
Case No. 54/2013

... **Petitioner**

... **Respondents**

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56 of 2012 inter alia determining the tariff for procurement of power by GRIDCO from 4 X 600 MW (2400 MW) Power Plant at Brundamal, Jharsuguda of M/s. Sterlite Energy Ltd. Further, M/s. Sterlite Energy Ltd. has filed another application seeking interim relief under section 94(2) read with Regulation 20(3) of the Odisha Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 for stay operation of the final Order dt.12.06.2013 or direct GRIDCO to continue to pay the petitioner at provisional rate of Rs.2.75 per unit as being approved in the ARR of the GRIDCO till the disposal of instant review petition. The Petitioner has also brought to our notice the copies of the Orders of Hon'ble High Court of Bombay (Goa Bench) and the Hon'ble High Court of Madras granting merger of subsidiaries with holding company Sterlite Industries Ltd. w.e.f. 01.01.2011.

2. M/s. SEL in its review petition has submitted that the Commission has erred in not considering the following facts while determining the tariff of the generating station of M/s. SEL:

(a) While computing the weighted average rate of interest as 5.55% the following two facts have not been considered by the Commission.

(i) The amount of Rs.1860 Crs as loan extended to M/s. Talwandi Saboo Power Limited (TSPL), a wholly owned subsidiary of the M/s. SEL, has not been utilized in M/s. SEL's project and hence needs to be reduced from the loan amount of Rs.4217.51 Cr. extended by its parent company i.e. Sterlite Industries (India) Ltd. (SIIL). Therefore, the weighted average rate of interest would be about 7.16% instead of 5.55% as arrived by the Commission.

(ii) The Commission has erred in not considering the weighted average rate of entire loan portfolio of the Petitioner which would be around 11.33% per annum.

(b) While computing the debt equity ratio the Commission has erred the following:

Investment in the petitioner company from the free reserve of the Holding Company has not been considered either as Equity or as Quasi-equity. The Commission has not also considered excess equity amount as normative loan as per CERC norms. Due to amalgamation of holding company with its subsidiary the loan extended to the petitioner should be treated as equity.

- (c) Intangible asset of Rs.2.60 Cr. and Capital Advance of Rs.66.96 Cr. have not been considered in project cost of Rs.7986.19 Crs. As per the new Schedule VI applicable from 2012-13, cost of SAP Licenses are to be treated as “Intangible Assets” to be shown separately under Fixed Assets schedule. Similarly, capital advances were forming part of the Fixed Assets under the sub heading ‘capital work in progress’ and long term advances are to be shown separately under the head ‘Long Term Loans and advances’. Accordingly, once the said amount of Rs.69.56 crs. is added, the project cost will increase to Rs.8055.75 crs. instead of Rs.7986.19 Crs.
- (d) The Commission has over looked the fact that the transmission constraints in 220 KV tie line between petitioner and OPTCL still continues. Therefore, the auxiliary consumption as determined by the Commission is erroneous.
- (e) Station Heat Rate as calculated also suffers from error due to part load operation arising out of evacuation constraint.
- (f) Energy cost of generation of electricity has to be considered in a pooled manner. Presently, the fuel supply agreement (FSA) mandates unit-wise entitlement of linkage coal. It does not permit diversion of linkage coal. According to the consolidated PPA executed between GRIDCO and SEL dtd. 19.12.2012, the energy charges shall cover the fuel cost and shall be worked out on the basis of ex bus energy scheduled to be sent out from the generating stations. SEL is therefore, entitled to recover of tariff from GRIDCO based on pooled variable charge which includes cost of linkage coal, e-auction coal and imported coal.

3. Responding to the review petition M/s. GRIDCO has submitted as follows:

- (a) The mere fact an amount of Rs.1860 cr was given to M/s. Talwandi Saboo Power Ltd. a wholly owned subsidiary of M/s. SEL can’t change the actual loan portfolio of M/s. SEL as on 31.03.2013 rather the same should have been disclosed under investment on which SEL may get return.
- (b) In the instant case the actual equity deployed is only around 15% of capital cost as per audited accounts. The question of normative loan does not arise. The funds deployed from the internal accruals, part of free reserves invested by the holding company as equity is not at all permissible.

- (c) There is no such provision in CERC Regulations to treat 0% loan of parent company as quasi-equity.
- (d) Capital advances are not be treated as a part of project cost as it is in the nature of advance only and has not been converted to capital cost yet.
- (e) As per CERC Regulation the units of SEL being more than 500 MW capacities is eligible for normative auxiliary consumption of 6% of total generation.
- (f) GRIDCO has accepted the day ahead schedule given by SEL in full, hence, part load operation if any attributed to SEL. The gross station heat rate as allowed by the Commission is justified.
- (g) As per Clause 14(1)(d) of Fuel Supply Agreement dtd. 09.06.2012 between M/s. SEL and M/s. MCL for Unit-II, 600 MW power plant, M/s. SEL has to submit a certificate (annual) from the State / Central Regulatory Authority as the case may be to the effect that the DISCOMs has received consistent supply of power from the power producers other wise M/s. MCL shall have the right to suspend supplies of coal to SEL. This implies that the coal procured by M/s. SEL from MCL is only dedicated to the consumers of the State. As it is observed that the coal requirement for actual drawal of GRIDCO is less than the linkage coal available to SEL and since SEL has a lone PPA with one utility i.e. GRIDCO, it can use other sources of coal such as imported, e-auction coal for selling of power to buyers other than GRIDCO.

4. Heard the parties at length. During hearing the Petitioner has submitted before us the orders of Hon'ble High Courts of Bombay (Goa Bench) on 03.04.2013 and Madras on 27.07.2013 granting merger of Sterlite Energy Ltd. which was a subsidiary of M/s. Sterlite Industries Ltd. along with all other subsidiaries of M/s. SEL with its holding company i.e. M/s. SEL w.e.f. 01.01.2011. The Petitioner has also prayed that due to the above merger their business model (capital structure) has undergone complete change which requires fresh view of equity and loan component of the generating project. Considering the above submission the Commission had observed that the present review petition has lost its relevance due to above amalgamation. The Commission also declines to review its Order by taking into account the Hon'ble High Court Orders as mentioned above on the ground that the full impact of High Court Orders on the debt and equity structure of generating units can only be known when the accounts of the present applicant company get merged with holding

company and final consolidated audited accounts are available to the Commission. Consequently, the Petitioner sought the attention of the Commission for reviewing that part of the original order which relates to a period before the said date of merger. Therefore, the Commission in their interim order dtd. 04.09.2013 admitted the review petition and made it clear that as per the revised prayer of the Petitioner during hearing the revised petition is confined to the consideration of matters relating to pre-merger period. Thus accordingly the Commission directed M/s. SEL to submit certain other information pertaining to capital cost and loan repayment with supporting documents.

5. As per Order 47 Rule 1 of the Civil Procedure Code, review of an order can be made on the following grounds:
 - (a) Error apparent on the face of the record;
 - (b) New and important matter or evidence which is relevant for the purpose was discovered which could not be produced after exercise of due diligence or if there appears to be some mistake;
 - (c) Any other sufficient reason.
6. At present our review has been limited to a period prior to the period of merger i.e. 01.01.2011. Let us examine the details repayment of loan which could not have been brought before us during the hearing of original petition and will have effect during the period of review. On scrutiny of the bank accounts statement it is observed that loan repayment of Rs.1860 Crs. as claimed by the Petitioner has started from 16.09.2011 onwards which is much after the appointed date of merger i.e. 01.01.2011. Therefore, the contention of the Petitioner to consider the said loan repayment and allow consequential tariff impact is not acceptable as it has been repaid after the merger date and beyond the period of review.
7. The contention of the petitioner to treat the loan availed from **holding** company as equity is also not acceptable due to the fact that it is beyond the scope of review as mentioned in the Para 5 above.
8. During the review period only one unit i.e. Unit-II was operational. The project cost as submitted by the Petitioner as far as Unit-II is concerned has been accepted by the Commission in full. So the prayer of accepting advance to supplier and intangible assets which were capitalized after the period of merger can't be accepted at present. This capitalization is also beyond the period of review and hence not tenable.

9. The contention of the petitioner with reference to auxiliary consumption and heat rate have been considered extensively by us in our original Order with due regard to power evacuation constraint of Unit-II. Therefore, dealing with the matter in this review Order would result in hearing an appeal against our own Order which is beyond the scope of review.
10. The averments of the petitioner in this review petition for pooling the cost of coal purchased through linkage, e-auction and import had been suitably dealt by us in our original order. It is again reiterated that the linkage coal supplied by M/s. MCL is only to be utilized for the generation of power to be supplied to the DISCOMs. This is a pre-condition for coal linkage given to the petitioner. However, reopening this matter is not in the nature of a review, therefore, is not acceptable.
11. The prayer for stay has become infructuous as we are issuing final order in this present review petition.
12. Accordingly, the matter is disposed of.

Sd/-
(S. P. Swain)
Member

Sd/-
(B. K. Misra)
Member

Sd/-
(S. P. Nanda)
Chairperson