H. L. BAJAJ
FORMER CHAIRMAN
CENTRAL ELECTRICITY AUTHORITY
& EX OFFICIO SECRETARY, GOVERNMENT OF INDIA

HLB /JERC/102 dated: June10, 2013

Mr. R.K. Malik
Secretary
Joint Electricity Regulatory Commission
Vanijya Nikunj, Second Floor
Udyug Vihar, Phase-V
Gurgoan 122 016

Dear Mr. Malik,

This has reference to your letter No. 11/6/2012-JERC/ Vol. II/ 415

Dated May10, 2013. The Final Report the Expert is attached.

The honorarium as offered in the aforesaid letter may please be

released.

Thanking you,

Regards,

Yours Sincerely,

(H.L.BAJAJ)

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REPORT

OF

THE EXPERT

APPOINTED ON MAY 10, 2013

BY

HON'BLE JOINT ELECTRICITY REGULATORY COMMISSION

FOR STATE OF GOA AND UNION TERRITORIES

IN

Petition No.89/2012...Petition for fixation of Completed / Actual Capital Cost of Project and Tariff of the project of the petitioner- a Power Generating Company
M/s Suryachakra Power Corporation Ltd.
Vs.
Electricity Department, Andaman & Nicobar Islands Administration

JUNE 10, 2013

INTRODUCTION

Report of the Expert Appointed by the Hon'ble Joint Electricity Regulatory Commission (for State of Goa and Union Territories) on May 10, 2013.

1.0 This Report is divided into three parts: Part –I of the Report covers the background of the project. abstracts from the submissions of the Petitioner and response from the Respondent Administration. Part-II deals with each of the issue one by one , citing submissions and responses and reaching recommendations after considering all aspects. Third part of the Report summarizes the recommendations. Annexures referred above are given after Part III of the Report.

2.0 The Expert was appointed by the Hon'ble Commission vide its letter 11/6/2012-JERC/Vol.-II/415 dated May 10, 2013. Following are the Broad Terms of Reference as given by the Hon'ble Commission:

Broad Terms of Reference:

Issues to be examined and final recommendation to be given by the expert:

- *Capital cost of the project*
- *Issue relating to liquidated damages -- recoverability if any from the Petitioner by the Respondent.*
- *Issue relating to foreign exchange for rupee funding in terms of prevalent exchange rate regime during the period 1995 to 2003 and consequential admissibility of exchange rate variations in the tariff.*
- *All tariff parameters which flow from the capital cost of the project.*
- *Interest rate for debt servicing and interest on working capital.*

- *Operational parameters as per PPA / Addendum to PPA /CEA decision which forms part of tariff.*
- *Payment / recovery of amounts due, but not aid, withheld, denied, if any, from the date they become due.*
- *Admissibility of interest on delay payments.*
- *Any other issue connected with finalization of project cost and determination of tariff payable to the Petitioner.*

All the components of capital cost, operational parameters and tariff elements as specified above are to examined, analyzed and interpreted as per the provisions of Power Purchase Agreement (PPA) signed M/s Suryachakra Power Corporation Ltd. and Andman & Nicobar Administration as well as the various reports of CEA and consultant appointed by the A&N Administration.

3.0 Expert was provided with relevant documents comprising twenty volumes running into several thousand pages as given in Annexure A to this Report.
In order to give fair chance to the Parties to highlight their respective concerns, both the Petitioner and the Respondent were given hearing on May 31 and June 1, 2013 in the Office of the Hon'ble Commission in Gurgaon. Parties presented their viewpoints and made elaborate submissions for consideration of the Expert. Attendance of the participants of the Parties is recorded at Annexure 'B.' Parties were also directed to file their Written Submissions after the meeting and also to exchange these between themselves and also send a copy to the Secretary of the Hon'ble Commission.

4.0 This Report is the result of study of the relevant documents provided to the Expert and the Written Submissions made by the Parties. While making its recommendations, the expert has been largely guided by the following considerations:

The Power Purchase Agreement(PPA) including its Amendments to PPA and agreements reached post PPA as reflected in the Minutes of the Meeting (MOM) held between the parties and the Respondent .Administration has been stressing that the agreements reached during various meeting though duly recorded in the MoM are of

no consequence unless the same are followed by an amendment to the PPA. However, according to the Expert, some meaning and consideration has to be given to the agreements reached during the meetings, otherwise contract meetings , which are so essential for the execution of any project, taken at the highest level including the Chief Secretary and Members, CEA are not required. Ground reality is that projects do not move like cogs and wheels as changes do occur during the project execution stages. Some changes may be as per the original scope of work and some changes may be outside the scope of work. Whatever is within the original scope needs no extra payment but anything outside the scope of work will have to be paid for. Having reached an agreement and one of the parties having made additional expenditure. it cannot be the case that due to a formal amendment to the PPA, additional payments will not become due. Agreements reached during the Meetings ought to be formalized as is the requirement of the Administration. Any additional claim by the Petitioner which is not outside the original scope cannot be admitted.

Letters from CEA.

Reports of the TANGEDCO and KPCL.

It has been noted that the Chief Secretary, Government of A&N has written to the Union Power Secretary vide D.O. No. EL/PL/1-43(d) /2010/PF dated May, 18, 2010, Inter alia stating as under:

This being a technical matter, which is beyond the competence of A&N Administration, needs to be examined by CEA to decide what should be the acceptable Completed Cost. *In fact, in the absence of powers delegated to A&N Administration by Government of India, there is no other option in this matter.*

The Secretary (Power), A&N Administration has taken up this matter with the Chairman, CEA New Delhi vide this Administration letter dated 03.05.2010 and all related documents have been submitted for re examination of he completed cost.

I request your kind intervention in this matter for expeditious finalization of completed project cost by the CEA. All related documents are available with CEA. An urgent action from your side is requested since the matter is pending for over six years. ***It may also be appreciated that A&N Administration is not competent to take a view in this matter before JERC without technical clearance from CEA.***

(Emphasis supplied)

In view of the forgoing views of the Chief Secretary, and rightly so, because A&N Administration has not full fledged establishment like the State Governments which are equipped with exclusive departments dealing with subject of Power, due cognizance has been given by the Expert to the views of CEA as also to the Reports of TANGEDCO and KPCL being State Government bodies having considerable expertise with them.

Annexure 'A'
Page 1/2.

Suryachakra Power Corporation Ltd (SPCL) Vs Electricity Department - A& N and A& N Administration

Petition No. 89/2012

List of documents sent

1) Petition No. 89/2012 – Received from M/s SPCL on 29-11-2012
   - Vol I : Pages 1 to 402
   - Vol II : Pages 403 to 755
   - Vol III : Pages 756 to 1092
   - Misc. application from SPCL : Pages 1 to 9
2) Copies of documents/ minutes / letters from M/s SPCL received on 10-01-2013 : Pages 1 to 70
3) Parawise Rejoinder affidavit of petitioner dated 14-01-2013 Pages 1 to 71
4) Tamil Nadu Generation and Distribution Corporation Ltd Report and subsequent letter – Received from M/s SPCL on 23-01-2013 – Pages 1 to 15
5) Statement of total debt for Project cost of Rs 83.67 Cr as submitted by M/s SPCL to JERC on 23-01-2013 (one page)
6) Copies of documents/ minutes / letters from M/s SPCL received on 24-01-2013 : Pages 1to 113
7) Reply on behalf of respondents (A& N Admn.) received on 30-01-2013
   - One Volume : Pages 1 to 98.
8) Written submissions on behalf of the petitioner (M/s SPCL) received by JERC on 11-02-2013 (Pages 1 to 56)
9) Copy of M/s SPCL letter dated 18-02-2013 to SE, ED- A& N enclosing supplementary invoice & other statements – Received by the Commission on 19-02-2013 (Pages 1 to 56)
10) Affidavit of Compliance of Commission Order dated 18-02-2013 by M/s SPCL received by the Commission on 11-03-2013 (Pages 1 to 42)
11) Reply on behalf of the Respondent received by the Commission on 11-03-2013 (Pages 1 to 21)
12) Compliance Report from ED- A& N as desired in JERC order dated 20-03-2013 Received by the Commission on 01-04-2013 (Pages 1 to 29)
13) Affidavit of additional documents w.r.t. issue of overhauling submitted by SPCL on 01-04-2013 (Pages 1 to 23)
14) Letter from M/s SPCL dated 01-04-13 with confirmation letter from bankers for calculation of interest on working capital etc.
   -Vol I : Pages 1 to 47
   -Vol II : Pages 1 to 60
15) Submission of Statement in pursuance of the Commission's order dated 02-04-2013 reg. release of payments – Reply on behalf of respondent - received on 16-04-2013 (Pages 1 to 70)
16) Submission of information / details by A& N Admn. in compliance of the Hon'ble Commission Order dated 17-4—2013 (Received in JERC on 30-04-2013)
   - Vol I : Pages 1 to 131
   - Vol II : Pages 1 to 623
17) Additional affidavit from M/s SPCL received on 07-05-2013 Pages : 1 to 6

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Annexure 'A'
Page 2/2

18) Copy of Judgment of APTEL – Appeal # 176 of 2011 – referred by M/s SPCL on Page : 2 of their affidavit received on 07-05-2013 (Pages 1 to 89)

19) Bunch of Papers containing Annual Report of M/s SPCL for FY 2003-04 (Pages 162 to 190), Annual Accounts of M/s SPCL with Audit Report for the period 01-04-2011 to 30-06-2012, (Pages 191 to 228), SBI Foreign Currency Loan Agreement (Pages 25 to 40), SBI Rupee Term Loan Agreement (Pages 41 to 74) Foreign Currency Loan Agreement by SREI International Finance Ltd (Pages 75 to 139), Working Capital Loan Sanction (Pages 140 to 142) and Term Loan Agreement by Citi Bank (Pages 143 to 155)
Total Pages : 236

20) Copies of Order issued by the Hon'ble Commission
   i) Order dated 17-12-2012 (Pages 1- 3)
   ii) Order dated 15-01-2013 (Pages 1-4)
   iii) Order dated 18-02-2013 (Pages 1 to 22)
   vi) Order dated 12-03-2013 (Pages 1 to 6)
   v) Oder dated 02-04-2013 (Pages 1 to 3) and
   vi) Order dated 17-04-2013 (Pages 1 to 7)

Annexure 'B' Page 1/2

MEETING OF PARTIES HELD ON MAY 31 AND JUNE 1,2013 IN THE OFFICE OF Hon'ble JERC

In the matter of

Petition for fixation of completed / actual capital cost of project and Tariff of the project of the petitioner- a Power Generating Company under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with Sections 62(1) (a) and 63 of the Electricity Act, 2003.

And in the matter of

***M/s* Suryachakra Power Corporation Ltd.**
Suryachakra House,
Plot No. 304-L-III, Road No.78,
Film Nagar, Jubilee Hills,
Hyderabad- 500096
Vs.

1. **Electricity Department,**
Rep. by its Superintending Engineer,
Port Blair, Andaman & Nicobar Islands.
2. **Chief Secretary,** Andaman & Nicobar Administration Secretariat,
Port Blair, Andaman & Nicobar Islands.

ATTENDED BY THE FOLLOWING

S/SHRI

1. Anand Behari — S.E Electricity.
2. SURESH K BHANDARI — Secretary (Power)
3. B.L.SHARMA — Secretary (Fin) A&N Admn.
4. Rizwana — Assistant Engineer (Works)
5. M.D. SHANTHI MURTHY — Consultant- A&N Adm
6. ARVIND TEWARI — Consultant A&N Adm
7. R BALASUBRAMANIAN — Advocate A&N Adm

Annexure B Page 2/2

MEETING OF PARTIES HELD ON MAY 31 AND JUNE 1,2013 IN THE OFFICE OF Hon'ble JERC

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Rep. by its Superintending Engineer,
Port Blair, Andaman & Nicobar Islands.
2. **Chief Secretary,** Andaman & Nicobar Administration Secretariat,
Port Blair, Andaman & Nicobar Islands.

ATTENDED BY THE FOLLOWING

S/SHRI

1)

2) K. Vijay Kumar

3) Biji George, GM(O1)

4) Sanjay Keshari