Sample Analysis, Envirotech-Environmental Impact assessment, soil investigating and testing etc. for 1 X 25 MW Plant at Seebpore for Rs 9.87 lakh, Occupational Health Hazard and Safety Audit of Plants (as per directive in Tariff Order)- National Productivity Council for Rs 1.89 lakh, Corporate Restructuring & Financial Projection (DPS 12 MW & Raghunathpur 540 MW) - Financial Advisory Services-DBD Business Solutions for Rs 163.82 lakh and other heads related to cases on tariff matters involving ARR determination comprising of both generation and distribution function etc. Accordingly, allocation as claimed by IPCL are not found to be justified.

Commission observes that, IPCL has submitted function wise Gross fixed asset as per Form 1.18 in their APR petition for 2011-12. The Gross fixed Asset (GFA) position as per such Form 1.18 in APR 2011-12 comes as below:

1. Generation: Rs 4294.60 lakh,
2. Distribution: Rs 12264.19 lakh
3. Total GFA: Rs 16558.79 lakh

Legal expenses and consultancy charges are part of Administrative and General Expenses which again is a part of O&M expenses. The O&M expenses arise out of an asset and can be reasonably related to as a percentage of Gross Fixed Asset as per prudent principles. Accordingly Commission allocates the admissible Legal expense and Consultancy Charges in the ratio of Gross Fixed Assets mentioned above as reported in Form 1.18 of APR 2011-12 petition submitted by IPCL as below:



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Rs lakh				
Sl No	Head of Expenditure	Generation	Distribution	Total
1	Legal expenses	11.93	34.08	46.01
2	Consultancy Charges	37.66	107.54	145.20
3	Total	49.59	141.62	191.21

The Legal expenses and Consultancy charges related to generation function are to be treated as per ceiling of O&M norms specified in the WBERC Tariff Regulations, 2011. The Legal expenses and Consultancy charges related to distribution function for **Rs 141.62 lakh** is admitted accordingly in disposal of IPCL review petition in compliance to the direction of the Hon'ble APTEL for review of earlier admitted sum of **Rs 54.05 lakh** for distribution function.

13.5 **Issue No. 4: Re-determination of capacity charge for Dishergarh Power Station for FY 2011-12:**

- IPCL has prayed for redetermination of capacity charges for old DPS unit for 2011 – 12 considering the fact that the plant was shut down on account of environmental norms and generation was interrupted due to lack of suitable quality of coal.
- Any asset of a generating station of a licensee (IPCL, in this case), whose tariff is not determined on the basis of availability, if remains inoperative for more than three months due to breakdown or force majeure events resulting in less than projected generation for generating station as compared to respective normative target for that generating station, then different element of ARR other than fuel cost corresponding to such inoperative assets will be



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determined considering methodologies as specified in regulation 5.25.2 of the Tariff Regulations, 2011.

Further, in terms of regulation 5.25.3 of the Tariff Regulations, 2011, any asset of a generating station of a licensee (IPCL, in this case), whose tariff is not determined on the basis of availability, if remains inoperative for less than three months due to breakdown or force majeure events, the Commission may deduct certain amount but not higher than the amount as per the principle laid down in regulation 5.25.2.

Now, IPCL neither has submitted any document or reference regarding their period of shutdown nor has submitted any letter from competent authority directing them for shut down due to environmental aspects. IPCL, though has submitted that the generation was less due to environmental norms but has not claimed their assets to be inoperative during the period. On the contrary, they have claimed 90% PAF in their petition. Thus, IPCL is not entitled for relief under inoperative assets clause.

- c) Regulation 6.4.3 of the Tariff Regulations, 2011 inter-alia specifies that the availability of a generating station affected only for the reason of shortage in coal availability from linkage source excluding own captive source shall be determined in a manner specified in the Balancing and Settlement Code. Such affected quantity of availability shall be compensated to the maximum extent possible by applying regulation 2.8.6.7 of the Tariff Regulations, 2011. For this purpose, the coal fired generating stations shall declare capacity for both the situations, i.e., Actual Declared Capacity taking into consideration existing actual shortage in coal supply and Notional Declared Capacity considering no shortage notionally in coal supply. The first and second proviso to the regulation 6.4.3 of the Tariff Regulations, 2011 specifies that the claim of shortage will be verified by SLDC based on the coal stock related data provided by the generating station. In case of any dispute, physical check by the beneficiaries in presence of SLDC representative will be done to verify the stock position and the decision of SLDC on coal stock will be final for the



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purpose of capacity charge recovery in terms of third proviso to regulation 6.4.3 of the Tariff Regulations, 2011.

Now, IPCL has claimed non availability of suitable coal for running DPS but has not provided in documents/ verification of SLDC regarding their claim. IPCL has also not provided their possible generation/ PLF in case coal would have been available during the period.

- d) DPS unit was not covered by online monitoring display arrangement in SLDC during the entire period of 2011 – 12. Thus, the recovery of capacity charge for Dishergarh generating station shall be determined on the basis of actual generation vis-à-vis targeted generation at target PLF as per first proviso to regulation 6.4.2 of the Tariff Regulations, 2011. The Commission also notes that Bandel Thermal Power Station and Kolaghat Thermal Power Station which have been commissioned in 1966 and 1990 and are very old have established online monitoring display arrangements along with communication systems in SLDC and are recovering capacity charges based on plant availability factor basis.
- e) Thus, there is no substantial document (submitted by IPCL) as per provisions of the Tariff Regulations, 2011 to reconsider the issue of redetermination of capacity charges for old Dishergarh Power Station unit for 2011 – 12 favourably.

13.6 Issue No. 5: Approval of quality and quantity assurance incentive for FY 2008-09 and quantity assurance incentive for FY 2009-10:

- a) The Hon'ble APTEL in its Judgement dated 01.04.2014 inter-alia stated that IPCL shall establish with the help of documents the justification of claim for quality assurance for Dishergarh for FY 2008 – 09 where the heat value of coal has been more than the minimum value as per Regulation 4.8 and for quantity assurance service provided to both the power plants for the FY 2008 – 09 and 2009 – 10 and the State Commission shall consider the same without being influenced by the impugned FPPCA Order. **If IPCL is able to establish the value addition actually provided by the coal transporter based on the**



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documentary proof, the Commission shall allow only the amount of incentive as expenditure in coal cost which is justified for the value addition service provided by the transporter. Further, Hon'ble APTEL in its Judgement dated 16.12.2021 directed the said appeals to be remitted to the Commission for fresh consideration and decision.

b) Regarding Quality Assurance Services for Dishergarh Power Station pertaining to FY 2008 – 09:

- i) DPSCL (presently IPCL) had issued work order on M/s PVR Inshield Bituminous Pvt. Ltd. on 29.11.2006 which was subsequently amended on 06.02.2007 and 03.12.2007. The said work order had a clause regarding incentive for quality assurance to be allowed to the contractor for improvement of weighted average GCV of coal received on 'as fired' basis over the guaranteed figure (5350 Kcal/kg) upto 5575 kCal/kg. Further, the work order also states that the incentive will be effective when the Heat Value of the coal is 75 Kcal/kg more than the guaranteed figure (5350 kcal/kg). The incentive amount will be given at a rate of Rs. 3602 per kCal per month plus taxes as applicable.
- ii) Now, from the order dated 30.06.2010 for FPPCA of FY 2008 – 09 in Case No. FPPCA – 34/09 – 10, the Commission observed that during FY 2008 – 09, the actual weighted average heat value of coal (5623 kcal/kg) at Dishergarh Power Station was more than the minimum value (5551.44 kcal/kg) as per the regulation 4.8 of the Tariff Regulations, 2007 as tabulated below. The Hon'ble APTEL had also pointed out the fact in Paragraph 27 in the Judgement in the Appeal No. 7 of 2013 and Appeal No. 217 of 2012 dated 01.04.2014.

	Dishergarh Weighted average Heat Value of Coal		Chinakuri Weighted average Heat Value of Coal	
	Minimum as per Regulation 4.8	Actual	Minimum as per Regulation 4.8	Actual
FY 2008-09	5551.44	5623.00	5518.88	5221.00



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From the above, it transpires that after paying Quality Assurance Incentive to the coal transporter, DPSCL has only managed to receive better quality coal for Dishergarh Power Station only whereas the actual GCV of coal received at Chinakuri is less than the minimum value (5518.88 kcal/kg) in spite of paying incentive for the same and thus Chinakuri Power Station is not entitled to receive any quality assurance incentive as an expenditure in the coal cost.

iii) The Commission in its FPPCA Order for FY 2008 – 09 in Case No. FPPCA – 34/09-10 has computed that the Cost of Coal for Dishergarh Power Station as Rs. 731.87 Lakhs which was computed with actual GCV i.e., 5623 kCal/kg. IPCL claimed that had they not issued a work order with a clause of quality assurance, they would have received inferior quality of coal and the actual GCV would not have been increased above the minimum value i.e., 5551.44 kCal/kg. Now, considering the minimum value of GCV of coal, the Cost of Coal for Dishergarh comes to Rs. 741.30 Lakhs. Thus, there has been a benefit of Rs. 9.43 Lakh (741.30 – 731.87) for the end consumers which is the value addition caused by engaging the coal transporter.

iv) From the submission of IPCL, it is observed that they have paid an amount of Rs. 22.49 Lakh as incentive i.r.o DPS for 2008 – 09 but the ultimate benefit passed on to the consumers is Rs. 9.43 Lakhs. Thus, an amount of Rs. 9.43 Lakh may be allowed as incentive i.r.o DPS for 2008 – 09 over and above the coal cost approved in the FPPCA Order of 2008 – 09.

c) Regarding Quantity Assurance Services for Chinakuri Power Station pertaining to FY 2008 – 09:

i) DPSCL (presently IPCL) had issued work order on M/s PVR Inshield Bituminous Pvt. Ltd. on 24.12.2008 for Transportation of Coal from different collieries of ECL to Chinakuri Power Station from December, 2008 to March, 2009. The total indicated quantity to be supplied in



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those four months is 61900 MT. The work order also includes a service charge payable to the coal transporter for additional supply of coal over 8000 MT per month at Rs. 300 per MT. The service charge is payable for a minimum additional supply of 500 MT per month. From the submission of IPCL, it is observed that they had paid an amount of Rs. 86.45 Lakh for quantity assurance services for Chinakuri during 2008 – 09.

From the FPPCA submission of IPCL for 2008 – 09 and the Work Order dated 24.12.2008, it is observed that Chinakuri Power Station has received the minimum additional supply (i.e, 500 MT per month) during December, 2008 to March, 2009 for which quantity incentive is applicable and the same is tabulated below:

Month	<u>Coal Purchase</u>	Admissible quantity over which incentive is allowed (Order dated 24.12.2008)	Excess Quantity of coal received
	<u>Chinakuri</u>		
	In MT		
Dec-08	10780.10	8000.00	2780.10
Jan-09	11749.80	8000.00	3749.80
Feb-09	14179.63	8000.00	6179.63
Mar-09	13637.46	8000.00	5637.46

- ii) From the submission of IPCL, it is observed that IPCL had purchased 50343.99 MT of coal for Chinakuri Power Station during December, 2008 to March, 2009. However, from the FPPCA Order dated 30.06.2010, it is observed that the annual coal consumption for Chinakuri was 120212.768 MT and considering 0.30% transit loss the coal requirement was 120574.492 MT. Thus, for the four (4) months i.e., December, 2008 to March, 2009 the coal requirement based on the generation of Chinakuri comes to 40191 MT ($120574.492 / 12 \times 4$).
- iii) From the above, it transpires that, had IPCL not paid the quantity incentive over and above the normal availability of 8000 MT per month or 32000 MT for 4 months, the generation during those 4 months would have significantly been lower. However, since 40191 MT has been the



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coal requirement during the period, therefore the net value addition on quantity of coal is 8191 MT (40191 – 32000). Now, considering the service charge of Rs. 300 per MT payable on the additional quantity of coal, the incentive for quantity assurance services for Chinakuri during 2008 – 09 is Rs. 24.57 lakhs (8191 MT x Rs. 300 / MT).

- iv) Thus, an amount of Rs. 24.57 Lakh may be allowed as incentive i.r.o CPS for 2008 – 09 over and above the coal cost approved in the FPPCA Order of 2008 - 09

- d) Regarding Quantity Assurance Services for Dishergarh Power Station and Chinakuri Power Station pertaining to FY 2009 – 10.

- i) DPSCS (presently IPCL) had issued work order on M/s PVR Inshield Bituminous Pvt. Ltd. on 21.04.2009 for transportation of coal from different collieries of ECL to Dishergarh and Chinakuri Power Station. The work order also included a service charge payable to the coal transporter for additional supply of coal over 8000 MT per month at Rs. 600 per MT. The said work orders were amended on 24.09.2009 and 30.12.2009. The work order dated 21.04.2009 along with its amendments have specified different coal supplies to Chinakuri and Dishergarh during the year. From the submission of IPCL, it is observed that they had paid an amount of Rs. 30.61 Lakhs for quantity assurance services for Dishergarh and Rs. 532.35 Lakhs for Chinakuri during 2009 – 10.

From the FPPCA submission of IPCL for 2009 - 10 and the Work Orders dated 21.04.2009, 24.09.2009 and 30.12.2009, it observed that Chinakuri Power Station and Dishergarh Power Station have received the additional supply (i.e., in excess of 8000 MT per month) during the year 2009 – 10 for which quantity incentive is applicable and the same is tabulated below:



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Month	<u>Coal Purchase</u>			Admissible quantity over which incentive is allowed		Excess Quantity of coal received for which incentive is payable	
	Dishergarh	Chinakuri	Total	Dishergarh	Chinakuri	Dishergarh	Chinakuri
	In MT						
Apr-09	2562.71	11467.79	14030.50	2000.00	6000.00	562.71	5467.79
May-09	2108.55	13164.68	15273.23	2000.00	6000.00	108.55	7164.68
Jun-09	2109.97	20423.59	22533.56	2000.00	6000.00	109.97	14423.59
Jul-09	2099.83	15048.52	17148.35		8000.00		7048.52
Aug-09	2720.64	14965.87	17686.51		8000.00		6965.87
Sep-09	3343.90	9946.89	13290.79		8000.00		1946.89
Oct-09	2068.40	11232.33	13300.73		8000.00		3232.33
Nov-09	1878.65	11445.29	13323.94		8000.00		3445.29
Dec-09	1946.73	11412.79	13359.52		8000.00		3412.79
Jan-10	2003.87	11350.65	13354.52	2000.00	6000.00	3.87	5350.65
Feb-10	2002.94	11344.64	13347.58	2000.00	6000.00	2.94	5344.64
Mar-10	2019.44	11145.28	13164.72	2000.00	6000.00	19.44	5145.28

- ii) From the submission of IPCL, it is observed that IPCL has purchased 26865.63 MT and 152948.32 MT of coal for Dishergarh and Chinakuri Power Station during 2009 – 10 respectively. However, from the FPPCA Order dated 04.06.2012, it is observed that the annual coal consumption for Dishergarh was 22616.457 MT and considering 0.30% transit loss the coal requirement was 22684.51 MT. Thus, for the six (6) months i.e., April, 2009 to June, 2009 and January, 2010 to March, 2010, the coal requirement based on the generation of Dishergarh comes to 11342.26 MT ($22684.51 / 12 \times 6$). Similarly, the annual coal consumption for Chinakuri was 124034.851 MT and considering 0.30% transit loss the coal requirement was 124408.08 MT during the whole year.
- iii) From the above, it transpires that the requirement of IPCL (11342.26 MT) during the 6 months is less than the 'Indicative Quantity of Coal' supplied to Dishergarh i.e., 2000 MT per month or 12000 MT for 6 months. Though, IPCL has received 807.48 MT of coal in excess of the indicative quantity during the 6 months and paid incentive on the same, but the same was not utilized for generation of Dishergarh. Thus, there



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has not been any value addition in paying the incentive for quantity assurance service for Dishergarh during 2009 – 10 to the coal transporter. Thus, no incentive may be allowed over and above the coal cost admitted for Dishergarh during 2009 – 10.

iv) Similarly, it transpires that, had IPCL not paid the quantity incentive over and above the normal availability of 84000 MT during the year (6000 MT X 6 months + 8000 MT X 6 months), the generation during the year could have significantly been lower. However, since 124408.08 MT has been the coal requirement during the period, therefore, the value addition has been on 40408.08 MT (124408.08 – 84000) of coal. Now, considering the service charge of Rs. 600 per MT payable on the additional quantity of coal, the incentive for quantity assurance services for Chinakuri during 2009 – 10 is Rs. 242.45 lakh (40408.08 MT X Rs. 600 / MT).

v) Thus, an amount of Rs. 242.45 Lakh may be allowed as incentive i.r.o CPS for 2009 – 10 over and above the coal cost approved in the FPPCA Order of 2009 – 10.

e) In view of the above, the following quantity and quality incentives have been allowed for the years 2008 – 09 and 2009 – 10:

Particulars	In Rs Lakhs							
	2008 - 09				2009 – 10			
	Dishergarh		Chinakuri		Dishergarh		Chinakuri	
	Claimed	Admitted	Claimed	Admitted	Claimed	Admitted	Claimed	Admitted
Quality Assurance Incentive	22.49	9.43	30.41	-	-	-	-	-
Quantity Assurance Incentive	3.88	-	86.45	24.57	30.61	-	532.35	242.45
TOTAL	26.37	9.43	116.86	24.57	30.61	-	532.35	242.45



ORDER OF THE COMMISSION

- 14.0 Based on the observations given in paragraph 13.2 Commission decides that rental income arising out of three floors in the building at Salt Lake for Rs 86.89 lakh is to be excluded under the head 'other income' for the year 2011-12. Thus, the additional net recoverable on account of redetermined other miscellaneous income comes to Rs 86.89 lakh
- 15.0 In view of observations given at paragraph 13.3 the NCD issue expenses of Rs 53.36 lakh is not admitted for ARR in 2011-12. No adjustment amount arises accordingly in recoverable amount.
- 16.0 In view of observations given at paragraph 13.4 the legal expenses and consultancy charges for the year 2011-12 are redetermined as below applying itemwise prudence based on actual expenditure incurred. Ceiling of O&M norms for generation function as specified in WBERC Tariff Regulations, 2011 will apply.

Rs lakh				
Sl No	Head of Expenditure	Generation	Distribution	Total
1	Legal expenses	11.93	34.08	46.01
2	Consultancy Charges	37.66	107.54	145.20
3	Total	49.59	141.62	191.21

Thus, the additional net recoverable on account of redetermined Legal expense and Consultancy charge of distribution function comes to Rs 141.62 lakh.

- 17.0 In view of observations given at paragraph 13.5, the claim on capacity charge is not admitted. Accordingly, no additional recoverable amount arises on this head.
- 18.0 In view of observations given at paragraph 13.6, the claim on quality and quantity assurance incentive for FY 2008-09 and quantity assurance incentive for FY 2009-10 is admitted as below :



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Particulars	In Rs Lakhs			
	2008-09		2009-10	
	Dishergarh	Chinakuri	Dishergarh	Chinakuri
Quality Assurance Incentive	9.43	-	-	-
Quantity Assurance Incentive	-	24.57	-	242.45
TOTAL	9.43	24.57	-	242.45

19.0 In terms of Tariff Regulations, the additional recoverable amount of **Rs 504.96 lakh** (Rs 86.89 lakh + Rs 141.62 lakh + Rs 9.43 lakh + Rs 24.57 lakh + Rs 242.45 lakh) or a part thereof may be adjusted with the amount of Aggregate Revenue Requirement for a subsequent period or that for any other ensuing year or through a separate order, as may be decided by the Commission. The decision in this regard will be given in the tariff order of IPCL for 7th control period.

20.0 The petition of IPCL is thus disposed off. Let a copy of this order be served upon IPCL.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 22.07.2022

Sd/-
SECRETARY