REPORT OF THE EXPERT

PART II

In this part of the Report each Issue, as given in the Terms of Reference, has been dealt issue by issue. Recommendations are given after dealing with the each issue. Information already available in the Part I has not necessarily been repeated but while analysing the issue the overall broad picture has been kept in mind.

ISSUE 1 CAPITAL COST OF THE PROJECT Including Foreign Exchange Rate Variation

1.0 As per Provisions of the PPA Completion cost is defined as:

Article 1(xxii), 'Completion Cost 'means the cost (expressed in rupees crores of Foreign Currency as applicable) actually incurred by the Company in completing the project, subject to incorporating the following principles clearly:

i) Costs in excess of Rs.37.908 crores i.e.,10.53 MUS Foreign Currency(A cost which have been agreed between the Administration and Company for the purpose of PPA) to the extent approved by the Administration as not having been attributable to the Company or the Company's suppliers or contractors shall be added to Rs.37.908 crores i.e.,10.53 MUS $ foreign currency for arriving at completed cost.

ii) Any increase or decrease in project cost attributable to changes in foreign currency exchange rates.

iii) The reduction in capital cost by an amount equal to any reduction in interest during construction and principle amount of loans through application of liquidated damages received under the construction contract on account of delay in completion.

iv) ……

v) ……

vi) ……

vii) For the purpose of determining the completion cost all foreign currency loans and all foreign currency equity sources shall be converted into rupees at the exchange rates applicable at the time of physical occurrence of the event. In case the actually incurred cost is less than the ceiling cost of Rs.37.908 crores i.e. , 10.53MUS$ foreign currency component of the PPA, the lesser cost shall be taken as the completion cost .

M/s.SPCL , in their written submissions , have stated that they have actually availed two foreign currency loans viz. SBI- FCL : 3.50 million USD; and SREI-FCL : 4.46 million USD totalling 7.96million USD and utilized foreign component of 5.13 million USD.

M/s.SPCL had spent more towards equipment, construction , services and taxes & duties paid in rupee currency. M/s. SPCL has given the details of the said project expenditure of Rs. 85.10 crores (Page:243 of Vol-1 of their petition submitted on 29/11/12 to JERC).The relevant portion of works cost is as follows:

	As per PPA	As per statement of actual expenditure
	Rs.6314 lakhs	Rs.8510.41Lakhs

CEA in its report attached to their letter to A & N dated 03/11/10 on the utilization of foreign currency amounting to 10.53 MUSD has commented as below:

" From the details as brought out above, the factor that can be considered to allow excess cost over approval cost is the exchange rate variation. In the approved cost of Rs.63.14 crores foreign component of US $ 10.53 million was considered at the exchange rate of Rs.36 per US $. The weighted average exchange rate during implementation of the project based on loan disbursement has been indicated as Rs.47.0445 per US $. It is stated in the report of the Committee on Joint Exercise that the IPP has utilized less foreign currency i.e. 9472653 DEM(equivalent Rs.22.277 crores) and utilized more domestic currency compared to the approved estimates. Increase in cost to the extent of exchange rate variation over the approved foreign currency utilized by the IPP is less considering that the actual expenditure is more than the approved cost as certified by the Chartered Accountants. This increase in cost works out to Rs.11.63 crores."

As per the Petitioner, " *the actual project cost or the completed project cost incurred by the Petitioner is Rs 85.10 crores . Thus there is an increase of Rs 21.96 crores over the TEC approved cost of Rs 63.14 crores."*

The variation in the project cost as stated by the petitioner was due to "(a) price escalations/inflation (b) exchange variations (c) additional items (d) change in design parameters based on soil conditions of the site etc.

This aspect was reviewed by consultants, CEA and Committee set up by the Administration. Their views regarding increase due to increase in establishment cost due to increased gestation period and increase in equipment cost are given here under:

CEA,s views

"as per the break-up details of the approved cost given in various documents, it is noticed that approved cost of preliminary and capital issue expenses was Rs.1.8525 crores which included a cost provision of about Rs.1.10 crores for

the establishment. As per the completed cost certified by the Chartered Accountant, an expenditure of Rs.5.8137 crores has been incurred on preliminary and capital issue expenses which include Rs.4.7464 crores for establishment. Considering the extended gestation period as recommended by A&N Administration, the cost of establishment worked out to Rs. 4.40 crores on proportionate basis. Thus, the additional expenditure due to extended gestation period works out to Rs.3.30 crores. The completed hard cost of the project excluding IDC would work out to Rs. 75.07 crores as per details given below:

CEA, however, had not considered any increase in equipment costs.

TANGEDCO in its review and report submitted on 05.09.2012, recommended the following with regard to the equipment cost :

SI No.	Description	Amount (Rs. lakhs)	Recommendation of TANGEDCO
(a)	Additional transformer & black start DG Set	30,97	Allowed as per MOM dt.19.8.2003
(b)	Centrifugal separator	39.85	To consider under natural justice
(c)	Road, Culverts, Jetty Bldg. & Civil Contn,	88.45	Subject to approval from APWD
Total		159.27	

Recommendations of the five member Committee set up by the Administration:

The committee had considered the Rs 3.30 crores on account of increase in cost of establishment due to extended gestation period as per the observations of CEA. However, with regard to the additional cost of works, it had not agreed to items (b) and (c) of above recommendations of TANGEDCO.

Foreign Exchange for Rupee Funding :

> It is a normal industry practice to take foreign currency loan not just for the purpose of import of capital goods and /or offshore services, but also on considerations of loan availability, cheaper interest rates, better terms & conditions as compared to the domestic loans as a source of funding the project. It is stated by the petitioner in the instant case that the loan in foreign currency was availed to the extent of 7.96 million USD, though they utilized only 5.13 million USD for import of foreign component. A&N Administration has been insisting that FERV should be limited only to the extent of cost of imported equipment. The Petitioner asserts that they have utilized 7.96 M US$ equivalent of foreign currency loans on which FERV is to be allowed. Therefore, the petitioner has utilized the balance portion towards other project related expenditure by converting the foreign currency loan into Indian Rupees.

The exchange rate variation is calculated on the actual loan drawal and not on the sanctioned loan or the estimated loan. While CEA in their report considered 10.53 M US$ foreign component included in the approved costof Rs.63.14 crores, it is seen that at the project implementation stage, (i) the import –indigenous mix of the equipment had changed; and (ii) the actual foreign currency loan availed also had come down.

Accordingly, the foreign exchange rate variation is allowed only on the actual foreign currency loan amount availed towards the funding of the project, not restricting only to the import of equipment .As seen from the CEA Report, the exchange rate considered at the time of approval of the project cost was Rs.36 per USD, whereas the weighted average exchange rate during the implementation of the project based on loan disbursement

as considered by CEA was Rs. 47.0445 per US$. The CEA Report while allowing Rs.77.595 crores as “funds tied up” gives the break up of loan and equity. As per the Report, the foreign currency loans taken from SBI and SREI are Rs.1636.10 lakhs and Rs.2108.64 lakhs respectively. The total foreign currency loan amount in Indian currency, therefore ,works out to Rs. 3744.74 lakhs i.e. Rs.374.474 M. Taking the weighted average exchange rate considered in the CEA Report referred to above at 1US$=Rs.47.0445,the equivalent foreign currency loan in US$ works out to 7.96 MUS$(374.474/47.0445).

In view of the aforementioned ,the increase in the US Dollar rate of Rs.11.0445 per USD is recommended to be considered as the foreign exchange variation and applied to the actual foreign currency loan drawal of 7.96 million USD. The increase in cost due to foreign exchange variation on the loan availed works out to Rs.8.79 crores (approx.) as against the increase allowed by CEA of Rs. 11.63 crores. However, it has to be ensured that the inward Foreign Currency remittances were actually made through Banking channels and documentary evidence produced thereafter.

Citi Bank and Unsecured Loans

The admissibility of Citibank loan and other sources/credits which was not considered by CEA in their report while suggesting the completed cost of the project was another issue discussed with both the parties. In this regard, the written submissions by both M/s.SPCL and A & N Admn. As well as various documents submitted by both the parties were scrutinized.

CEA in their report attached to their letter to A & N Administration offered their views that the total expenditure in respect of the 20 MW Diesel Generating project of M/s.SPCL including IDC works out to Rs.80.38 crores. However, considering that the total funds tied-up for the project for which documentary proof was given by M/s.SPCL , the project cost was restricted to Rs.77.595 crores only. While working out the funds tied-up for the project, CEA has excluded the loans taken by M/s.SPCL from Citibank of Rs.4.02 crores after the COD and other loans/credits of Rs.2.052 crores for which according to CEA, no proper documents were

given by M/s. SPCL. CEA informed A & N Administration to examine the funds tied-up status before inclusion of these loans.

Subsequently , Andaman & Nicobar Administration appointed Tamil Nadu Generation and Distribution Corporation Ltd.(TANGEDCO) as consultants , to examine and provide expert comments on Citibank loan and other sources/credits availed by M/s.SPCL for the project for onward submission to CEA in finalization of the completed cost. TANGEDCO was also required to comment on the extended gestation period including the delay caused by both parties—M/s.SPCL and A & N Administration.

The Expert has relied on the opinion given by TANGEDCO as their team of officials visited the site, held discussions and scrutinized the various original documents with respect to the sanction of the loan, withdrawal of the loan , utilization of the loan and the nature of expenditure forming part of the project cost.

TANGEDCO after site visit, discussions with both the parties and scrutiny of the documents provided by M/s.SPCL , came to the conclusion that :

1)out of Rs.4.02 crores of Citibank loan, an amount of Rs.3.865 crores could be considered for inclusion in the capital cost. Even though the bank loan was taken after the COD, it was noticed that the loan was utilized towards payment in respect of works completed prior to COD ; besides, A &N Administration has certified that the above work had actually been done and were being used beneficially. TANGEDCO allowed expenditure like additional transformer, black start DG, centrifugal separator, road &civil constructions, jetty building & construction, Equipment Supplier(M/s. Caterpillar) retention payment, cooling tower etc. as part utilization of Citibank Loan amounting to Rs.3.865 crores.The balance amount of the loan spent on expenditure like start-up lube oil,telephone bills, travelling expenses and audit fees was not considered in the tied-up funds;

2)in the case of unsecured loans of Rs.2.052 cr, the outstanding liability to the EPC contractor (M/s.BSES Ltd) of Rs.0.65 cr, was only allowed to be included in the capital cost.

3) the completed cost including IDC works out to Rs.82.11 crores.

As per TANGEDCO Report, the completed cost including IDC works out to Rs.82.11 Crs. It is seen from the list of expenditure allowed by TANGEDCO out of the Citi Bank loan, an amount ofRs.62.70 lakhs was paid in respect of Jetty building and civil construction .As the Detailed Estimate given in the PPA under the head "construction of Jetty allocates Rs.5.50 lakhs, an amount of Rs.57.20(62.70-5.50) should have been deducted by TANGEDCO.

After discussions with CEA on the above first report of TANGEDCO, as advised by CEA, TANGEDCO relooked into the matter. TANGEDCO reiterated their stand regarding admissibility of partial amount of Citibank loans and unsecured loans; however, as advised by CEA, the total completed project cost was restricted to Rs.80.38 crores.

Recommendation:

In view of the aforementioned analyses and the fact that the issue has been examined in depth with documentary evidence by TANGEDCO-a State Government entity, it is recommended that Citibank loan to the extent of Rs.2.8915 Crs. (Rs.3.865Crores allowed by TANGEDCO MINUS Rs.57.20 lakhs towards extra expenditure on construction of Jetty and Rs.39.85 lakhs towards the cost of Centrifugal separator not approved by the 5 member committee of A&N) and unsecured loan of Rs. 0.65 Crs. may be considered as funds tied-up along with Rs.77.595 crores already considered by CEA. However, total project cost will be limited to Rs. 80.38 Crs as decided by CEA.

ISSUE 2 RELATING TO LIQUIDATED DAMAGES …Recoverability ,if any,from the Petitioner by the Respondent

2.1 Andaman & Nicobar Island administration vide letter dated 20.11.97 had accorded sanctions to the proposal to M/s Suryachakra Power Corp. Ltd. (SPCL – Petitioner) at an estimated completes cost of US $ 10.53 million plus Rupees 25.232 crore totalling to Rs. 63.14 crore. Regarding

commissioning schedule, it was stipulated in the sanction letter that the project shall be completed within a period of 24 months from the date of clearance from CNE (Committee for Non-Plan Expenditure) with unit 1&2 to be commissioned in 19 months, unit 3 in 21 months and the last unit no. 4 within 24 months from the date of clearance of CNE.

In the PPA (Power Purchase Agreement) signed for the project between Andaman & Nicobar Island Administration and M/s SPCL, the project milestone schedule (Appendix- C, Page No. 80 of PPA) envisaged as follows :

S. No.	**Milestone**	**Date**
1.	Financial closing	Four months from the date of fulfillment of conditions precedent as mentioned in Article 1 Clause (Lxi) 3 at Page 17 PPA.
2.	Effective Date	Same as financial closing date.
3.	Commercial Operation date of the first and second units.	19th month after the financial closing.
4.	Commercial Operation Date of the third units.	24th month after the financial closing.
5.	Commercial operation date of the fourth units.	24th month after the financial closing.
6.	Commercial Operation Date	24th month after the financial closing of the project.

As per above, the COD works out as under:

First two units – 1.3.2002 (577 days)

Rest two units - 1.8.2002 (730 days)

The financial closure was achieved on 01.08.2000 (Zero date / Effective date)

As against the said milestones all the four DG Sets of 5 MW each achieved Commercial Operation in April 2003.

2.2 Chronological Events/Reasons for dealay and force Majeure as submitted by M/s SPCL (Annex I of CEA,s letter dated 3.11.20100

1. Evacuation facilities were supposed to be ready by 1st November 2001 i.e. 120 days prior to the scheduled commercial operation date i.e. 1st March 2002 as per article 3.3 (c) (v) of PPA. However the evacuation facilities were not ready on the scheduled date .

2. A&N vide letter dated 7.12.2001 has informed that Supreme Court prohibited cutting of tree vide its order dated 11th October 2001 and covers under force majeure.

3. Refer point 1 above, the evacuation facilities should be ready by 1st November 2001 but Supreme Court order were issued on 11th October, 2001. No major work was carried up to the court order date and it is not possible to complete the evacuation facilities within 20 days. We have not received any further intimation when the prohibition was lifted by Supreme Court and when the evacuation facilities were ready.

4. Since the delay in evacuation facilities were not a force majeure event , we requested for payment of fixed charge, but A&N has not paid.

5. A&N supposed to open letter of credit as security 60 days before COD, which they have not opened .

6. SPCL, requested several times for Operating procedures / manual for inter connection facilities and A&N has not provided.

7. A&N informed on 20th May 2002, that existing transmission line strengthened to receive 6 MW To 7 MW of power.

8. SPCL informed A&N that the existing 53 km. line is not reliable and requested for new 33 kV. transmission line as per the provisions of PPA.

9. EPC Contractor (BSES limited) informed on 3rd June 2002, that the plant is ready for synchronization and commencement of operation and ready to complete the acceptance test (72 hours per DG Set) by 20th June 2002, provided the arrangement for synchronizing of machines is made available. We requested A&N vide our letter dated 3rd June 2002 enclosing copy of BSES Limited Letter.

10. All the 4 DG Sets were run with auxiliary equipment loaded up to 2.5 MW to 3 MW in June 2002 . At this stage on 8th June 2002, the German Embassy send a message to German technicians working on commissioning of project , to leave India because of war like situation between India and Pakistan. Hence Germans left the country and DG sets were shutdown. This is a force majeure as per PPA.

11. The German Technicians came in October 2002 and noticed pitting & rusting in lube oil piping and need re pickling & passivation.

12. SPCL on several occasions requested A&N to organize engineer form CEA for witnessing during conducting of Acceptance Test. Dates were fixed several times and rescheduled due to non availability/ arrival in time of CEA engineer for supervising the Tests.

13. Finally Acceptance test for individual DG sets were conducted from 8th January 2003 to 4th February 2003 and for all the sets for 72 hours on 18th February 2003.

14. Thereafter also A&N look a very long time in declaring COD in spite of directive from CEA and finally declared provisional COD on 1St April 2003.

Form the chronological events as detailed above it is evident that the delay in commissioning of the plant in the stipulated time period was not from the IPP side but entirely from A&N side in not complying the conditions of the PPA by them. More over, there was no Force Majeure from tha A&NI side as claimed by them. As such IPP will not accept the imposition of liquid dated damages levied on it.

Further it is also pertinent to mention here that the A&N has failed in providing reliable construction power for the IPP continuously during the construction activity and delay in

opening of Letter of Credit in time as per provisions of PPA resulting in delay in commissioning of the plant.

2.3 Extracts of A&NI Administration letter dated 1.4.2011 addressed to CEA forwarding their comments on delayed gestation period;

"*ADMISSIBLE GESTATION PERIOD*

a) First Two Units – The milestone schedule as per PPA the first two set COD should be in 19 months from financial closure date. Since the financial closure date is 01.08.2000, the COD should be on 01.03.2002. As per this a total of 577 days gestation period admissible as per PPA. The 53 km transmission (Tiger) line was completed and ready by 01.05.2002. But the supervisor of MAK CAT, Germany (Engine manufacturer) was withdrawn due to war like situation at Indo-Pak border during first week of June, 2002. Further, the Hon'ble Supreme Court ordered ban for felling of naturally grown trees resulting in change of original alignment of Panther Transmission line & was modified to be re-done. The COD was therefore modified vide MOM dt. 05.06.2002 for first two set to 31.08.2002. Due to which this period of 184 days from 01.03. 2002 to 31.08.2002 stands admissible. However, M/s SPCL could not get back their Supervisor, MAK CAT by 31.08.2002, and could reach Port Blair by October, 2002, though the war like situation was there for only about a fortnight. The A&N Admn. completed the double circuit Panther transmission line on 10.12.2002 and M/s SPCL was ready with their first two unit only on 13.12.2002. The extended gestation period from 31.08.2002 to 13.12.2002 for 104 days is therefore not admissible. The period from 13.12.2002 to 08.01.2003 for 26 days taken by independent engineer (CEA) to reach Port Blair was not under the control of either party and hence should cause no effect on IDC or LD. The testing started w.e.f. 08.01.2003 and completed in all respect on 18.02.2003 and this 42 days also not considered to be admissible as these testing are essential and must be completed before COD.

Further, M/s SPCL w.e.f. 18.02.2003 was ready for COD and CEA also recommended for COD w.e.f. 18.02.2003 but the COD could be declared only on 01.04.2003 for 42 days gestation period also stands admissible in favour of M/s SPCL.

Hence, a total no. of 226 days extended gestation period for first two set could be considered due to various factors but 146 days extension cannot be considered for first two units and M/s SPCL will have to pay L.D. for this delay for first two units as per PPA.

(b) Rest Two Units : As per milestone schedule the rest two units COD should be in 24 months from financial closure date of 01.08.20000. Accordingly, the rest two units, the COD should have been on 01.08.2002 and therefore a total of 730 days gestation period is admissible as per PPA,

During first week of June, 2002 due to the war like situation referred above, supervisor of MAK, CAT, Germany (Engine manufacturer) were called back. Further, the Hon'ble Supreme Court ordered ban on cutting the naturally grown trees resulting in modification of original alignment of double circuit Panther transmission line. Due to the above facts alongwith many; other issues, a meeting was taken by the CS, A&N Admn. and vide MOM dt. 05.06.2002 the COD of rest two units were rescheduled to 15.10.2002. Hence this extension from 01.08.2002 to 15.10.2002 for 76 days become admissible. Since the Double circuit panther transmission line could be completed only on 10.12.2002, this period from 15.10.2002 to 10.12.2002 for 56 days also to be considered as elegible extension of gestation period. Since, M/s SPCL could place their rest two units for testing and complete all testing on 18.02.2003, this period for 10.12.2002 to 18.02.2003 for 71 days cannot be considered.

Further, M/s SPCL w.e.f. 18.02.2003 was ready for COD and CEA also recommended for COD w.e.f. 18.02.2003 but the COD could be declared only on 01.04.2003 by A&N Admn. This period from 18.02.2002 to 01.04.2003 for 42 days gestation period also stands admissible in favour of M/s SPCL.

Hence, a total no of 174 days extended gestation period for rest two units could be considered but 71 days cannot be considered for rest two units and M/s SPCL need to pay LD for these 71 days for rest two units as per PPA."

2.4 Extracts of TANGEDCO report dated 11.11.2011

The Electricity Department of Government of Andaman & Nicobar Islands had requested the services of the services of the Tamilnadu Generation and Distribution Corporation Ltd. (formerly Tamil Nadu Electricity Board) in the matter of examining the Power Purchase Agreement entered into by Andaman & Nicobar Islands administration with M/s Suryachakra Power Corporation Ltd. for the 4 x 5 MW Diesel Generating Plant established by them at Bamboo Flat Island on a build own and operate basis.

The scope of work besides others included "**comments on the extended Gestation period including the delay caused by both parties as recorded in the Administration letter dated April 1,2011".**

The observations of TANGEDCO on the Justification for Extended Gestation Period due to delay in establishing power evacuation facilities and LC opening are given hereunder:

"*Clause 3.3.0 (i), (ii) and (v) of Power Purchase Agreement, stipulates that the administration is obliged to cause the transmission facilities by laying and rerouting new transmission lines etc., for*

drawing and receiving electricity produced by Independent Power Producer 120 days before COD of the first engine / power station, i.e. 19 months from the financial closure date of 01.08.2000 for Unit I & II and 24 months for Unit III & IV. But the COD was extended till 31.08.2002 mutually for Unit I and II and till 15.10.02 for Unit III and IV as per MOM dt. 05.06.20002. Accordingly, the Andaman Administration should have completed and offered a new transmission line by 01.04.2002 as per MOM dt. 05.06.2002 which was not done by the Administration. Without readiness of the transmission facilities, matching parameters set forth in Appendix E of Power Purchase Agreement, it is not appropriate to expect the Independent Power Producer to commence operation of the units. As seen from the records, the double circuit panther transmission line was ready only by 10.12.2002 and Independent Power Producer was ready to commence the required tests on the engines by the above date. However, the Independent Engineer who was to witness these tests as per Power Purchase Agreement clauses could not arrive by that date i.e., 13.12.2002, the date fixed for commencing the Performance Tests on the engines jointly by both Independent Power Producer and A & N Administration as seen from the record of the discussions held on 09.12.2002 by the above both the parties. However the Independent Engineer from CEA arrived to site only on 07.01.2003 and completed by 18.01.2003. As such these period / days i.e. from 01.09.2002 to 08.01.2003 totalling to about 180 days cannot be accounted to Independent Power Producer. The Independent Engineer who had arrived to witness the above test has arrived only 27.01.2003 and the tests on the rest of two engines was started on 28.01.2003 and completed by 04.02.2003. Thus there was a gap of 11 days for conducting the tests on the rest of two engines, the fault of which does not lie upon the Independent Power Producer and as such the period of the delay of 11 days is also not attributable to Independent Power Producer.

Further as per Power Purchase Agreement, LC has to be opened by A&N Administration one month before the COD i.e. before 01.04.2003 whereas LC was initially opened only on 01.04.20003, the delay of which is also attributable to Administration.

To sum up as per MOM dt. 05.06.2002, COD should have been achieved by 31.08.2002 for Unit I and II and by 15.10.2002 for III and IV. But this was not achieved due to non-completion of power evacuation facilities and LC opening. The consultant has taken all these aspects into consideration for arriving at the days recommended for admission / not recommended for admission for Unit I to IV as in Annexure II of this report.

We therefore suggest no change and offer and offer no comments in addition to what Andaman has finalized on dated 01.04.2011."

However ,TANGEDCO had further opined at Para 4.0 that:

"*The administration achieved compliance of the provisions of the Power Purchase Agreement (PPA) under clause 3.3(c) (i), (ii) and (v) (age No. 23) and clause 8.3 (Page No. 41) only on 10.12.2002 & 01.04.2003 respectively. Hence achieving of COD by M/s SPCL on 02.04.2003 was well before the provision of 120 days and 30 days schedule given in above clause of Power Purchase Agreement (PPA). Thus imposition of liquidated damages as per clause 3.10 (Page No. 28) of Power Purchase Agreement (PPA) on M/s SPCL for delay in achieving COD is not justifiable.* "

As per PPA, the first two units were to be commissioned in 19 months and next two units in 24 months from the financial closure date thereby the target date were 1.3.2002 (Unit 1 & 2) and 1.8.2002 (unit 3 & 4).However, the commissioning schedule was modified vide MOM dated 05.06.2002 to 31.08.2002 and 15.10.2002 respectively due to factors like war like situation and ban on felling of trees. The Commercial operation date (COD) was finally declared as 02.04. 2003.

Clause 3.3.0 (i), (II) and (v) of PPA stipulates that the Administration is obliged to cause the transmission facilities by laying and rerouting new transmission line etc., for drawing and receiving electricity produced by IPP 120 days before COD of the first engine /power station. Accordingly, the line should have been ready by 1.4.2002 to meet the revised schedule of 31.8.2002 for the first two units. However, the A&N Administration completed the double circuit Panther transmission line on 10.12.2002. M/s SPCL was also stated to be ready only on 13.12.2002.

The process of organizing for testing, actual conducting of acceptance tests and final approval took its time and COD could be declared only on 2.4.2003.The provision of 120 days of readiness of the Transmission line is kept to take care of such commissioning procedures and third party inspection. Further , Administration opened the letter of Credit on1.4.2003 which as per PPA should have been opened one month before COD.

Recommendation.

TANGEDCO has concluded that' ***Thus imposition of liquidated damages as per clause 3.10 (Page No. 28) of Power Purchase Agreement (PPA) on M/s SPCL for delay in achieving COD is not justifiable.'*** **As SPCL achieved the COD on 2.4.2003 , which is within the period of 120 days of availability of new transmission lines and within 30 days of opening of LOC, one tends to agree with the recommendation of the consultant appointed by the Administration. Agreeing with the recommendations of TANGEDCO, recommended that the imposition of Liquidated Damages is not justified.**

ISSUE 3 Foreign Exchange Variation

This issue has been covered under Issue 1 itself.

ISSUE 4 ALL TARIFF PARAMETERS WHICH FLOW FROM THE CAPITAL COST OF THE PROJECT

4.1 Tariff for Diesel generators has the following components:

Fixed Cost and Variable cost

Fixed cost comprises of: Return on Equity, Interest on Loan, Depreciation, Interest on Working Capital, O&M expenditure and Incentive.

Variable Charges include cost of Fuel and adjustment on account of variation in price or heat value of fuels.

All the aforementioned parameters are well defined in the PPA,once the project Capital Cost is finalized, the Tariff parameters will be based on the provisions of the PPA.

Issue of Incentive is another issue raised by the Petitioner which is discussed below:

4.2 INCENTIVE

The Power Purchase Agreement provides the following clause on incentive:-

> *"Incentive payment for any Billing period shall be calculated at 0.65% of equity for every 1% increase in PLF, over the normative PLF of 68.49%"*

Whereas, the petitioner contented that the incentive due to him as per the above mentioned clause of PPA should be paid, the respondent is contesting that this 0.65 percentage should be applied on the 16% return on equity and not the equity' per se.

It is pertinent to refer to the clause of 1.6 the Ministry of Power Notification dated 30th March, 1992 with regard to the incentive reproduced below:

> *"Full fixed charges shall be recoverable at generation level of 6000 hours/ kw/year (4500 hours/kW/year during stabilisation period.) payment of fixed charges below the level of 6000 hours /kW/ year shall be on prorate basis. There shall not be any payment for fixed charges for generation level above 6000 hours/ kW/ year. For*

generation of above 6000 hours/ kW/ year, the additional incentive payable shall not exceed 0.7 per cent of paid up and subscribed capital, for each percentage point increase of Plant Load Factor above the normative level of 6000 hours/ kw/ year. While computing the level of generation, the extent of backing down, as ordered by the Regional Electricity Boards or State Load Despatch Centre, as the case may be, shall be reckoned as generation achieved. The payment of fixed charges shall be on monthly basis, proportionate to the electricity drawn by the respective Boards and other person. Necessary adjustment based on actual shall be made at the end of each year.

***Note** -1 The additional incentive of return of equity of 0.7 per cent for each percentage increase above the normative level of 60000 hours/ kW/ year, mentioned above, shall be the maximum ceiling. It shall be open to the Generating Companies and Boards or other power purchasers to negotiate and fix a suitable lower additional incentive, within the above ceiling.*

***Note 2** For Naphtha based thermal plants, the extent of backing down, as ordered by Regional Electricity Boards or the State Load Despatch Centre as the case may be, beyond plant Load Factor of 6000 hours/ kW/ year, shall not be reckoned as generation achieved for incentive purpose.*

***Note 3** For Diesel Engine Generating units the extent of backing down, as ordered by Regional Electricity Boards or the State Load Despatch Centre, as the case may be, beyond Plant Load Factor operation norms laid down by the Central Electricity Authority for the time being, subject to modification therefor, if any, shall not be reckoned as generation achieved for incentive purpose"*

From a conjoint reading of the aforesaid clause of the PPA and the Government notification which inter alia states that '*the additional incentive payable shall not exceed 0.7 per cent of paid up and subscribed capital* ' it is clear that the incentive of 0.65% is applicable on equity as defined and not on the 'return on equity' as pleaded by the respondent. This clause on incentive is time tested and has since been followed in all Organisation including NTPC.

ISSUE 5 INTERST RATE FOR DEBT SERVICING AND INTEREST RATE ON WORKING CAPITAL

5.1 INTEREST ON DEBT

As per provision of the PPA (Appendix D), Interest on Debt is defined as:

Quote

"Interest on Debt "shall mean the interest, bank commissions actually payable on Debt borne by the Company, arising after the Commercial Operation Date of each unit in commercial operation after taking into account the actual repayment liability with respect to Debt, under the terms thereof and includes the actual Rupee equivalent of such liability on Foreign Debt, at the then Current Foreign Exchange Rate applicable thereto, and shall cease as soon as Debt is fully paid.

Unquote

Thus it is clear beyond doubt from a plain reading of the above provision of the PPA that the interest on Debt is reimbursable in the monthly tariff billing, on the basis of actual interest amount paid by the Petitioner. It is seen from the Petitioner's submission that the loan agreements with the lenders provide for floating rate of interest. Along with each monthly invoice, the Petitioner is required to provide necessary documentary evidence in support of its claim to the Administration, from the respective lenders, for the: prevailing rate of interest ,repayment of loan ,interest amount due on the reduced balance of loan after repayment and the interest amount actually paid by the Petitioner.

5.2 INTERST ON WORKING CAPITAL

Appendix D to the PPA provides that;" Working Capital may be referred to as Clause 3.0 of CEA norms dated 14.12.1995". As per the estimate of cost of generation given in Annexure IV to PPA, Working Capital consists of:

1. Thirty days Primary Fuel cost.

2. Sixty days Lube Oil cost;

3. O&M for one month;

4. Maintenance Spares at actual but not exceeding one year's requirement less value of 1/5th of initial spares already capitalised and;

5. Receivables equivalent to two months average sale of electricity.

It is seen from the Written Submissions of both the parties that the Administration had started supplying HSD and Lube oil at the request of the Petitioner from July 2008 and January 2009 onwards respectively. Since the respondent is providing HSD and Lube Oil, while calculating the Working Capital requirements, these elements are not to be included.

As per the documents and Written Submissions provided by the Petitioner, SPCL has taken a WC loan from SBI on floating interest rate basis. The interest on WC is payable on actual basis on furnishing documentary proof of payment to the Bank.

ISSUE 6 OPERATIONAL PARAMETERS AS PER PPA/ADDENDUM TO PPA/CEA DECISION WHICH FORMS PART OF TARIFF

6.1 HEAT RATE

As per the PPA, originally the Heat Rate was 2000 kcal/ kWh, subsequently the heat rate was revised to 2010 kcal/ kWh as reflected in Addendum to the PPA. The issue of increase in Heat Rate from 2000 kcal/ kWh to 2010 kcal/ kWh in the year 1998 on the plea that the increase is required in view of the difference in ISO and the site conditions. The issue was again raised by the petitioner in the year 2007 for increasing the Heat Rate from 2010 to 2090 kcal/ kWh on account of ambient temperature variation. Central Electricity Authority vide its note CEA/TETD/GR&D/2001/T-41/ 2829 dated 10.10.2007 had clarified the issue of Heat Rate correction due to ambient temperature variation raised in 1998 was considered and after considering the site conditions, Heat Rate was increased by 10 kcal/ kWh. Accordingly, Addendum 1 to PPA and that the issue need not be considered again.

The petitioner had submitted that IOC Ltd. stopped the supply of LSF- HSD oil to the Power Plant from July 2008 which was being supplied since COD of the plant in April 2003 which was being used and that due to the use of other grade of oil i.e. BS-II / Extra mile etc. by IOCL, the specific fuel consumption of the engine has increased resulting in high consumption of oil compared to the earlier with LSHF HSD which has resulted in the increase in the heat rate of the plant causing monitory losses of Rs. 2 lacs per day and that the IOCL has not acceded their request for supplying LSF HSD oil.

The petitioner contends that in spite of several request to the officials of IOCL at Kolkata and Delhi for supplying LSHF HSD oil, IOCL has not relented. As IPP cannot sustain this kind of loss the alternative left for IPP was only to request increase in the Heat Rate from the existing. Letter date 28.09.2010 addressed to Secretary (Power) explaining in detail the reason with relevant and requesting for increase in the Heat Rate from 2010 to 2090 kcal/ kWh or at the archived Heat Rate by the plant to compensate the extra consumption with different grade of oil. Meeting was also conducted with Secretary (Power) on 12.11.2010 & 17.04.2010 and it was minuted that the issue may be scrutinised by the ED and to be submitted to the Administration for obtaining further clarification from CEA but no action has been taken.

The issue of density and temperature had already been raised by the petitioner in the past and the same was addressed. Though, the petitioner had tried for increase in Heat Rate beyond PPA provision on account of various reasons, the increase was permitted only on account of difference in temperature and Addendum 1 to PPA was signed on 30th March, 1999, whereby the heat rate 2010 kcal/ kWh had been agreed by the Authority, the same being in line with Diesel Generating operation norms issued by the MoP /CEA.

It is observed that CEA had advised the Administration that since the petitioner had been raising the issue of increase in operating norms in heat rate on various grounds and that it appears that the heat rate of the machine may have deteriorated and had suggested the following vide its letter No. DPD / UT/ 374-6(A&N) 2012/3155 dated 19.11.2012:

"(i) A&N Administration shall direct the SPCL, to carryout major overhaul of engines/ systems. This will recover the loss in performance to a great extent.

(ii) Heat Rate measurement/ audit shall be carried out by a third party /consultant appointed by A&N Administration. This is to assess the actual heat rate of the plant. The heat rate so obtained may be submitted to regulatory commission for a change in PPA in accordance with the provisions (if any) contained in the PPA / allowed by regulatory commission".

In view of the above mentioned facts and analysis no increase in The technical operating norms are set with sufficient margin to take care of varying conditions,

different design, ageing, loading pattern etc. Moreover, the heat rate does not depend upon the value of density of liquid fuel, since the heat rate input is based on weight of liquid fuel consumed by the DG set. Therefore, there is no reason as to why the heat rate should be now increased on the basis of variation in density.

Recommendation:

Heat Rate beyond 2010 kcal/ kWh is presently not recommended. However, in future the aforementioned suggestion of the CEA regarding the major overhauling and subsequent determination of Heat Rate and its consideration by the Regulatory Commission may be pursued.

6.2 LUBE OIL CONSUMPTION OF THE DG SETS FOR LUBE OIL CALCULATION FROM THE EXISTING IN THE MONTHLY TARIFF INVOICES.

The petitioner has submitted that the Administration has been paying lube oil consumption @ 1.1 gm/ kWh in their monthly tariff invoices since inception of the plant in April, 2003 whereas the lube oil consumption increases with the ageing of the plant. As such in the high level meeting taken by Member (Thermal) CEA in April 2006, it was recorded in its MoM that the existing lube oil consumption @ 1.1 gm/ kWh will be reviewed after three years i.e. in April 2009. As the stipulated time of three years was over by 29.4.2009 and seeing the increased consumption in the lube oil over the years IPP vide its letter dated 28.9.2010 again requested the Secretary (Power) for consideration of increase in the lube oil consumption from the existing 1.1 gm/ kWh to 1.5gms/kWh citing the reasons for the same w.e.f. 29.4.2009. The matter was discussed in the meeting convened by Secretary (Power) on 12.11.2010 & 17.04.2012

In the meeting taken by the Member Thermal, CEA along with the Commissioner cum Secretary (Power) A&N on April, 27th & 28th 2006, it has indeed been recorded :*Agreed for 1.1 gm/ kWh on the basis of past three years consumption. This will be reviewed after three years.*

It may be pertinent to add that the Ministry of Power Government of India vide their letter dated 17th May, 2005 had *Authorised* the Member Thermal, CEA for making suggestion

and providing assistance/ guidance to A&N Administration on technical / policy issues when asked. Thereafter, A&N Administration may take decision independently on such matter in view of advice of the CEA.

The Principal Secretary (Power) in a meeting taken by him on April 17,2012 opined that SPCL to complete the overhauling/servicing of all DG sets and thereafter the consumption pattern of lube oil be recorded and compared for three –four months at least ,with the rate of consumption prior to March 2010 and an average suggested A detailed proposal after verifying the lube oil consumption be submitted to the Administration for taking a view in the matter.

The aforementioned approach seems to be very pragmatic and reasonable and the same is recommended for determination of Specific Lube Oil Consumption for future in view of the similar approach suggested by CEA in April 2006.However,eventually SPCL has to approach the Commission for approval.

Recommendation:

No change in the specific lube oil consumption is recommended as of now as norms are decided over the life of the plant. While initially the lube oil consumption may be less than the normative value , over the years it may exceed the norm value but as norms are decided based on the average over the life of the plant, on the whole it would average out.

6.3 DENSITY OF HIGH SPEED DIESEL

As per Appendix B of the PPA, HSD oil consumption is stipulated on the basis of kcal/ kWh as per the ISO. It was realised by the petitioner as evidenced vide their letter dated May 30 , 2007 that since commissioning of the station in April, 2003, in their tariff invoice, they have been miscalculating the quantum of fuel by considering density of the HSD corresponding to 15^{o}C. Whereas, they should have considered the density corresponding to the ambient temperature at the time of despatch and that due to this mistake SPCL had losses in tariff revenue over the month and the analysing would be on based on density measure at ambient temperature in future. This issue was referred to CEA ,who on

examination recommended that as fuel charges are to be billed on Rs. Per kg as per PPA that raising tariff invoice based on density at ambient temperature is reasonable and may be agreed. Accordingly, A& N administration agreed to this procedure w.e.f. April 2007. The Addendum of the PPA was issued approving for converting the HSD oil consumption in weight (Kg) calculated as per provision of PPA to volume (litre) as per density at ambient temperature and not on 15 degree C. It is the contention of the Petitioner that the approval should be from the April 2003 and not April 2007 in line with the recommendation of CEA. During the meeting held with the parties, it was contented by the Administration that the request for making correction due to density at ambient temperature can not be exceeded as no record is available for the ambient temperature at the time of despatches of fuel. However, the petitioner stated that they have been able to obtain the temperature data for the hourly temperature date wise from the Metrological Department.

Recommendation:

The principle of ambient temperature related to density for determination of quantum of fuel has been agreed. The same has also been applied since April, 2007. In case of reliable verifiable authentic data giving from ambient temperature at the time and dates of respective despatches from April, 2003 to April 2007 may be made available by the Petitioner to the satisfaction of the Administration , there seems no reason why correction should not be applied retrospectively. Recommended accordingly.

ISSUE 7 PAYMENT/RECOVERY OF AMOUNTS DUE , BUT NOT PAID,WITHHELD,DENIED,IF ANY FROM THE DATE THEY BECAME DUE

7.1 The Capital Cost now recommended and other recommendations , if approved ,will become the basis for tariff determination w.e.f. the COD. The amount thus worked out month wise will be the Tariff due as per PPA.

Actual payments made when compared with the benchmark month wise due tariff will determine the amount of Arrears/Recoveries .

7.2 The payment of arrears to the Petitioner will be made along with the interest on delayed payments as per terms of the PPA . Similarly, recoveries from the Petitioner by the Administration will also be made along with interest as per terms of the PPA.

ISSUE 8 ADMISSIBILITY OF INTEREST ON DELAYED PAYMANTS

This has been covered under Issue 7 above.

ISSUE 9 ANY OTHER ISSUE CONNECTED WITH FINALIZATION OF PROJECT COST AND DETERMINATION OF TARIFF PAYABLE TO THE PETITIONER

9.1 REFURBISHMENT OF THE PLANT

The petitioner has pleaded that in order to restore the power station equipments to its original conditions so as to achieve an increase in their life, the existing critical parts have to be Refurbished with new critical parts. Twenty MW diesel Power Station has been in operation for more than ten years and being close to the sea due to which high salinity exists around the plant. Moreover, secondary cooling water system for the engine utilises sea water which has led to the increased rusting of steel structures despite frequent painting with anticorrosive paints. The petitioner having submitted the proposal to the Administration for Refurbishment of the power station equipment is awaiting response of the Administration.

Expert is of the view that is prudent to carry out the refurbishment works at this stage rather than plant completing its full life when the benefits may not be commensurate with the refurbishment cost. Better carry out the required renovation and modernisation now in order to extend the existing life of the plant. CEA has already recommended on similar lines, it is not prudent practice to delay refurbishment process till the end of the 15 years terms of PPA.

Recommendation:

It is recommended that the plant having completed 10 years of operation, it is the right time for renovation of the plant after carrying out R&M study and Cost benefit analysis and proposal submitted to the Hon'ble Commission for taking prior in principle approval before proceeding with the actual works. For this purpose the Petitioner should make a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension, financial package, phasing of expenditure, schedule of completion, estimated completion cost and any other information considered to be relevant and file a petition before the Hon'ble Commission.

9.2 JETTY

The petitioner has contended that originally seashore pump house was considered suitable for seawater supply to the secondary cooling system but due to the sea being shallow near the project site ,an in-depth study of the water measurement during the high and low tide conditions in different seasons was carried out, whereby it was concluded that so as to ensure uninterrupted and problem free running of the water cooling system, a jetty will have to be located at a distance on 135 meters into the sea from the bay and therefore the pump house was located at a distance of 135 meters into Sea. This requires deep sea piling which was not envisaged at the time of the project cost estimation and as such approval was taken from the Administration which contributed to the increased cost which was not included earlier. The petitioner asserted this has contributed to the increase in the capital cost in the project which was later approved by the first Respondent.

Petitioner has further submitted that the project site is surrounded by Mountains on three sides. During the rains there is a heavy flow of the water from the slopes which threatens the foundation and washing away of the project area during the rain. For protection of the project from flooding, a deep and wide concrete drain of adequate capacity was constructed to collect the water and lead into sea. This requirement was not considered during the project cost estimation which had to be carried out to protect the plant .In

addition to this a compound wall with deep concrete foundation and side protection to ensure its protection during the heavy rain water flooding was also considered. Although, it was not part of the project cost estimate. This was later approved by the Administration.

The Respondent Administration has stated that the scope of work inter alia includes the land and site development, plot drainage and boundary wall , construction of Main Sea Water Pump House on Jetty and the cost thereto has been included in the detailed estimate in the PPA. In view of this, there is no reason for the Respondent to bear the additional costs as the petitioner himself was required to carry out necessary site investigations before bidding .As project has been awarded to the petitioner on the basis of competitive bidding no additional cost is payable.

Recommendation:

It has been seen that the PPA scope of work includes construction of Jetty, land development, plot drainage etc. In view of this it is recommended that no additional payment is admissible to the Petitioner on account of construction of Jetty, drainage, boundary wall.

9.3 O&M Expenditure

PPA provides the following clause regarding O&M Expenses

(xxxxvii)"Operation and Maintenance Expenditure" or O&M Expenses (Schedule-1(h)

In relation to a period, the expenditure incurred in operation and maintenance of the generating station including manpower, spares, consumables (including water) insurance and overheads.

Explanation : O&M expenses means all expenditure other than interest, depreciation, taxes on income, return on equity, debt repayment and variable cost, necessarily incurred by the company for the efficient and economic generate on of power by the project and includes, inter alia, all staff related expenses, costs, royalties, taxes, duties and other Government charges in respect of spares for operation and Maintenance. Water and all other materials (excluding the variable cost materials), contract labour and other payment for running, repair, maintenance, replacement and overhauling of he plant(s), equipments and work necessary for such generation and insurance charges if any on any plant, equipment or materials as may be in the opinion of THE COMPANY

in accordance with Prudent Utilities Practices be considered necessary subject in the final decision of the Government of India as to the treatment for insurance costs.

Recommendation:

From the above clause of PPA it is evident that the following charges being claimed as extra by the Petitioner are not admissible

Water Charges,

Octroi Charges: (Administration may, however provide support to the Petitioner for exemption of Octroi charges as the plant is outside the bounds of Municipal Committee.)

Port management Board

Increase in O&M expenses other than the escalation provided in the PPA.

9.4 REBATE

Relevant clauses of PPA dealing with rebate are given below:

8.2 Billing and payment disputes

(a) Billing payment. The company shall prepare and submit (by facsimile transmission or otherwise) to THE ADMINISTRATION not later than the firth Business Day after each matering Date an invoice (a "Tariff Invoice") for the pauments due to the company under this agreement (Other than those due in respect of Supplementary Invoice but including the billing period ending immediately prior to such Matering Date), along with the corresponding Record of Meter Reading detailing Electricity and Deemed Generation and THE COMPANY'S calculation in accordance with the provisions of Appendix D of such payments due to the company for such Billing period. Payment due in respect of supplementary Invoice shall be paid in accordance with section 8.6. The aggregate amount of the payments due to the Company for such billing period as set forth in the applicable Tariff Invoice ("The Invoice Amount") which terms shall also mean, with reference to any Supplementary Invoice, the aggregate amount of he payments due to the company under such supplementary Invoice) shall be due and payable by THE ADMINISTRATION.

(b) Payment of disputed Amounts Resolution of Disputes. If THE ADMINISTRATION disputes the accuracy of Tariff Invoice of a supplementary invoice, the Administration shall nevertheless pay the full amount of such Invoice but may serve notice on the company that an amount submitted under such Invoice is disputed and the parties shall use their best efforts to resolve the disputes in accordance with Article 15 within the time limits set forth therein.

(c) Payment upon Resolution of Disputes, if upon the resolution of disputed amount, the company is required to reimburse the Administration, the Company shall make such payment to the Administration with interest thereon. Such interest shall be payble at the rate which is one half per cent (0.5%) above the applicable Cash Credit Rate Calculated for the period from date of receipt of such amount is paid to but excluding the date of on which the administration is reimbursed. To the fullest extent permitted by the law of India THE ADMINISTRATION hereby irrevocably waive the right to disputes any tariff Invoice or Supplementary Invoice after a period of one hundred and twenty days from the date on which the ADMINISTRATION received such Invoice, unless THE ADMINISTRATION is able to demonstrate that it could not reasonably have been aware of an error in such Invoice during such period.

8.4 Rebates.

(a) If payment in full of a tariff Invoice and all other amounts due in respect thereof is made on or prior to the date which is the fifth Business day after the Date of presentation o f the Tariff Invoice to THE ADMINISTRATION pursuant to Article 8.2 (which presentation may be by fascismile transmission) by wire transfer payment or otherwise such that, in any such case, there shall be immediately available funds in any amount equal to the full which is such fifth Business Day, THE ADMINISTRATION shall be allowed a rebate equal to 2.5% of the amount of Invoice Amount of such tariff Invoice paid on such date for payments within a period of one month of presentation of bills by the generating company, a rebate of 1% shall be allowed.

(b) If the Company shall receive all such amounts not later than such fifth Business Day in immediately available funds, such rebate, if any, may be taken by the ADMINISTRATION as a credit against the Tariff Invoice which is then due (and overdue) and then being paid.

(c) Notwithstanding the foregoing, THE ADMINISTRATION shall not be allowed a rebate under this Article 8.2 unless the Letter (s) of credit specified in Article 8.3 unless he Letter(s) of Credit

specified in Article 8.3 and the Collateral Arrangements are at the time such rebate is to be allowed, being maintained by THE ADMINISTRATION in accordance with Article 8.3

As per Article 8.4 of the PPA *If payment in full of a Tariff Invoice and all other amounts due in respect thereof is made on or prior date which is the fifth Business day after the Date of presentation of the Tariff Invoice to The Administration pursuant to Article 8.2 ……The Administration shall be allowed a rebate of 2.5% of the amount of the Invoice Amount of such Tariff Invoice paid on such date for payment within a period of one month on presentation of bills by the generating company, a rebate of 1% shall be allowed.*

Now let us turn to Article 8.2 which stipulates that the *Tariff Invoice for the payments due to the company under this agreement……* which means that the IPP cannot raise invoice for any amount expecting that the Administration will pay in full in order to enjoy rebate. The amount for which the Invoice has to be raised has to be the AMOUNT DUE. The Administration has submitted that the petitioner was raising invoices including the cost of fuel and lube oil which was being supplied on free charge basis. How can anyone make such excessive payments to avail the Rebate. So if the Administration has been verifying the AMOUNT DUE before the release of payment, the Expert does not find anything wrong with this. If the Administration has been making unjustified deductions, they are liable to make balance payments with interest.

The Petitioner has cited judgement: 2013ELR (APTEL) 0438 of the Appellate Tribunal for Electricity in Appeal No.176 of 2011 dated February 22, 2013. This judgement does not come to the rescue of the Petitioner as the plea that the Tamil Nadu Generation and Distribution Company was allowing substantial ad hoc amount was not accepted by the Hon'ble Tribunal.

Recommendation:

In view of the fact that the Capital cost was not finalised, both parties have been working with various figures of the Capital Cost , as also other tariff related parameters, therefore, the Invoices raised were being paid by the Administration on the basis of DUE PAYMENT as decided by the Administration. It is recommended that the REBATE may be applicable

retrospectively since COD, on *all Tariff Invoice amounts released* within the PPA stipulated time for availing the Rebate.

9.5 ISSUE REGARDING THE PETITIONER's CLAIM OF LOSS OF OPPORTUNITY

As there is no provision regarding LOSS OF OPPORTUNITY CLAIM, this claim of the petitioner may not be acceded to.

9.6 HSD Handling /Transportation Losses

As there is no provision in the PPA regarding payment of HSD evaporation losses as also viewed by CEA vide letter dated January 22,2013 that there is no provision in the PPA to allow compensation for evaporation losses, it is recommended that no compensation on account of HSD Handling/Transportation losses is payable.