

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal (M.P.) - 462 016



**Petition No. 37 of 2021**

**PRESENT:**

**S.P.S Parihar, Chairman**

**Mukul Dhariwal, Member**

**Shashi Bhushan Pathak, Member**

**IN THE MATTER OF:**

**True-up of Generation Tariff for 1x600 MW (Phase-1) Coal Based Thermal Power Project at Barela-Gorakhpur, Dist. Seoni, (M.P.) determined by Madhya Pradesh Electricity Regulatory Commission for FY 2019-20 vide MYT Order dated 8<sup>th</sup> May' 2021 in Petition No 47 of 2020.**

**M/s. Jhabua Power Limited:**

**PETITIONER**

**Vs.**

- 1. M.P. Power Management Company Ltd., Jabalpur**
- 2. M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Jabalpur**
- 3. M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal**
- 4. M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore**

**RESPONDENTS**

**ORDER****(Passed on this day of 7<sup>th</sup> December' 2021)**

1. M/s. Jhabua Power Limited (hereinafter called "the petitioner") filed the subject petition for Truing-up of Generation Tariff for FY 2019-20 for its 1x600 MW coal based thermal power project (Phase-I) at District Seoni, Madhya Pradesh, determined by the Madhya Pradesh Electricity Regulatory Commission (hereinafter called "the Commission" or 'MPERC") vide Multi Year Tariff (MYT) Order dated 8<sup>th</sup> May' 2021 in Petition No 47 of 2020.
2. The subject true-up petition has been filed under Sections 62 and 86(1)(a) of the Electricity Act, 2003 and in terms of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG- (IV) of 2020} (herein after referred to as "the Regulations' 2020") for the control period FY 2019-20 to FY 2023-24 notified on 28<sup>th</sup> February' 2020.
3. Jhabua Power Project under the subject petition comprises of one generating unit of 600 MW capacity. The generating unit achieved Date of Commercial Operation (CoD) on 3<sup>rd</sup> May' 2016.
4. The petitioner executed long term Power Purchase Agreement (PPA) on 5<sup>th</sup> January' 2011 with MP Power Management Company Ltd., (hereinafter called "MPPMCL" or "Respondent No. 1") for supply of 30% power from the petitioner's Unit No.1 of the Project at regulated tariff determined by the Commission.
5. The petitioner had earlier filed Petition No.47 of 2020 for determination of Multi Year Tariff for its generating station for the control period from FY 2019-20 to FY 2023-24 based on the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Vide order dated 08<sup>th</sup> May' 2021 in the aforesaid petition, the Commission determined the multi-year tariff for the aforesaid generating unit of project subject to true-up based on the Annual Audited Accounts for the respective year.
6. In the aforesaid MYT order dated 8<sup>th</sup> May' 2021, the following Annual Capacity (fixed) Charges for FY 2019-20 were determined by the Commission:

**Table 1: Annual Capacity (Fixed) Charges determined for FY 2019-20**

Sr. No.	Particulars	Unit	Amount
1	Return on Equity	Rs. Crore	153.14
2	Interest Charges on Loan	Rs. Crore	322.78
3	Depreciation	Rs. Crore	202.37

4	Interest on Working Capital	Rs. Crore	52.39
5	O & M Expenses	Rs. Crore	121.56
6	Annual Capacity (fixed) Charges	Rs. Crore	852.24
7	Less: Non-Tariff Income	Rs. Crore	0.11
8	Net AFC (after adjusting Non-Tariff Income)	Rs. Crore	852.13
<b>9</b>	<b>Annual Fixed Charges corresponding to 30% of the installed capacity of the Unit</b>	<b>Rs. Crore</b>	<b>255.64</b>

7. In the subject petition, the petitioner has sought true-up of Annual Capacity (fixed) Charges for FY 2019-20 in respect of the additional capital expenditure incurred during FY 2019-20 in accordance with Regulation 9.4 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, which provides as under:

*“A generating company shall file a petition at the beginning of the Tariff period. A review shall be undertaken by the Commission to scrutinize and true up the Tariff on the basis of the capital expenditure and additional capital expenditure actually incurred in the Year for which the true up is being requested. The generating company shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for each year of the period from 1.4.2019 to 31.3.2024, duly audited and certified by the auditors”.*

8. In the subject petition, the petitioner filed the additional capitalization of Rs 18.39 Crore on accrual basis and Rs. 17.56 Crore on cash basis during FY 2019-20. Based on the aforesaid additional capitalization of Rs 17.56 Crore on cash basis, the petitioner claimed the following Annual Capacity (fixed) Charges for the Thermal Power project:

**Table 2: Annual Capacity Charges claimed for FY 2019-20:**

S. No.	Particulars	Amount (Rs. Crore)
1	Return on Equity	153.55
2	Interest on Loan	323.59
3	Depreciation	203.18
4	Interest on Working Capital	53.44
5	O & M Expenses	121.56
6	<b>Total Annual Capacity (Fixed) Charges</b>	<b>855.32</b>
7	Less:-Non Tariff Charges	0.02
8	<b>Net Annual Capacity (Fixed) Charges</b>	<b>855.30</b>
9	<b>30% of Capacity charges</b>	<b>256.59</b>

9. The petitioner filed a copy of the Annual Audited Accounts of Jhabua Thermal Power Plant for FY 2019-20 with the subject petition.

10. With the above submission, the petitioner prayed the following:
- (a) *Carry out the truing-up of tariff for Unit-1 of the Project for the period from 01.04.2019 till 31.03.2020 and allow to recover the Gap amount along with carrying cost.*
  - (b) *Approve the Additional Capital Expenditure of Rs. 17.56 Cr for FY 2019-20 beyond the Cut-Off Date of 31.03.2019 in accordance with Commission's Order dated May 30, 2019.*
  - (c) *Determine the Energy (Variable) charges to be paid by the Respondent No.1 for and on behalf of Government of Madhya Pradesh for the energy supplied under the PPA dated 27.06.2011 equivalent to 5% of net (ex-bus) energy generated;*
  - (d) *Allow to recover E.D., Water Charges and Cess on auxiliary power consumption and other taxes, if any, levied by the Statutory Authorities from the beneficiaries on submission of documentary evidence;*
  - (e) *Allow to recover the fees paid to the Commission and publication expenses from the beneficiaries on submission of documentary evidence;*
11. The subject petition has been examined by the Commission in accordance with the principles, methodology and the norms specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, Annual Audited Accounts and other supplementary submissions filed by the petitioner in response to the additional information / details sought by the Commission alongwith all other documents placed on record by the petitioner. The Commission has also examined the subject petition in light of the comments/ suggestions offered by the Respondent No.1 and the response of the petitioner on the same.
12. In this true-up order, the Commission has considered the opening figures of Gross Fixed Assets, Equity, Loan, Accumulated Depreciation as per the true-up order for FY 2018-19 in Petition No 27 of 2020 issued on 5<sup>th</sup> January' 2021.

### **Procedural History**

13. Motion hearing in the subject true up petition was held on 24<sup>th</sup> August' 2021 wherein the petition was admitted and the petitioner was directed to serve copies of its petition to all Respondents in the matter. The Respondents were directed to file their response on the petition within four weeks. The petitioner was asked to file its rejoinder within two weeks, thereafter.

14. Vide Commission's letter dated 21<sup>st</sup> September' 2021, the information gaps and requirement of additional information on preliminary scrutiny of the petition were communicated to the petitioner seeking its comprehensive reply by 8<sup>th</sup> October' 2021.
15. The petitioner vide letter dated 6<sup>th</sup> October' 2021 sought one week time extension, i.e., 15<sup>th</sup> October' 2021 for submitting the reply. The Commission granted the time extension.
16. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner filed its reply to the issues communicated to it by the Commission.
17. By affidavit dated 21<sup>st</sup> October' 2021, the Respondent No. 1 (M.P. Power Management Co. Ltd.) filed its response/comments on the subject petition.
18. By affidavit dated 30<sup>th</sup> October' 2021, the petitioner filed its rejoinder to the response/comments filed by Respondent No.1. The petitioner's responses on each comment offered by the Respondent No.1 are mentioned in Annexure-I of this Order.
19. The public notice for inviting comments/ suggestions from stakeholders was published on 23<sup>rd</sup> October' 2021 in the following newspapers:
  - (i) Nayi Duniya (Hindi), Gwalior,
  - (ii) Nayi Duniya (Hindi), Bhopal,
  - (iii) Nayi Duniya (Hindi), Jabalpur,
  - (iv) Nayi duniya (Hindi), Indore,
  - (v) Times of India (English), MP.
20. The Commission has not received any comment in this matter within the time line specified in the public notice. The public hearing in the subject petition was held on 23<sup>rd</sup> November' 2021 through video conferencing wherein the representatives of petitioner and Respondent No. 1 appeared.

### **Capital Cost as on 1<sup>st</sup> April' 2019**

#### **Petitioner's Submission:**

21. Regarding the capital cost of the project, the petitioner submitted that the Commission in last true-up order dated 5<sup>th</sup> January' 2021 has considered the closing capital cost of Rs. 3952.18 Crore as on the 31<sup>st</sup> March' 2019. The same capital cost has been considered by the petitioner as opening capital cost as on the 01<sup>st</sup> April' 2019 for the purpose of true-up of tariff for FY 2019-20 in the subject petition.

**Commission's Analysis:**

22. The petitioner has considered the opening capital cost as on the 1<sup>st</sup> April' 2019 as considered in Commission's tariff order dated 5<sup>th</sup> January' 2021 in true-up petition No. 27 of 2020. The breakup of the capital cost admitted by the Commission as on 31<sup>st</sup> March' 2019 in aforesaid true-up order dated 5<sup>th</sup> January' 2021 for FY 2018-19 is as given below:

<b>Particulars</b>	<b>Amount</b>
Land and Site Development	55.48
Civil Works	201.75
Plant & Machinery	3679.80
Furniture & Fixtures	7.10
IT Equipments (Computers)	4.04
Office Equipments	3.80
Vehicles	0.21
<b>Total Capital cost considered</b>	<b>3952.18</b>

23. On scrutiny of the subject true-up petition, it was observed that, the Commission has been determining the tariff based on "Indian Generally Accepted Accounting Principles" (IGAAP), whereas, the Annual Audited Accounts prepared by the petitioner are based on the "Indian Accounting Standards (Ind. AS)" in compliance with the Companies Act, 2013. Therefore, vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file a detailed note explaining the difference in each item of the capital cost due to transition of accounting practices from IGAAP to Ind. AS along with the consequential impact of such changes on the tariff, if any.
24. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted that there is no difference in the financial statements prepared as per IGAAP vis-à-vis IND AS system. Therefore, there is no difference in the value of Gross Fixed Assets.
25. On further scrutiny of the subject petition, it was observed that the petitioner did not file Form TPS 5B regarding detailed break-up of capital cost along with the petition. Therefore, vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file TPS form 5B with complete break-up of capital cost components as per original estimates (as per investment approval from BoD) and liability as on 31<sup>st</sup> March' 2020. The petitioner was also asked to file the variation in original estimate (as per investment approval) and the actual expenditure along with the detailed reasons for such variations, if any.

26. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner filed the item-wise reconciliation of the actual expenditure as on CoD vis-à-vis the additional capitalization incurred during FY 2019-20. The petitioner also filed form TPS 5B indicating component-wise break-up of all cost components in this regard.
27. In view of the above, the Commission has considered the closing GFA of Rs. 3952.18 Crore as considered in the last true-up order for FY 2018-19 as opening GFA as on 1<sup>st</sup> April' 2019 in this order. The Commission has also considered the closing balance of equity and loan admitted in last true-up order for FY 2018-19 as opening equity and loan in this order. The details of opening capital cost, equity and loan considered as on 1<sup>st</sup> April' 2019 are as given below:

**Table 4: Opening Figures as on 01.04.2019 considered in the order**

Opening GFA as on 01.04.2019	Opening Loan as on 01.04.2019	Opening Equity as on 01.04.2019
Rs 3952.18 Crore	Rs 2386.36 Crore	Rs 988.03 Crore

### Additional Capitalization

#### Petitioner's Submission

28. In the subject true-up petition, the petitioner has claimed the additional capitalization of Rs 18.39 Crore on accrual basis (Rs 17.56 Crore on cash basis) during FY 2019-20. The breakup of additional capitalization claimed on accrual basis and cash basis by the petitioner as given below:

**Table 5: Additional Capitalization claimed by the petitioner for FY 2019-20: (Rs. Crore)**

S. No	Particulars	Add. Cap. On Accrual Basis	Add. Cap. On Cash Basis
1	BTG	1.09	1.09
2	Initial Spares	9.66	9.66
3	Road & Drainage	6.86	6.04
4	Misc Mechanical & Electrical Works	0.51	0.51
5	AHP & Main Silo	0.14	0.13
6	Chemical & Electrical Lab	0.09	0.09
7	Misc Civil Works	0.06	0.06
	<b>Total</b>	<b>18.39</b>	<b>17.56</b>

29. With regard to the additional capitalization claimed in the petition, the petitioner submitted the following:

*With the issuance of RBI Circular dated 12<sup>th</sup> February 2018 with regard to classification of assets, the lenders classified the Project as a Non-Performing Asset*



(NPA). The Petitioner's Plant was identified as one of the 34 stressed thermal coal-based power plants in the 40th report of the Standing Committee on Energy (2017-18), Ministry of Power. Thereafter, the lenders stopped the process of debt restructuring in line with the above RBI circular and initiated the process of due-diligence for change of ownership further delaying the works to be executed before the cut-off date.

The petitioner's company was under the control of lenders (Committee of Creditors – CoC) and the complete operational control was not with the management of the company. The timeline of events leading to delay in execution of works under the original scope of works are enumerated below.

Due to non-availability of funds post commercial operation of the unit (due to retention of money by the Respondent from the monthly raised invoices by the Petitioner on various accounts such as Liquidated Damages & On-Off bar issue, poor scheduling by the Respondent), the progress of balance works was severely affected leading to delay in work which was otherwise envisaged to be completed by March 2018. Also, since there were no revenue inflows, the Petitioner was not able to service its debt obligations and it defaulted on its monthly interest payments to bankers in June 2017. Post which, lenders tried to restructure company's debt but the effort remained unsuccessful. Also, in the interim period, all the payments had to be approved by lenders and considering the strained financial position of the company, they did not allow company to incur any capex expenditure. Subsequently, the lenders also invoked the pledge on the shares of the company and took control of 60% of the promoter's equity.

The lenders decided to stop all capital expenditure since March 2018 which were required to complete the balance Project works and to meet a number of undischarged liabilities. This step was taken under the assumption that the amount and course of capital expenditure would be decided by the new management post resolution of the asset, which was expected to be completed by August 2018, in line with the above RBI Circular. However, the process of resolution of the asset got delayed due to various factors like:

- Longer than expected timeline for the process of due diligence in view of the apprehensions of the bidders regarding the various project fundamentals as well as sectorial outlook.
- Failure of the identified bidder to achieve financial closure to proceed with the resolution.



- *Stay order by the Hon'ble Supreme court on the process of resolution of the stressed assets in the power sector under Insolvency and Bankruptcy Code.*

*The petitioner was constantly pursuing with the consortium lenders, regarding the matter of allowing the capital expenditure, at least for the Railway works from the operational flow as the same results in increase in reliability of coal, decrease in landed cost of fuel. Recognizing the same, the lenders agreed to allow the same in October, 2018. However, due to long interruption and delay, all the awarded contracts, for supply as well as execution, had to be re-negotiated and re-ordered adding further to the delay in execution of works.*

*It is further submitted that the Petitioner has not been able to purchase and stock critical & costly insurance spares like Generator rotor, HP module, LPT last stage blades, Turbine Governing System Spares, Generator Stator Spares, DCS Spares etc. in view of the paucity of funds. Further, no payments could be released to the then existing creditors and the other miscellaneous balance activities like construction of township, service building, roads & drains etc. also could not be completed on account of the same.*

*Further, one of the capex creditors had filed the case against the company in NCLT for non-payment of its dues. The company finally got admitted into CIRP (Corporate Insolvency Resolution process) on March 27, 2019*

*The petitioner submits that the petitioner continues to be under the Insolvency and Bankruptcy Code, 2016 ("I&BC") Proceedings with effect from 27<sup>th</sup> March 2019 vide an Order passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in C.P.(IB) NO. 634/KB/2017 as per which a Resolution Professional for Jhabua Power Limited has been appointed vide Hon'ble NCLT, Kolkata order dated 24<sup>th</sup> July 2019*

*With the above background, it is submitted that the work execution process got delayed owing to compliance to RBI Circular, and NCLT proceedings which are entirely beyond the control of the petitioner. It is therefore prayed that the additional capitalization of Rs. 18.39 Crore (accrual basis) and Rs. 17.56 Crore (cash basis) claimed for FY 2019-20 may kindly be allowed.*

### **Provisions in Regulations**

30. Regarding additional capitalization in respect of existing generating station, after the cut-off date, Regulation 27.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*27.1 The additional capital expenditure incurred or projected to be incurred in respect of an existing project or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:*

- (i) Liabilities to meet award of arbitration or for compliance of the directions or order of any statutory authority, or order or decree of any court of law;*
- (ii) Change in law or compliance of any existing law;*
- (iii) Deferred works relating to ash pond or ash handling system including ash transportation facility in the original scope of work;*
- (iv) Liability for works executed prior to the cut-off date;*
- (v) Force majeure events;*
- (vi) Liability for works admitted by the Commission after the cut-off date to the extent of discharge of such liabilities by actual payment; and*
- (vii) Additional capitalization on account of raising of ash dyke as a part of ash disposal system.*

### **Commission's Analysis**

31. The petitioner has filed the additional capitalization of Rs. 18.39 Crore on accrual basis, however, the additional capitalization claimed in the subject petition on cash basis is Rs. 17.56 Crore.
32. The petitioner submitted that the additional capitalization claimed for FY 2019-20 is beyond the cut-off date of the project but under original scope of work of the project in accordance with the Tariff Regulations, 2020. Out of the total additional capitalization on accrual basis, the assets of Rs. 1.09 Crore pertains to BTG, Rs. 0.14 Crore pertains to AHP & Main Silo, Rs. 9.66 Crore pertains to Initial Spares, Rs 6.86 Crore pertains to Road & Drainage works, Rs 0.09 Crore pertains to Chemical & Electrical Lab, Rs 0.51 Crore pertains to Miscellaneous Mechanical & Electrical works and Rs 0.06 Crore pertains to Miscellaneous Civil Works.
33. On examination of the subject petition, certain necessary details/documents for proper scrutiny of the additional capitalization claimed in the subject petition were sought from the petitioner. Vide Commission's letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file a comprehensive reply on various issues related to additional capitalization. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner filed its response on the issues raised by the Commission. The response of the petitioner on all such issues is mentioned below:

**Issue**

- i) The petitioner was asked whether the asset under additional capitalized claimed by the petitioner are under original scope of work. If so, all supporting documents establishing that the assets capitalized under original scope of work be filed. The petitioner was also asked to explain that the addition of assets is on account of the reasons mentioned in Regulation 27.1 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.
- ii) The petitioner was further asked to file the information duly filled up in the following table in respect of assets addition during the year.

**Details of Additional Capitalization:**

<b>S. No.</b>	<b>Particulars</b>	<b>Asset Additions (Rs. Cr.)</b>	<b>Reasons of Asset Additions</b>	<b>Provisions of Regulations under which Add. Cap. filed</b>	<b>Reference supporting doc. Enclosed</b>
1					

- iii) If the additional capitalization is claimed beyond the Original Scope of work, the petitioner was asked to explain whether the addition of asset is on account of the reasons mentioned in Regulation 28.1 of the MPERC Terms and Conditions for determination of Generation Tariff) Regulations, 2020.
- iv) The petitioner was asked to file a list of the orders placed on different vendors for additional capitalization claimed in the petition along with date of order, price at which contracts were awarded and anticipated date of completion of each work. If there is any delay in completion of works from contractor side, the details of penalty if any, imposed on the contractor be informed.
- v) The reasons for delay in capitalization of all such assets under additional capitalization were asked to file.
- vi) The petitioner was asked to file copy of the bills/invoices of all such assets under additional capitalisation etc.
- vii) The petitioner was asked to intimate the cut-off date of the Unit in light of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

**Petitioner' Response on the above-mentioned issues:**

i. *The petitioner submits that the assets capitalized during the year FY 2019-20 are under original scope of work. It is submitted that the mandatory spares, roads and drainage BTG work and other expenses claimed were already envisaged in the DPR however, the same could not be completed within cut-off date owing to the uncontrollable reasons which is explained in detail in the filed petition. With regard to the supporting documents, the petitioner submits that the works proposed under the Original Scope of Works are reflected in the DPR along with cost estimates and the same is attached as Annexure 4.*

*With regard to the justification of addition of assets in light of MPERC Tariff Regulations, 2020, the petitioner respectfully submits that it has claimed the additional capitalization for FY 2019-20 under Regulation 26.1 of MPERC Tariff Regulations, 2020 instead of Regulation 27.1 as referred by the Hon'ble Commission.*

*The cut-off date of the project as per the MPERC Tariff Regulations, 2015 under which the petitioner's project has been commissioned, is March 31, 2019. However, anticipating the delay in execution of works, the petitioner had filed a Petition (No. 19 of 2019) for extension of cut-off date of the project by 2 years i.e. till March 31, 2021 on the grounds of spilling over of works under original scope beyond the cut-off date on account of various reasons beyond the reasonable control of the petitioner despite regular monitoring & follow-up by the petitioner. Subsequently, after the due proceedings in the matter, the Commission has directed the petitioner to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of MPERC Tariff Regulations while filing the true-up petition for respective financial year. Further, in the MYT Order dated May 8, 2021 also the Commission, on capital expenditure projections had ruled that the petitioner shall be at liberty to approach the Commission for approval of additional capitalization along with requisite information. Accordingly, the petitioner has claimed the additional capitalization under Regulation 26.1 considering the extended cut-off date as all the works claimed are under the original scope of works and that all due supporting documents in support of the same is being supplied in these replies.*

ii. *The petitioner humbly submits the information as follows:*

**Table 6 Information regarding the additional capitalization claimed in FY 2019-20**

<b>S. No</b>	<b>Particular</b>	<b>Asset Addition (Rs. Crore)</b>	<b>Detailed reasons of Asset Additions</b>	<b>Provision of Regulations under which Add. Cap is Filed</b>	<b>Reference of supporting documents</b>
1	BTG	1.09	Deferred works under original scope of works which are essential, for Safety, reliability and smooth running of the Plant.	26.1 (ii)	Copies of the Orders placed and invoices are attached as <b>Annexure 5</b> and <b>Annexure 6</b> respectively.
	AHP & Main Silo	0.14		26.1 (ii)	
2	Initial Mandatory Spares	9.66	In line with the Regulation 25 of MPERC Tariff Regulations, 2020 which allows initial spares to be claimed at 4% of Plant & Machinery Cost of the Project.	26.1 (iii)	
3	Road & Drainage	6.86	Deferred works under original scope of works which are essential are Safety, reliability and smooth running of the Plant.	26.1 (ii)	
	Chemical & Electrical lab	0.09		26.1 (ii)	
4	Misc. Mechanical and Electrical Works	0.51		26.1 (ii)	
	Misc. Civil Works	0.06		26.1 (ii)	
5	<b>Total</b>	<b>18.39</b>			

iii. The petitioner respectfully submits that all the works which are claimed under additional capitalization for FY 2019-20 are under Original Scope of Works as already submitted in the Petition and in this reply and no asset addition has been proposed on account of works which are new or beyond Original Scope of Works.

iv. Copies of Purchase Orders to the extent placed on various suppliers/contractors for additional capitalization claimed in the Petition have been attached as Annexure 5 in the above reply.

v. The petitioner respectfully submits that the petitioner in reply to the query (iv) above has already submitted the reasons for delay in capitalization of all the assets claimed under additional capitalization. The petitioner is not repeating the same for the sake of brevity.

vi. *The petitioner humbly submits that owing to the voluminous nature of Bills/Invoices, copies of Bills/Invoices of the assets above Rs. 2 Lakh and above only have been annexed as Annexure 6 in the above reply since the same amounts to more than 85% of the total claim of additional capitalization. The petitioner further submits that all the invoices against the total additional capitalization claimed in the Petition are available with the petitioner and the same can be provided in case the same are required by the Commission. Accordingly, the petitioner requests the Commission to consider the same and approve the additional capitalization as claimed in the Petition.*

vii. *The cut-off date of the project considered by the petitioner is March 31, 2019 as per MPERC Tariff Regulations, 2015 and the petitioner has already submitted the same in Para 6.2 of the Petition.*

34. On perusal of the aforesaid petitioner's response on additional capitalization claimed in the subject petition vis-a-vis the issues raised by the Commission, the Commission has observed the following:

- i. The petitioner has filed additional capitalization in the petition under Regulation 27.1 (iii) & (iv) of the Tariff Regulations, 2020 however, in response to the issues raised by the Commission, the petitioner changes its contention and submitted that the additional capitalization claimed are on account of the reasons mentioned under (i) to (vi) of Regulation 26.1 of the MPERC (Terms & Conditions for Determination of Generation Tariff) Regulations, 2020.
- ii. The petitioner submitted that the original scope of work of the project is as per the Detailed Project Report. The petitioner has filed Form TPS 5B mentioning the break-up of capital cost in accordance with the Original Scope of work approved by its Board of Director's (BOD).
- iii. The petitioner further submitted that the total actual project expenditure as on 31<sup>st</sup> March' 2020 is within the total amount of Rs 4950 Crore approved by its Board of Directors and therefore, no further approval from Board of Directors of the Company has been taken.
- iv. The petitioner has filed the details of the bills/invoices, purchase orders placed on various suppliers/contractors. The petitioner also filed the reconciliation of the additional capitalization with the assets recorded in the Annual Audited Accounts for FY 2019-20.



35. By affidavit dated 21<sup>st</sup> October' 2021, Respondent No. 1 (MPPMCL) filed its response on the additional capitalization claimed in the subject petition. The response filed by Respondent No. 1 (MPPMCL) is summarized as below:

*That the petitioner has claimed Additional Capitalisation to the tune of Rs. 17.56 Crores on cash basis under Table 2 in the petition. The said Additional Capitalisation is denied and disputed as the same was incurred after the cut-off date for no reasons attributable to the beneficiaries of the project. The lack of financial arrangements or delay caused in arranging the same was never on account of the beneficiaries but on account of lack of competency and creditability on the part of the petitioner. Such a reason cannot also be a basis for claiming additional capitalisation after the cut-off date. The expenditure which ought to have been incurred by the cut-off date were deferred as the management of the petitioner was not performing up to the mark and had lost trust of the lenders and as a result the insolvency proceedings were initiated against the petitioner and the management got vested with the Interim Resolution Professional. The petitioner by timely deploying expert managerial could have avoided such a situation. Moreover, appointment of an Interim Resolution Professional is expected to deliver expert and better management to the petitioner. The beneficiaries of the project cannot be held responsible for the same and made to suffer additional capitalisation after the cut-off date. The Additional Capitalisation claimed by the petitioner is denied and disputed and ought not to be allowed.*

**Capitalization of Initial Spares:**

*That, the petitioner is seeking capitalisation of spares after the cut-off date under Regulation 27.1 (vi). The Petitioner has stated that earlier it had procured spares, till the cut-off date 31-03-2019, to the extent of Rs. 38.63 Crs. (Rs. 23.54 Crs during FY 2016-17 and Rs. 15.09 Crs. during FY 2018-19) which is much less than the ceiling limit of Rs. 90.79 Crs and therefore it be permitted to capitalise initial spares amounting to Rs. 9.66 Crs. during FY 2019-20, i.e. after the cut-off date. The petitioner has assigned no reasons for procuring the initial spares at a belated stage after the cut-off date.*

*That, merely for the reasons that the initial spares capitalised till 31<sup>st</sup> March, 2019 were much less than the ceiling limit, the Petitioner cannot be permitted to claim the differential or short capitalisation of initial spares after the cut-off date. If permitted so, it would be against the regulatory provisions of Regulation 27.1(6) governing capitalisation of initial spares. It would have a cascading effect on the higher side on the capital, depreciation, equity, notional loan and other components of tariff and ultimately lead to an artificially escalated tariff. Therefore, such a capitalisation of initial*



spares beyond the cut-off date to the tune of Rs. 9.66 crs. is denied and disputed. The same ought not to be allowed.

That, the petitioner has claimed an amount of Rs. 8.73 crs towards additional capitalisation towards BTG, AHP and Main Silo, Road and Drainage, Chemical and Electrical Lab and misc. Electrical & Mechanical works u/r. 27.1(6) without offering any justification for the same. Hence, the same be disallowed.

36. The Commission has examined the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The Commission has also examined the claim of additional capitalization in light of the response filed by the Respondent No. 1 and other details and documents submitted by the petitioner.

#### **A. Annual Audited Accounts and Asset-cum-Depreciation Register**

37. On perusal of the Annual Audited Accounts and Assets-cum-Depreciation Register for FY 2019-20 filed by the petitioner, it was observed that the figures of capital cost and additional capitalization were at variance. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to reconcile the Opening GFA, additional capitalization of Rs. 18.39 Crore on accrual basis (Rs 17.56 Crore on cash basis) and closing GFA claimed in the subject petition with the figures recorded in the Asset-cum-Depreciation Register and Annual Audited Accounts for FY 2019-20.

38. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted the following:

*The reconciliation of the figures recorded in the Assets-cum-Depreciation register (also referred as Fixed Asset register) along with figures recorded in Annual Audited Accounts are as follows:*

**Table 7- Reconciliation of figures in Annual Audited Accounts with Assets-cum Depreciation Register: (Rs. Crore)**

<b>Particular</b>	<b>Ref</b>	<b>Gross Block as on 01.04.2019</b>	<b>Acc. Dep. as on 01.04.2019</b>	<b>Addition during FY 2019-20</b>	<b>Dep. for FY 2019-20</b>	<b>Net Block as on 31.03.2020</b>
<i>As submitted in Fixed Asset Register</i>	A	4753.66	496.90	18.39	167.09	4108.06
<b>As Recorded in Audited Accounts</b>						

Tangible Assets (Schedule No. 3)	B	4747.93	491.26	18.39	167.05	4108.01
Intangible Assets (Schedule No. 5)	C	5.73	5.64	-	0.04*	0.05
Total	D=B+C	4753.66	496.90	18.39	167.09	4108.06
Difference	A-D	0	0	0	0	0

\*Amortization charged for the year

From the above, it can be observed that the figures recorded in Annual Audited Accounts are reconciled with the figures recorded in Assets-cum-Depreciation register

39. In view of the above, it is observed that the additional capitalization of Rs 18.39 Crore (on accrual basis) claimed in the subject petition have been capitalised in Annual Audited Accounts for FY 2019-20 and are recorded in the Asset-cum-Depreciation register of the project filed by the petitioner.

#### **B. Capital Cost under Original Scope of Work and BoD Approval**

40. The petitioner submitted that the additional capitalization claimed in the subject petition is within the original scope of work of Rs. 4950 Crore of the project as per the Resolution of its Board of Directors dated 10<sup>th</sup> March' 2016, approving final project cost of the project. The petitioner further submitted that the BoD of the petitioner's company had already approved Investment Approval for complete project cost of Rs. 4950 Crore. With the additional proposed cost, the total project cost as on 31.03.2020 is within Rs. 4950 Crore. A copy of the BOD approval for complete project cost of Rs. 4950 Crore has also been filed by the petitioner. Break-up of the capital cost approved by the Board of petitioner is as under:

**Table 8: Approval of Petitioner's BOD dated 10<sup>th</sup> March' 2016 (Rs Crore)**

Description	Project Cost approved by Board of Directors
Land & Site Development	70.00
Plant & Equipment-BTG, BOP & Civil	2,965.00
Initial spares	100.00
Total Overheads & pre-commissioning expenses	100.00
IDC, FC, FERV & Hedging Cost	1,435.00
Total Overheads	280.00
<b>TOTAL</b>	<b>4,950.00</b>

41. Details of the capital cost as on 31.03.2019 admitted by the Commission, additional capitalization (on cash basis) claimed by the petitioner during FY 2019-20 and total Actual expenditure as on 31.03.2020 filed by the petitioner are as given below:

**Table 9: Details of Capital cost as on 31.03.2020 filed by the Petitioner (Rs in Crore)**

Capital Cost Components	GFA as on 01.04.2019 admitted by the Commission	Additions claimed by the petitioner during FY 2019-20 (on cash basis)	Actual expenditure as on 31.03.2020 filed by the petitioner
Land and site development	55.48	-	55.48
Civil Works	201.75	6.22	207.97
Plant & Machinery	3679.80	11.34	3691.14
Furniture & Fixture	7.10	-	7.10
IT Equipment	4.04	-	4.04
Office Equipments	3.80	-	3.80
Vehicles	0.21	-	0.21
<b>Total Capital Cost</b>	<b>3952.18</b>	<b>17.56</b>	<b>3969.74</b>

42. In the aforesaid break-up of capital cost components, the soft cost components are not indicated separately and loaded proportionately on hard cost components. On perusal of the aforesaid details, the Commission has observed that the total capital expenditure as on 31<sup>st</sup> March' 2020 filed by the petitioner is within the estimated capital expenditure of Rs. 4950 Crore approved by the BoD dated 10<sup>th</sup> March' 2016.

### **C. Cut-off Date**

43. Regarding the Cut-off date of the project, Regulation 4.1 (I) of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2015 provides as under:  
*'Cut-off Date' means 31<sup>st</sup> March' of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut- off date shall be 31<sup>st</sup> March of the year closing after three years of the year of commercial operation:*
44. The Unit No. 1 of Jhabua Thermal Power Project under subject petition achieved CoD on 3<sup>rd</sup> May' 2016, therefore, the cut-off date of the project is 31<sup>st</sup> March 2019 in accordance with the above provision under Regulations 2015. Therefore, the additional capitalization claimed by the petitioner in the subject petition is beyond the cut-off date.
45. The Commission observed that the additional capitalization filed by the petitioner in the subject petition has been claimed under Regulation 27.1 which is applicable for additional capitalization within the original scope of works after the cut-off date. Subsequently in response on the issues raised by the Commission, the petitioner submitted that the additional capitalization covered under Regulation 26.1 of the MPERC Tariff Regulations, 2020, which is within the original scope of works and up to cut-off date.

46. In para 6.3 of the petition, the petitioner submitted that anticipating the spill over of works due to uncontrollable reasons, the petitioner had filed a Petition (No. 19 of 2019) for extension of cut-off date by 2 years (from 31.03.2019 till 31.03.2021) on the grounds of spilling over of works under original scope beyond the cut-off date on account of various reasons beyond the reasonable control of the petitioner.

47. Vide Order dated 30<sup>th</sup> May' 2019 in the subject matter the Commission disposed of the Petition with the following observations:

*“7. From the aforesaid provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2015, it is observed that for considering the actual additional capitalization beyond cut-off date of the project, detailed examination of actual capital expenditure of each work beyond cut-off date and the reasons for delay in capitalization of all such works beyond cut-off date shall be required by the Commission in terms of Regulation 4.1(l) and 20.2 of MPERC Tariff Regulations, 2015. Hence, the subject petition cannot be examined and decided by the Commission at this stage. Therefore, the petitioner is directed to approach the Commission with actual additional capitalization of all works beyond cut-off date as per the Annual Audited Accounts along with all details and documents in terms of aforesaid Regulations while filing the true-up petition for respective financial year.”*

48. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked as to why the works claimed under additional capitalization were not completed till cut-off date of the project. The petitioner was also asked to explain detailed reasons for delay in completion of major works claimed as additional capitalization in the subject petition.

49. Vide affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted:

*The petitioner submits that the works claimed under additional capitalisation for FY 2019-20 pertains to the works included under original scope of work and the same could not be completed before the cut-off date of the project as per MPERC Tariff Regulations, 2015 i.e., March 31, 2019 on account of various restricting factors which were beyond the control of the Petitioner. Anticipating the delay, the petitioner had filed a Petition (No. 19 of 2019) for extension of cut-off date of the project by 2 years i.e. till March 31, 2021 on the grounds of spilling over of works which were under original scope on account of various reasons beyond the reasonable control of the petitioner despite regular monitoring & follow-up by the petitioner.*

*Subsequently, after the due proceedings in the matter, the Commission after apprising the matter directed the petitioner to approach the Commission with actual*

*additional capitalization of all works beyond cut-off date duly supported by Annual Audited Accounts along with all details and documents as required under MPERC Tariff Regulations while filing the true-up petition for respective financial year. Further, in the MYT Order dated 8<sup>th</sup> May' 2021 also the Commission, on the additional capitalisation projections had ruled that the petitioner shall be at liberty to approach the Commission for approval of additional capitalization along with requisite information. Accordingly, the petitioner is approaching the Commission for approval of the additional capitalization along with the requisite information.*

*The petitioner submits the detailed justification and reasons that resulted in the delay. The chronology of the uncontrollable events which is affecting the execution of the works are as follows:*

- (i) Due to non-availability of funds post commercial operation of the unit (due to retention of money by the Respondent from the monthly raised invoices by the Petitioner on various accounts such as Liquidated Damages & On-Off bar issue, poor scheduling by the Respondent), the progress of balance works was severely affected leading to delay in work which was otherwise envisaged to be completed by March 2018. Also, since there were no revenue inflows, the Petitioner was not able to service its debt obligations and it defaulted on its monthly interest payments to bankers in June 2017. Post which, lenders tried to restructure company's debt but the effort remained unsuccessful. Also, in the interim period, the lenders made it mandatory to seek their prior-approval for all kinds of payments. Considering the strained financial position of the company, the lenders did not allow the company to incur any capital expenditure. Subsequently, the lenders also invoked the pledge on the shares of the company and took control of 60% of the promoter's equity.*
- (ii) With the issuance of RBI Circular dated February 12, 2018 with regard to classification of assets, the lenders classified the Project as a Non-Performing Asset (NPA). The Petitioner's Plant was identified as one of the 34 stressed thermal coal-based power plants in the 40<sup>th</sup> report of the Standing Committee on Energy (2017-18), Ministry of Power. Thereafter, the lenders stopped the process of debt restructuring in line with the above RBI circular and initiated the process of due-diligence for change of ownership further delaying the works to be executed before the cut-off date.*
- (iii) The lenders decided to stop all capital expenditure after June 2017 when the company defaulted in its loan servicing obligation. Suspension of capex which*

were required to take up the balance Project works and to meet a number of un-discharged liabilities resulted in the delay in completion of the works. This step was taken by the lenders under the assumption that the amount and course of capital expenditure would be decided by the new management post resolution of the asset, which was expected to be completed by August 2018, in line with the above RBI Circular. However, the process of resolution of the asset got delayed due to various factors like:

- Longer than expected timeline for the process of due diligence in view of the apprehensions of the bidders regarding the various project fundamentals as well as sectorial outlook.
- Failure of the identified bidder to achieve financial closure to proceed with the resolution.
- Stay order by the Supreme court on the process of resolution of the stressed assets in the power sector under Insolvency and Bankruptcy Code.

- (iv) The petitioner was constantly pursuing with the consortium lenders, regarding the matter of allowing the capital expenditure, at least for the Railway works from the operational flow as the same results in increase in reliability of coal, decrease in landed cost of fuel. Recognizing the same, the lenders agreed to allow the same in October, 2018. However, due to long interruption and delay, all the awarded contracts, for supply as well as execution, had to be re-negotiated and re-ordered adding further to the delay in execution of works.
- (v) It is further submitted that the petitioner has not been able to purchase and stock critical & costly insurance spares like Generator rotor, HP module, LPT last stage blades, Turbine Governing System Spares, Generator Stator Spares, DCS Spares etc. in view of the paucity of funds. Further, no payments could be released to the then existing creditors and the other miscellaneous balance activities like construction of township, service building, roads & drains etc. also could not be completed on account of the same.
- (vi) Further, one of the capex creditors had filed the case against the company in NCLT for non-payment of its dues. The company finally got admitted into CIRP (Corporate Insolvency Resolution process) on March 27, 2019.
- (vii) The petitioner submits that the petitioner continues to be under the Insolvency and Bankruptcy Code, 2016 ("I&BC") Proceedings with effect from March 27, 2019 vide an Order passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in C.P.(IB) NO. 634/KB/2017 as per which a Resolution



*Professional for Jhabua Power Limited has been appointed vide Hon'ble NCLT, Kolkata order dated July 24, 2019.*

*(viii) With the above background, it is submitted that the work execution process got delayed owing to compliance to RBI Circular, and NCLT proceedings which are entirely beyond the control of the Petitioner. It is therefore prayed that the additional capitalization of Rs. 18.39 Crore (accrual basis) and Rs. 17.56 Crore (cash basis) claimed for FY 2019-20 may kindly be allowed. The Petitioner further submits that the additional capitalization claimed by the Petitioner is well within the investment approval from BoD for capital cost of Rs. 4950 Crore.*

50. Regulation 24.3 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 stated that the uncontrollable factors shall include Force Majeure events, Change in Law and time and cost overrun on account of land acquisition except where the delay attributable to the generating company.
51. The reasons mentioned by the petitioner for extension of cut-off date were not completely beyond the control of the petitioner as the petitioner was well aware with the provisions of the MPERC Tariff Regulations and there was ample time between the COD of the project and the cut-off date for completion of the balance works. The documentary evidences for the actual expenditure incurred cannot be treated as prudent documentary evidences for treating the additional capitalization after cut-off date as beyond the control of the petitioner.
52. Respondent No. 1 in its response has submitted that the lack of financial arrangements or delay caused in arranging the same was never on account of the beneficiaries but on account of lack of competency and creditability on the part of the petitioner.
53. In view of the above submission and considering all the facts and documents submitted by the petitioner, it is observed that the spilling over of works beyond the cut-off date due to non-availability of funds and other reasons mentioned by the petitioner post commercial operation of the unit are not cover under the aforesaid uncontrollable factors and are due to the reasons attributable to the petitioner. Hence, extension of cut-off date is not found considerable beyond the cut-off date i.e., 31<sup>st</sup> March' 2019 in accordance to the Tariff Regulations.
54. Further, in accordance to the provisions under MPERC Tariff Regulations, 2020, it is observed that the actual additional capitalization beyond cut-off date of the project, needs to be examined in terms of the Regulation 27.1 of MPERC Tariff Regulations, 2020.



55. In view of the above, additional capital expenditure claimed by the petitioner during FY 2019-20 are beyond the cut-off date and shall be examined in light of the Regulation 27.1 of Tariff Regulations, 2020.

**D. Analysis of additional capitalization in light of the provisions under Regulations**

56. The petitioner filed the additional capitalization of Rs. 17.56 Crore on cash basis under seven major heads i.e. BTG, AHP & Main Silo, Initial Spares, Roads & Drainage, Chemical & Electrical Lab, Miscellaneous Mechanical and Electrical works and Misc Civil Works. The additional capitalization under each of the aforesaid heads is discussed below in light of the provisions under Regulations, 2020:

**Boiler, Turbine & Generator (BTG):**

57. The petitioner filed additional capitalization of Rs. 1.09 Crore on cash basis towards procurement of Steam Generator Island of the project. In response to the Commission's queries, the petitioner submitted that the aforesaid additional capitalization are deferred works under original scope of works which are essential for safety, reliability and smooth running of the Plant and covered under Regulation 26.1 (ii) of the Regulations, 2020.
58. On scrutiny of the details and documents filed by the petitioner, the Commission has observed that the aforesaid additional capitalization towards BTG of Rs. 1.09 Crore is under the original scope of works but beyond the cut-off date of the project. Therefore, additional capitalization towards BTG of Rs. 1.09 Crore is not covered in any provisions under Regulation 27.1 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, hence not considered in this order.

**AHP & Main Silo:**

59. The petitioner has claimed Rs 0.13 Crore on account of AHP & Main Silo under additional capitalization on cash basis. The petitioner submitted that the works has been claimed under deferred works under original scope of works which are essential for safety, reliability and smooth running of the Plant. The petitioner has claimed the aforesaid additional capitalization under Regulation 26.1 (ii).
60. On examination of the aforesaid claim of Rs 0.13 Crore, it is observed that the work is related to Ash Handling Plant. These works are under the original scope of works and beyond the cut-off date of the Project. The aforesaid additional capitalization work is covered under Regulation 27.1 (iii) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Therefore, the additional capitalization of Rs. 0.13 Crores on cash basis towards AHP & Main Silo Works is considered in this order.

**Initial Spares:**

61. The petitioner filed additional capitalization of Rs. 9.66 Crore on cash basis towards balance mandatory spares of the project.
62. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file the details of mandatory capital spares till 31<sup>st</sup> March' 2019 considered by the Commission. The petitioner was also required to justify its claim towards mandatory spares in light of the Regulation 25 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.
63. Vide affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted:

*The petitioner submits that the Commission has allowed a total of Rs. 38.63 Crore towards mandatory spares till 31.03.2019. A summary of the mandatory spares approved by the Commission till March 31, 2019 is as follows:*

**Table 10 Details of initial mandatory capital spares till 31<sup>st</sup> March 2019**

<b>S. No</b>	<b>Particular/ Description</b>	<b>Amount in Rs. Crore</b>	<b>Remark</b>
1	Mandatory initial spares approved in Order dated November 30, 2018	23.54	The approved initial spares of Rs. 23.54 Crore consists of Rs. 9.01 Crore towards initial spares as on CoD and Rs. 14.53 Crore towards initial spares procured after CoD during FY 2016-17
2	Mandatory initial spares approved in Order dated January 5, 2021	15.09	The approved initial spares of Rs. 23.54 Crore consists of Rs. 8.46 Crore which were pertaining to FY 2017-18 and Rs. 6.63 Crore pertaining to FY 2018-29
<b>Total</b>		<b>38.63</b>	

*With regard to the justification of claim of mandatory initial spares for FY 2019-20, the petitioner submits that Regulation 25 of MPERC Tariff Regulations, 2020 provides as follows:*

**“25. Initial Spares:**

*25.1 Initial spares shall be capitalised as a percentage of the Plant and Machinery cost, subject to following ceiling norms:*

*(a) Coal-based thermal generating stations - 4.0%*

*(b) Hydro generating stations including pumped storage hydro generating system-4.0%*

*Provided that the, Plant and Machinery cost shall be considered as the original project cost excluding IDC, IEDC, Land Cost and cost of civil works. The generating company for the purpose of estimating Plant and Machinery Cost shall submit the break-up of head-wise IDC and IEDC in its tariff application”.*

*It is submitted that considering the Plant and Machinery cost as approved by the Commission vide its Order dated 30.11.2018 i.e. as on CoD of Rs. 2269.78 Crore the ceiling limit as per the above Regulations works out to Rs. 90.79 Crore and the petitioner’s claim till March 31, 2020 including the approved mandatory initial spares workout to be only Rs. 48.29 Crore (2.13%). Therefore, the initial spares claimed by the petitioner in FY 2019-20 along with earlier approved spares is well within the ceiling limit specified in Regulation 25 of MPERC Tariff Regulations, 2020. The petitioner therefore requests Commission to approve the same. The petitioner further provides a summary sheet of Purchase Orders in support of the claim of Rs. 9.66 Crore as also provided during MYT proceedings as Annexure3.*

64. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 9.66 Crore is on account of capitalization of the initial / mandatory spares during FY 2019-20 claimed in accordance with Regulation 26.1 (ii) of the Regulations, 2020. The petitioner further submitted that the total expenditure on initial spares is within the prescribed limit of 4% of the plant and machinery cost of the project in accordance with Regulation 25 of the Regulations, 2020. It is observed that the aforesaid works are under the original scope of works but beyond the cut-off date of the project.
65. On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 9.66 Crore is after cut-off date and not covered under the Regulation 27.1 and it is beyond the scope of the Regulations, hence, not considered in this Order.

### **Roads & Drainage**

66. The petitioner has claimed Rs 6.04 Crore on account of Roads & drainage under additional capitalization on cash basis. Vide letter dated 21<sup>st</sup> September’ 2021, the petitioner was asked to explain the reasons for claiming additional capitalization of Rs. 6.86 Crore towards Roads and drainage after the cut-off date of the project.
67. By affidavit dated 16<sup>th</sup> October, the petitioner submitted the following response:

*These works forming part of civil works were reflected in DPR cost estimates under item no. 3.15 and 3.16 with an estimated cost of Rs. 17 Crore and the works completed till FY 2018-19 on accrual basis is Rs. 28.79 Crore.*

*In this regard, the petitioner would like to submit that the land at Project Site emerged to have solid rocky earth and uneven terrain which was not anticipated earlier and there is an increase in cost of excavation, civil works (in steel and cement) owing to price variation on account of their linking with CPI and WPI Inflation. This has led to increase in the actual cost towards roads and drainage.*

*It is further submitted that in the past due to shortage of funds bitumen-pitch roads could not be constructed at some of the places which has led to the requirement of re-laying of roads. Due to frequent vehicular movement including heavy earth equipment, most of these roads need to be converted to Bitumen-Pitch roads.*

*It is further to be noted that the cost estimates under DPR were prepared based on market prices prevailing as on April 2009 and the overall project estimate including IDC and Finance Charges was Rs. 2895.85 Crore. The same was revised to Rs. 4950 Crore (including proposed additional capitalization of Rs.289 Crore) in further Board meetings which substantiates the impact of inflation which needs to be factored in.*

*In view of the above justifications, it is humbly prayed that roads and drainage systems are one of the most important aspects impacting efficient plant operations and hence it is submitted that Commission takes above factors into consideration and approve the same.*

68. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 6.04 Crore is on account of capitalization of the roads and drainage works during FY 2019-20 in accordance with Regulation 26.1 (ii) of the Regulations, 2020. It is observed that the aforesaid works are under the original scope of works but capitalized beyond the cut-off date of the project.
69. On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 6.04 Crore after cut-off date is not covered under the Regulation 27.1 and it is beyond the scope of the Regulations, hence, not considered in this Order.

### **Chemical Lab Equipments**

70. The petitioner has claimed Rs. 0.09 Crore under additional capitalization on cash basis during FY 2019-20 towards Chemical Lab Equipments in Unit No. 1 of the project. The petitioner submitted an amount of Rs. 0.09 Crore is on account of procurement of the chemical lab equipments during FY 2019-20 in accordance with Regulation 26.1 (ii) of the Regulations, 2020. It is observed that the aforesaid works are under the original scope of works but beyond the cut-off date of the project.

71. On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 0.09 Crore after cut-off date is not covered under the Regulation 27.1 and it is beyond the scope of the Regulations, hence, not considered in this Order.

#### Miscellaneous Mechanical & Electrical Works

72. The petitioner submitted that out of the total additional capitalization, an amount of Rs. 0.51 Crore is on account of capitalization of miscellaneous mechanical & electrical works during FY 2019-20 in accordance with Regulation 26.1 (ii) of the Regulations, 2020. The petitioner further submitted that the works has been claimed under deferred works under original scope of works which are essential for safety, reliability and smooth running of the Plant.
73. On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 0.51 Crore after cut-off date is not covered under the Regulation 27.1 and it is beyond the scope of the Regulations, hence, not considered in this Order.

#### Misc. Civil Works

74. The petitioner has claimed Rs. 0.06 Crore under additional capitalization on cash basis during FY 2019-20 towards Misc Civil Works in Unit No. 1 of the project. The petitioner submitted that an amount of Rs. 0.06 Crore is on account of capitalization of miscellaneous civil works during FY 2019-20 in accordance with Regulation 26.1 (ii) of the Regulations, 2020. It is observed that the aforesaid works are under the original scope of works but beyond the cut-off date of the project.
75. On perusal of the above submission of petitioner, it is observed that the capitalization of Rs 0.06 Crore after cut-off date is not covered under the Regulation 27.1 and it is beyond the scope of the Regulations, hence, not considered in this Order.

#### Additional Capitalization Considered in this order:

76. In view of the above, out of the total additional capitalization of Rs. 17.56 Crore claimed, the Commission has only considered the total Additional Capitalization of Rs. 0.13 Crore during FY 2019-20 in this order. The break-up of additional capitalization considered in this order as given below:

**Table 11: Additions Capitalization Admitted in the Order (Rs. in Crore)**

<b>Sr. No.</b>	<b>Name of Asset/works with specifications</b>	<b>Amount of assets Addition allowed</b>	<b>Provision of Regulation under which Add. Cap is allowed</b>
1.	AHP & Main Silo	0.13	27.1 (iii)

77. Component wise break-up of capital cost as on 31<sup>st</sup> March' 2020 admitted by the Commission in this order are as given below:

**Table 12: Opening & Closing Capital Cost Considered in the order (Rs. in Crore)**

Opening GFA as on 31.03.2019	Capital Cost Components	Additions allowed by the Commission during FY 2019-20	Closing GFA as on 31.03.2020
Land and site development	55.48	-	55.48
Civil Works	201.75	-	201.75
Plant & Machinery	3679.80	0.13	3679.93
Furniture & Fixture	7.10	-	7.10
IT Equipment	4.04	-	4.04
Office Equipments	3.80	-	3.80
Vehicles	0.21	-	0.21
<b>Total Capital Cost</b>	<b>3952.18</b>	<b>0.13</b>	<b>3952.31</b>

## DEBT –EQUITY RATIO

### Petitioner's Submission:

78. In para 7.2 of the subject petition, it is submitted that, the petitioner in terms of Regulation 33.5 of MPERC Tariff Regulations, 2020, has considered the debt-equity ratio of 70:30 for the actual additional capital expenditure incurred FY 2019-20 to FY 2023-24. Further, the additional capital expenditure has been funded through the operational cash flows as no external borrowings are being granted to the petitioner's company.

### Provision in Regulation:

79. Regulation 33 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*33.1 For new projects, the debt-equity ratio of 70:30 as on date of commercial operation shall be considered. If the equity actually deployed is more than 30% of the capital cost, equity in excess of 30% shall be treated as normative loan:*

*Provided that:*

- where equity actually deployed is less than 30% of the capital cost, actual equity shall be considered for determination of tariff:*
- the equity invested in foreign currency shall be designated in Indian rupees on the date of each investment: -*



c. any grant obtained for the execution of the project shall not be considered as a part of capital structure for the purpose of debt : equity ratio.

*Explanation.-The premium, if any, raised by the generating company while issuing share capital and investment of internal resources created out of its free reserve, for the funding of the project, shall be reckoned as paid up capital for the purpose of computing return on equity, only if such premium amount and internal resources are actually utilised for meeting the capital expenditure of the generating station.*

33.2 The generating company shall submit the resolution of the Board of the company regarding infusion of fund from internal resources in support of the utilization made or proposed to be made to meet the capital expenditure of the generating station.

33.3 In case of the generating station declared under commercial operation prior to 1.4.2019, debt- equity ratio allowed by the Commission for determination of tariff for the period ending 31.3.2019 shall be considered:

*Provided that in case of a generating station which has completed its useful life as on or after 01.04.2019, if the equity actually deployed as on 01.04.2019 is more than 30% of the capital cost, equity in excess of 30% shall not be taken into account for tariff determination.*

33.4 -----

33.5 Any expenditure incurred or projected to be incurred on or after 1.4.2019 as may be admitted by the Commission as additional capital expenditure for determination of tariff, and renovation and modernisation expenditure for life extension shall be serviced in the manner specified in clause 33.1 of this Regulation.

### **Commission's Analysis**

80. Regarding opening balance of capital cost and funding, the Commission has considered closing figures of GFA, Equity and Loan as considered in true-up order dated 5<sup>th</sup> January' 2021 in Petition No 27/2020 as opening balance in this order as follows:

<b>Sr. No</b>	<b>Particular</b>	<b>Amount</b>
1	Opening Capital Cost	3952.18
2	Opening Equity	988.03
3	Opening Loan	2386.36



81. With regard to funding of additional capitalisation, vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to justify the funding of additional assets through the operational cash flows in light of the Annual Audited Accounts.

82. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted the following response

*The petitioner submits that the additional capitalization made by the petitioner is funded from the operational cash flows as no external borrowings are being granted to the petitioner's company. The lenders/Committee of Creditors (CoC) who were holding the operational control were initially hesitant to allow JPL to initiate any capital expenditure works. However, with the Petitioner's constant discussions with the lenders stressing the importance of the works (which were part of original scope of works) for safety and reliability of the plant, the lenders agreed in FY 2018-19 for the execution of the works with available resources of JPL. Accordingly, the Petitioner funded the additional capitalization from the operational cash flows from FY 2018-19. With regard to the justification of said additional capitalization in light of Annual Audited Accounts, the Petitioner submits that from the Cash flow statement for the year ended March 31, 2020, it can be observed that the 'Net cash from operating activities' is a positive amount (of Rs. 110.20 Crore). This is indicated under "Cash Flow from Operating Activities" in Cash Flow Statement of Annual Audited Account and the amount has been generated during the year. Out of the above Rs. 110.20 Crore, Rs. 39.01 Crore has been invested for purchase of Fixed Assets (including CWIP) under "Cash flows from investing activities" in Cash Flow Statement of Annual Audited Account. Similarly, in the year ended March 31, 2019 out of the positive cashflow of Rs. 108.21 Crore, Rs. 60.31 Crore has been invested for purchase of Fixed Assets (including CWIP). Accordingly, it can be interpreted from the Audited Accounts that the additional capitalization was funded from the cash flows generated by the company itself.*

*The above explanation is further substantiated with the fact that there has been no increase in the Equity/Debt component indicating that no such infusion was availed to fund capital expenditure.*

83. In view of the above submission and provisions under Regulation 33.1, the Commission has considered the same Debt: Equity ratio of 70:30 for additional capitalization as considered by the petitioner. The detail of additional capitalization considered during the year and its corresponding Debt and Equity admitted by the Commission for FY 2019-20 in this order are as given below:

**Table 14: Additional Capitalization and Funding: (Rs. in Crore)**

Sr. No.	Particulars	Asset Addition and Source of Funding Admitted for FY 2019-20		
		Asset Addition	Loan Addition	Equity Addition
1	Additions during the year	0.13	0.09	0.04
2	Debt : Equity Ratio	<b>70:30</b>		

**Annual Capacity (fixed) Charges:**

84. Regulation 17 of the MPERC (Terms and Conditions for Determination of General Tariff) Regulations, 2020 provides that the Annual Capacity (fixed) Charges derived on the basis of annual fixed cost (AFC) of a generating station shall consist of the following components:

- (a) Return on Equity;
- (b) Interest on Loan Capital;
- (c) Depreciation;
- (d) Interest on Working Capital;
- (e) Operation and Maintenance Expenses:

**a. Return on Equity:****Petitioner's Submission:**

85. While claiming the Return on Equity for FY 2019-20, the petitioner submitted that: “

*The Opening Equity as on 01.04.2019 has been considered as Closing Equity as on 31.03.2019 as approved in the Order dated 05.01.2021. The Petitioner has claimed return on equity on the average equity considering the equity infused to fund the additional capital expenditure incurred in FY 2019-20. Further, keeping in view that there was no tax liability in FY 2019-20 owing to losses incurred, the RoE has not been grossed up with the applicable Tax rates and has therefore been claimed RoE at 15.50% as per the above quoted Regulation for FY 2019-20 and as considered by the Commission in its MYT Order dated 08.05.2021.*

86. Accordingly, the petitioner claimed the Return on Equity for FY 2019-20 considering base rate of return @15.50% as given below:

**Table 15: Return on Equity claimed by the petitioner for FY 2019-20**

Sr. No.	Particular	Unit	FY 2019-20
1	Gross Opening Equity (Normal)	Rs. Cr.	988.03
2	Less: Adjustment in Opening Equity	Rs. Cr.	0.00
3	Adjustment during the year	Rs. Cr.	0.00

4	Net Opening Equity (Normal)	Rs Cr	988.03
5	Add: Increase in equity due to addition during the year/period	Rs. Cr.	5.27
6	Net Closing Equity (Normal)	Rs. Cr.	993.30
7	Average Equity (Normal)	%	990.66
8	Rate of RoE (%)	%	15.50%
9	<b>Total RoE</b>	%	<b>153.55</b>

### Provision in Regulations:

87. Regarding the Return on Equity, Regulation 34 & 35 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020, provides as under:

#### 34 . Return on Equity:

34.1 Return on equity shall be computed in rupee terms on the equity base determined in accordance with Regulation 33 of these Regulations.

34.2 Return on equity shall be computed at the base rate of 15.50% for thermal generating stations and hydro generating stations and at the base rate of 16.50% for the pumped storage hydro generating stations and run-of river generating stations with pondage.

Provided that

(a) in case of a new project, the rate of return of a new project shall be reduced by 1.00% for such period as may be decided by the Commission, if the generating station is found to be declared under commercial operation without commissioning of any of the Restricted Governor Mode Operation (RGMO)/ Free Governor Mode Operation (FGMO):

(b) in case of existing generating station any of the above requirements are found lacking based on the report submitted by the respective SLDC/RLDC, RoE shall be reduced by 1% for the period for which the deficiency continues.

(c) in case of a thermal generating station, with effect from 1.04.2020:

(a) rate of return on equity shall be reduced by 0.25% in case of failure to achieve the ramp rate of 1% per minute:

(b) an additional rate of return on equity of 0.25% shall be allowed for every incremental ramp rate of 1% per minute achieved over and above the ramp rate of 1% per minute, subject to ceiling of additional rate of return on equity of 1.00%:

Provided that the detailed guidelines in this regard shall be issued by National Load Despatch Centre).

**35. Tax on Return on Equity:**

35.1 The base rate of return on equity as allowed by the Commission under Regulation 34 shall be grossed up with the effective tax rate of the respective financial year. For this purpose, the effective tax rate shall be considered on the basis of actual tax paid in the respective financial year in line with the provisions of the relevant Finance Acts by the concerned generating company. The actual income tax on other income stream including deferred tax liability (i.e., income from non-generation business) shall be excluded for the calculation of “effective tax rate”.

35.2 Rate of return on equity shall be rounded off to three decimal places and shall be computed as per the formula given below:

$$\text{Rate of pre-tax return on equity} = \text{Base rate} / (1-t)$$

Where  $t$  is the applicable tax rate in accordance with Regulation 35.1 of this Regulation and shall be calculated at the beginning of every financial year based on the estimated profit and tax to be paid estimated in line with the provisions of the relevant Finance Act applicable for that financial year to the company on pro-rata basis by excluding the income of non-generation business and the corresponding tax thereon. In case of generating company paying Minimum Alternate Tax “ $t$ ” shall be considered as MAT rate including surcharge and cess.

Illustration: -

(a) In case of the generating company paying Minimum Alternate Tax (MAT) @ 20.96% including surcharge and cess:

(b) Rate of return on equity =  $15.50 / (1 - 0.2096) = 19.610\%$

(c) In case of generating company paying normal corporate tax including surcharge and cess:

i. Estimated Gross Income from generation business for FY 2019-20 is Rs 1000 Crore.

ii. Estimated Advance Tax for the year on above is Rs 240 Crore.

iii. Effective Tax Rate for the year 2019-20 =  $\text{Rs } 240 \text{ Crore} / \text{Rs } 1000 \text{ Crore} = 24\%$

iv. Rate of return on equity =  $15.50 / (1 - 0.24) = 20.395\%$

35.3 The generating company shall true-up the grossed up rate of return on equity at the end of every financial year based on actual tax paid together with any additional tax demand including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities pertaining to the tariff period 2019-20 to 2023-24 on actual gross income of any financial

year. However, penalty, if any, arising on account of delay in deposit or short deposit of tax amount shall not be claimed by the generating company. Any under-recovery or over-recovery of grossed up rate on return on equity after truing up, shall be allowed to be recovered or refunded to beneficiaries on year to year basis.

### Commission's Analysis:

88. Equity balance as on 31<sup>st</sup> March' 2019 as admitted by the Commission in the true-up order dated 5<sup>th</sup> January' 2021 for FY 2018-19 is considered as the base figure for opening equity balance as on 01<sup>st</sup> April' 2019 for the project. Further, the Commission has considered normative equity addition of Rs. 0.04 Crore during FY 2019-20 towards additional capitalization considered in this order which is in accordance with the provisions under Tariff Regulations, 2020.
89. The petitioner has claimed Return on Equity on the base rate of return (15.50%) without considering any tax rate for grossing up the base rate during FY 2019-20, as it has not paid any Tax.
90. Further, in compliance to Regulation 34.2, the petitioner by affidavit 16<sup>th</sup> October' 2021 submitted that its thermal power plant meets both the requirements. RGMO/FGMO was duly installed at the time of COD of the petitioner's project, i.e., the petitioner's project has been duly operating under RGMO / FGMO and the Project have been operating with the ramp rate of over 1% per minute.
91. Accordingly, the following Return on Equity for FY 2019-20 is worked out by applying the base rate of Return on Equity as given below:

**Table 16: Annual Return on Equity determined for FY 2019-20**

<b>Sr. No.</b>	<b>Particular</b>	<b>Unit</b>	<b>FY 2019-20</b>
1	Opening Equity as on 01.04.2019	Rs. Crore.	988.03
2	Equity addition during the year	Rs. Crore.	0.04
3	Closing Equity as on 31.03.2020	Rs. Crore.	988.07
4	Average Equity	Rs. Crore.	988.05
5	Base rate of Return on Equity	%	15.50%
<b>6</b>	<b>Rate of Return on Equity</b>	<b>Rs Crore</b>	<b>153.15</b>

**b. Interest on loan capital:****Petitioner's Submission:**

92. In form TPS 5M of the petition, the petitioner submitted the break-up of opening loan balances, repayment during the year, closing balance of loan, weighted average rate of interest and interest on loan, as given below:

**Table 17: Interest on Loan Claimed by the petitioner for FY 2019-20** **Rs. Crore**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Unit</b>	<b>FY 2019-20</b>
1	Gross Normative Loan – Opening	Rs. Crore	2,964.16
2	Cumulative Repayment of Normative Loan upto Previous Year	Rs. Crore	577.80
3	<b>Net Normative Loan-Opening</b>	Rs. Crore	2,386.36
4	Loan Additions during the year	Rs. Crore	12.30
5	Repayment During the year	Rs. Crore	203.18
6	<b>Closing Loan</b>	Rs. Crore	2195.48
7	<b>Average Loan-Normative</b>	Rs. Crore	2,290.92
8	Weighted average Rate of Interest on actual Loans	%	14.12%
9	<b>Interest on Normative loan</b>	<b>Rs. Crore</b>	<b>323.59</b>

**Provision in Regulations:**

93. With regard to Interest on Loan Capital, Regulation 36 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations 2020, provides as under:

36.1 *The loans arrived at in the manner indicated in Regulation 33 of these Regulations shall be considered as gross normative loan for calculation of interest on loan.*

36.2 *The normative loan outstanding as on 1.4.2019 shall be worked out by deducting the cumulative repayment as admitted by the Commission up to 31.3.2019 from the gross normative loan. The repayment for each of the year of the tariff period 2019-24 shall be deemed to be equal to the depreciation allowed for the corresponding year/period. In case of de-capitalization of assets, the repayment shall be adjusted by taking into account cumulative repayment on a pro rata basis and the adjustment should not exceed cumulative depreciation recovered upto the date of de-capitalisation of such asset*

36.3 *Notwithstanding any moratorium period availed by the generating company, the repayment of loan shall be considered from the first year of commercial operation of the project and shall be equal to the depreciation allowed for the year or part of the year.*



36.4 *The rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized:*

*Provided that if there is no actual loan for a particular year but normative loan is still outstanding, the last available weighted average rate of interest shall be considered:*

*Provided further that if the generating station does not have actual loan, then the weighted average rate of interest of the generating company as a whole shall be considered.*

36.5 *The interest on loan shall be calculated on the normative average loan of the year by applying the weighted average rate of interest.*

**Commission's Analysis:**

94. For determination of interest on term loan, closing loan balance as on 31<sup>st</sup> March' 2019 as admitted in the Commission's true-up order for FY 2018-19 issued on 5<sup>th</sup> January' 2021 is considered as the opening loan balance as on 1<sup>st</sup> April' 2019.
95. Further, the Commission has considered the normative loan addition of Rs. 0.09 Crore during FY 2019-20 towards additional capitalization considered in this order.
96. With regard to weighted average rate of interest filed in the petition, vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file the detailed computation of actual weighted average rate of interest during FY 2019-20 in excel along with supporting documents such as banker's certificates in respect of actual weighted average rate of interest claimed in the petition.
97. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner broadly submitted the following:
- The detailed computation for arriving at the lending agency wise weighted average rate of interest claimed is attached in the Annexure-8. With regard to the basis of weighted average rate of interest, the petitioner humbly submits that the weighted average rate of interest on term loan has been worked out as 14.12% in the petition as per the last applicable interest rates levied by the Bankers **excluding the penal interest**. It is further submitted that Commission has in the past approved the same and it is requested that the same may be considered for FY 2019-20 as well.*
98. On perusal of the form TPS 13 filed with the petition it has been observed that the repayment of loan during FY 2019-20 was nil. The petitioner was asked to explain the



reasons of default in repayment obligations by the petitioner to the lenders. The petitioner was also asked to demonstrate/establish that the impact of default in repayment is not considered in the weighted average rate of interest claimed in the petition. The petitioner was further asked to confirm that while computing the weighted average interest on loan, interest on interest amount or any penalty amount is not a part of interest on loan amount

99. On further analysis of the petition, it was observed that while calculating the weighted average rate of interest, repayment for many of the loans were not fully considered. Hence, vide Commission's letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to explain the reasons of default in repayment obligations by the petitioner to the lenders. The petitioner was also asked to confirm that while computing the weighted average interest on loan, interest on interest or any penalty amount is not a part of interest on loan amount.
100. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted the following reasons for default in repayment obligations to lenders:

*The petitioner submits the following reasons for default in repayment obligations to lenders:*

- a. *As on the date of commercial operation and up to November 2016, the operationalised PPAs summed up to less than 35% of the capacity (30% on Regulated Tariff basis plus 5% of net generation on variable charges basis) with MPPMCL. Post December'16, a PPA with KSEB of 115 MW got operationalised. However, there was extremely low scheduling (about 3%) from MPPMCL and very poor energy rates were being seen in the power exchange. In view of the above the plant could achieve a meagre PLF of about 5% and generated a revenue of Rs. 288 Crore only for FY 2016-17. Denial of Fixed Cost by MPPMCL when the unit was off-bar even during the prolonged periods of "nil" scheduling and higher cost of generation as compared to the existing market price in Power Exchanges were the main reasons of intermittent plant operation resulting in low revenue, thus resulting in its failure to meet debt servicing obligations in June'2017 which subsequently led to initiation of CIRP (Corporate Insolvency Resolution process) on March 27, 2019 (reasons for such admission to CIRP are already explained in detail in reply to query iv (a) & not reproduced here for the sake of brevity).*
- b. *Further, as the generator is under CIRP, thus it has not provided for interest on outstanding loans for FY 19-20 as the said period falls within the moratorium period as per NCLT order dated 27th Mar'19 (refer note 2.1A of financial statements).*

*In view of the above, the consideration of penalty in computation of weighted average rate of interest, **the petitioner hereby submits that the Penalty amount/ interest on interest amount has not been considered while calculating the weighted average rate of interest for FY 2019-20.***

101. On perusal of the submissions made by the petitioner, it was observed that the petitioner has considered the applicable weighted average rate of interest same as considered in true up for FY 2017-18 and FY 2018-19. The petitioner vide affidavit dated 16<sup>th</sup> October' 2021 has also confirmed that it has not considered any penalty/over due amount in the interest amount and repayment filed in the petition and worked out the applicable weighted average rate of interest.
102. Accordingly, the petitioner filed the weighted average rate of interest of 14.12% on the basis of last year true up orders since, the petitioner has not been able to repay any of the loans. Therefore, the Commission has considered the weighted average rate of interest as 14.12% for FY 2019-20 as filed by the petitioner. The repayment equivalent to depreciation during the year is considered as per the provision under the Tariff Regulations, 2020.
103. In view of the above, the interest on loan is worked out by the Commission based on the following:
- Gross normative opening loan of Rs. 2386.36 Crore has been considered as per last true-up Order dated 5<sup>th</sup> January' 2021.
  - Loan addition of Rs. 0.09 Crore (70% of add. Cap. approved above) is considered.
  - Annual repayment of loan equal to annual depreciation is considered.
  - Weighted average rate of interest @ 14.12% filed by the petitioner is considered.
104. Based on the above, the interest on loan is worked out as given below:

**Table 18: Annual Interest on Loan Allowed**

Sr. No.	Particulars	Unit	FY 2019-20
1	Opening Loan	Rs. Crore	2386.36
2	Loan Addition during the year	Rs. Crore	0.09
3	Repayment during the Year considered	Rs. Crore	202.37
4	Closing Loan	Rs. Crore	2184.08
5	Average Loan	Rs. Crore	2285.22
6	Weighted average Rate of Interest	%	14.12%
<b>7</b>	<b>Annual Interest Amount</b>	<b>Rs. Crore</b>	<b>322.67</b>

**c. Depreciation:****Petitioner's Submission**

105. The petitioner has claimed the annual depreciation in form TPS 12 of the petition as given below:

<b>Financial Year</b>	<b>FY 2019-20</b>
<i>Opening Capital Cost</i>	3952.18
<i>Closing Capital Cost</i>	3969.74
<i>Average Capital Cost</i>	3960.96
<i>Freehold land</i>	55.48
<i>Rate of depreciation</i>	5.13%
<b><i>Depreciation (for the period)</i></b>	<b>203.18</b>

**Provision in Regulations:**

106. Regulation 37 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

37.1 "Depreciation shall be computed from the date of commercial operation of a generating station or unit thereof. In case of the tariff of all the units of a generating station for which a single tariff needs to be determined, the depreciation shall be computed from the effective date of commercial operation of the generating station taking into consideration the depreciation of individual units:

*Provided that effective date of commercial operation shall be worked out by considering the actual date of commercial operation and installed capacity of all the units of the generating station for which single tariff needs to be determined.*

37.2 *The value base for the purpose of depreciation shall be the capital cost of the asset admitted by the Commission. In case of multiple units of a generating station, weighted average life for the generating station shall be applied.*

37.3 *The salvage value of the asset shall be considered as 10% and depreciation shall be allowed up to maximum of 90% of the capital cost of the asset:*

*Provided that in case of hydro generating station, the salvage value shall be as provided in the agreement, if any, signed by the developers with the State Government for development of the generating station:*

*Provided further that the capital cost of the assets of the hydro generating station for the purpose of computation of depreciated value shall correspond to*

*the percentage of sale of electricity under long-term power purchase agreement at regulated tariff:*

*Provided also that any depreciation disallowed on account of lower availability of the generating station or generating unit shall not be allowed to be recovered at a later stage during the useful life or the extended life:*

*Provided also that the salvage value for IT equipment and software shall be considered as NIL and 100% value of the assets shall be considered depreciable.*

*37.4 Land other than the land held under lease and the land for reservoir in case of hydro generating station shall not be a depreciable asset and its cost shall be excluded from the capital cost while computing depreciable value of the asset.*

*37.5 Depreciation shall be calculated annually based on 'Straight Line Method' and at rates specified in Appendix-I to these Regulations for the assets of the generating station.*

*37.6 Depreciation shall be chargeable from the first Year of commercial operation. In case of commercial operation of the asset for part of the Year, depreciation shall be charged on pro rata basis:*

*Provided that the remaining depreciable value as on 31<sup>st</sup> March of the year closing after a period of 12 years from the effective date of commercial operation of the station shall be spread over the balance useful life of the assets.*

*37.7 In case of the existing projects, the balance depreciable value as on 1.4.2019 shall be worked out by deducting the cumulative depreciation as admitted by the Commission upto 31.3.2019 from the gross depreciable value of the assets.*

*37.8 The generating company shall submit the details of proposed capital expenditure five years before the completion of useful life of the project along with justification and proposed life extension. The Commission based on prudence check of such submissions shall approve the depreciation on capital expenditure during the fag end of the project.*

*37.9 In case of de-capitalization of assets in respect of generating station or unit thereof, the cumulative depreciation shall be adjusted by taking into account the depreciation recovered in tariff by the de-capitalized asset during its useful services.*

**Commission's Analysis:**

107. For determining the annual Depreciation, the Commission has considered the closing Gross Fixed Assets as on 31<sup>st</sup> March' 2019, as admitted in the last true-up order dated 5<sup>th</sup> January' 2021 for FY 2018-19, as opening Gross Fixed Assets as on 1<sup>st</sup> April' 2019 in this order.
108. The closing Gross Fixed Assets as on 31<sup>st</sup> March' 2020, is worked out after considering the asset additions of Rs 0.13 Crore towards additional capitalization during the year as considered in this order.
109. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file the basis of the weighted average rate of depreciation claimed in the petition in light of Asset-Cum-Depreciation register vis-à-vis the addition of assets claimed in the subject petition.
110. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted that :

*The petitioner humbly submits that the weighted average rate of depreciation worked out in the Petition for FY 2019-20 is as per Regulation 37 of MPERC Tariff Regulations, 2020, Form TPS 11 and Form TPS 12 and as per the depreciation rates specified in Appendix-I to the MPERC Tariff Regulations, 2020.*

*The opening GFA as on April 1, 2019 has been considered equal to the closing GFA approved by the Commission for FY 2018-19 in the Order dated January 5, 2021. With regard to the additional capitalization considered for the year FY 2019-20, the petitioner submits that it has claimed an amount of Rs. 17.56 Crore on cash basis and the petitioner has already submitted Asset-cum-Depreciation register which shows the asset addition of Rs. 18.39 Crore on accrual basis out of which Rs. 17.56 Crore is on account of cash basis.*

*The petitioner, in the Form TPS 11 has arrived at the weighted average rate of depreciation of 5.13% for the year by dividing the total of asset wise depreciation amount i.e., Rs. 203.18 Crore with the average GFA for the year (Average of GFA as on April 1, 2019 and March 31, 2020) i.e., Rs. 3960.96 Crore.*

111. The petitioner has filed the Assets cum Depreciation Register, wherein the weighted average depreciation rate of 5.13% is worked out based on the depreciation rates specified in the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. The aforesaid weighted average rate of depreciation worked out by the petitioner by considering the additional claimed during FY 2019-20.

112. Since, the Commission has allowed addition of Rs 0.13 Crore in respect of the additional capitalization of Rs 17.56 Crore claimed in the petition, therefore, the Commission envisage that there would be no change in weighted average rate of depreciation with respect to the weighted average rate of depreciation allowed in last year true up order for FY 2018-19. Therefore, the Commission is considering the same weighted average rate of interest as considered in True-up order for FY 2018-19, i.e., @ 5.12%.
113. According, the depreciation is worked out by considering the weighted average rate of depreciation as filed by the petitioner in the subject petition as given below:

**Table 20: Annual Depreciation allowed for FY 2019-20**

Sr. No.	Particular	Units.	FY 2019-20
1	Opening Gross Block	Rs. Crore	3952.18
3	Addition during the year	Rs. Crore	0.13
4	Closing Gross Block	Rs. Crore	3952.31
5	Average Gross Block	Rs. Crore	3952.25
6	Weighted Average Rate of Depreciation	%	5.12%
7	<b>Annual Depreciation amount</b>	<b>Rs. Crore</b>	<b>202.37</b>
8	Closing Cumulative Depreciation	Rs. Crore	780.17

**d. Operation and Maintenance Expenses:****Petitioner's Submission:**

114. The petitioner filed the Operation and Maintenance expenses for Unit No 1 for FY 2019-20 in the petition as given below:

**Table 21: O&M Expenses claimed (Rs. in Crore)**

Particulars	FY 2019-20
Annual O & M Expenses	121.56

**Provision in Regulations:**

115. The norms for Operation and Maintenance Expenses for thermal generating units commissioned on or after 01/04/2012 are specified under Regulation 40.2 of the Regulations, 2020 for the generating Unit of "600 MW Series" for FY 2019-20 which are as given below:

**Table 22: Normative O&M Expenses for FY 2019-20**

Units (MW)	Rs. Lakh/MW/Year
45 MW	37.51
200/210/250 MW	32.96



300 MW Series	27.74
500 MW Series	22.51
<b>600/660 MW Series</b>	<b>20.26</b>
800 MW Series and above	18.23

**Commission's Analysis:**

116. The Commission has worked out the annual Operation and Maintenance Expenses as per the norms prescribed under the Regulations, 2020 for the generating unit of "600 MW" as given below:

**Table 23: O & M Expenses for Unit No 1 (Rs. in Crore)**

Particular	Units	FY 2019-20
Generating Unit Capacity	MW	600
Per MW O&M Expenses Norms	Rs in Lakh/MW	20.26
<b>Annual O&amp;M expenses</b>	<b>Rs in Crore</b>	<b>121.56</b>

**e. Interest on Working Capital****Petitioner Submission:**

117. The petitioner submitted the following for claiming the Interest on Working Capital for the generating station for FY 2019-20

*The petitioner submits that it has computed the Working Capital in accordance with Regulation 38.1 (A) of MPERC Tariff Regulations, 2020 for FY 2019-20. Further, with regards to interest rate on Working Capital, in line with Regulation 38.3 of the MPERC Tariff Regulations, 2020 the rate of interest on working capital has been taken on normative basis and has been worked out considering one year MCLR of SBI as on 01.04.2019 plus 350 bps i.e., 12.05% (8.55% + 3.50%) for FY 2019-20.*

**Table 24: Interest on Working Capital Claimed**

Sr. No.	Particulars	Units	FY 2019-20
1	Cost of Coal/Lignite	Rs. Crore	173.06
2	Cost of Secondary Fuel Oil	Rs. Crore	1.82
3	O & M Expenses	Rs. Crore	10.13
4	Maintenance Spares	Rs. Crore	24.31
5	Receivables	Rs. Crore	234.17
<b>6</b>	<b>Total Working Capital</b>	<b>Rs. Crore</b>	<b>443.49</b>
7	Rate of Interest	Rs. Crore	12.05%
<b>8</b>	<b>Interest on Working Capital</b>	<b>Rs. Crore</b>	<b>53.44</b>

**Provision in Regulations:**

118. Regulation 38 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 regarding working capital for coal based generating stations provides that:

38.1 *“The Working Capital shall cover:*

*(1) Coal- based thermal generating stations*

- (a) Cost of coal towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal stock storage capacity whichever is lower;*
- (b) Advance payment for 30 days towards cost of coal for generation corresponding to the normative annual plant availability factor;*
- (c) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*
- (d) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 39 and 40 of these Regulations;*
- (e) Receivables equivalent to 45 days of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*
- (f) Operation and maintenance expenses for one month.*

38.2 *The cost of fuel shall be based on the landed fuel cost incurred (taking into account normative transit and handling losses) by the generating station and gross calorific value of the fuel as per actual weightage average for the three months preceding the first month for which tariff is to be determined and no fuel price escalation shall be provided during the tariff period.”*

*Provided that in case of new generating station, the cost of fuel for the first financial year shall be considered based on landed fuel cost (taking into account normative transit and handling losses) and gross calorific value of the fuel as per actual weighted average for three months, as used for infirm power, preceding date of commercial operation for which tariff is to be determined*

38.3 *“Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate as on 1.4.2019 or as on 1<sup>st</sup> April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:*

*Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1<sup>st</sup> April of each of the financial year during the tariff period 2019-24.*

*38.4 Interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency.*

**Commission's Analysis:**

119. Under Provisions of Regulations, 2020, it is mentioned that no fuel price escalation shall be provided during the tariff period for calculating the working capital. The Regulation further provides that the interest on working capital shall be payable on normative basis notwithstanding that the generating company has not taken loan for working capital from any outside agency. The working capital is worked out as per the provisions under the Regulations, 2020 as given below:

- (i) 60 Days Cost of coal, as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 is considered in this order.
- (ii) Two month's Cost of secondary fuel of main oil equivalent to normative plant availability factor as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 is considered in this order. Details of the coal cost and oil cost for working capital purpose is considered as given below:

Particulars	FY 2019-20 (Rs in Crore)
Cost of Coal for 60 Days	167.01
Cost of Secondary Fuel Oil for two Months	1.90

- (iii) Maintenance spares as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 as stated below is considered:

Particulars	FY 2019-20 (Rs in Cr.)
Maintenance Spares (20% of O&M Expenses)	24.31

- (iv) Receivable have been worked out on the basis of 45 Days of fixed and energy charges as given below:

Particulars	FY 2019-20 (Rs in Cr.)
Variable Charges- 45 Days	126.66

(As considered on Order dated 8 <sup>th</sup> May' 2021)	
Annual Fixed Charges- 45 Days	104.77
(Worked out in this Order)	
<b>Total</b>	<b>231.43</b>

- (v) O&M expenses for one month for the purpose of working capital as considered in Commission's MYT Order dated 8<sup>th</sup> May' 2021 in petition No. 47 of 2020 is considered:

Particulars	FY 2019-20 (Rs in Cr.)
O & M Expenses for One Month	10.13

120. Regarding the rate of interest on working capital, Regulation 38.3 of the Regulations, 2020 provides that :

*“Rate of interest on working capital shall be on normative basis and shall be considered as the bank rate 1.4.2019 or as on 1<sup>st</sup> April of the year during the tariff period 2019-20 to 2023-24 in which the generating station or a unit thereof, is declared under commercial operation, whichever is later:*

***Provided that in case of truing-up, the rate of interest on working capital shall be considered at bank rate as on 1<sup>st</sup> April of each of the financial year during the tariff period 2019-24.***

121. In view of the above provision under Regulations, 2020, 1-year MCLR of State Bank of India applicable/ prevailing as on 01.04.2019 is 8.55% + 3.50% = 12.05%.
122. Considering the above, the interest on working capital worked out by the Commission for FY 2019-20 in this true-up order is as given below:

**Table 25: Interest on Working Capital Allowed**

Sr. No.	Particulars	Norms	FY 2019-20
1	Cost of Coal/Lignite	60 Days of coal purchase	167.01
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	1.90
3	O & M expenses	1 month of O&M	10.13
4	Maintenance Spares	20% of O&M	24.31
5	Receivables	45 days of total revenue	231.43
6	<b>Total Working Capital</b>		<b>434.78</b>
7	Rate of Interest (SBI MCLR)*		<b>12.05%</b>
8	<b>Interest on Working Capital</b>		<b>52.39</b>

**f. Non-Tariff Income:**

123. In the subject true-up petition, the petitioner filed Rs. 0.04 Crore as non-tariff income during the year.

**Provision in Regulations:**

124. Regulation 58 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*58.1 "The non-tariff net income in case of generating station on account of following shall be shared in the ratio of 50:50 with the beneficiaries and the generating company on annual basis:*

- a) Income from rent of land or buildings;*
- b) Income from sale of scrap;*
- c) Income from sale of fly ash;*
- d) Interest on advances to suppliers or contractors;*
- e) Rental from staff quarters;*
- f) Rental from contractors;*
- g) Income from advertisements; and*
- h) Interest on investments and bank balances:*

*Provided that the interest or dividend earned from investments made out of Return on Equity corresponding to the regulated business of the Generating Company shall not be included in Non-Tariff Income:*

*Provided further that the Generation Company shall submit full details of its forecast of Non-Tariff Income to the Commission. Non-tariff income shall also be trued-up based on audited accounts.*

**Commission's Analysis:**

125. On perusal of the details submitted for FY 2019-20 towards non-tariff income, it was observed that the petitioner has filed the total non-tariff income of Rs. 0.04 Crore during FY 2019-20 whereas, in Note 23 of Annual Audited Accounts "other income" is shown as Rs. 5.85 Crore. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to explain the reasons for aforesaid discrepancy in non-tariff income recorded in Annual Audited Accounts vis-a-vis filed in the subject petition. The petitioner was also asked to file detailed break-up of non-tariff income in accordance with the Regulation 58.1 of the Tariff Regulations, 2020 duly reconciled with the Annual Audited Accounts.

126. By affidavit dated 16<sup>th</sup> October' 2021, the petitioner filed its reply along with the

reconciliation of non-tariff income with Annual Audited Accounts of FY 2019-20 as given below:

The petitioner submits that the claim of total non-tariff income of Rs. 0.03 Crore (Rs. 3.44 Lakh) in the Petition corresponds to sum of sale of scrap (used Oil) of Rs. 2.87 Lakh and other miscellaneous receipts of Rs. 0.57 Lakh as recorded in the Note 24 of Annual Audited Accounts for FY 2019-20. With regard to the reconciliation of the petitioner's claim of non-tariff income with the Annual Audited Accounts for FY 2019-20, the petitioner submits the following item wise justification for non-consideration of the same as non-tariff income:

**Table 26 Justification for petitioner's claim of Non-Tariff Income for FY 2019-20**

S. No	Particular/Description	Amount in Rs. Crore	Remark/ Justification
1	Interest on fixed deposit	2.67	The same have not been considered as non-tariff income as the interest amount received is on account of investments made out of Petitioner's RoE. From the Annual Audited Accounts of the Petitioner, it can be observed that all the cash generated by the Petitioner's company (from the Return on Equity allowed by the Commission) has been lying in the accounts of the company and the Petitioner is neither involved in any other activity other than sale of electricity. Therefore, the above interest amount received is purely out of Petitioner's own funds and are not to be considered as non-tariff income as per Regulation 58 of MPERC Tariff Regulations, 2020.
2	Interest from others	3.15	
A	Suppl.Bill-FC/April'17-Mar'18 (True up-Tariff-Intt)	0.37	The same has not been considered as non-tariff income since the same pertain to carrying cost received from beneficiaries as per the Hon'ble Commission's True up Order for FY 2017-18.
B	Suppl.Bill-FC/May'16 to Mar'19 (Review-Tariff-Intt)	2.39	The same has not been considered as non-tariff income since the same pertain to carrying cost received from beneficiaries as per the Hon'ble Commission's Order dated December 12, 2019 in Review Petition.
C	PTC-Suppl./Intt./Jun & Aug 2019 31-03-20	0.37	The same has not been considered as non-tariff income since the same pertain to interest on delayed payment received from one of the beneficiary of the Petitioner i.e.,



S. No	Particular/Description	Amount in Rs. Crore	Remark/ Justification
			PTC. However, the amount corresponding to this has not been received by us.
D	Income Tax Entries For A.Y 2017-18	0.02	This is interest received on Income tax refund for FY 2016-17 issued by Income Tax Office. It is submitted that as the Petitioner has not been allowed any Income Tax hence the refund do not qualify as NTI.
E	Income Tax Entries For A.Y 2018-19	0.003	This is interest received on Income tax refund for FY 2017-18 issued by Income Tax Office. It is submitted that as the Petitioner has not been allowed any Income Tax hence the refund do not qualify as NTI.
3	Scrap Sale	0.03	Claimed as non-tariff income
3	Other Miscellaneous Receipts	0.01	Claimed as non-tariff income
	<b>Total</b>	<b>5.86</b>	

Keeping in view of the above submissions, the total non-tariff income of the petitioner for FY 2019-20 is Rs. 0.03 Crore (Rs. 3.44 Lakh) and as per Regulation 58.1 of MPERC Tariff Regulations, 2020 the petitioner is entitled to retain 50% of the above non-tariff income. Accordingly, the petitioner humbly requests the Commission to consider the sharing of non-tariff income of Rs. 3.44 Lakh in 50:50 ratio between petitioner and Beneficiaries. The Invoices raised for carrying cost at Sl. No. a, b & c are attached as Annexure 9.

127. In view of the above, it is observed that the petitioner claimed the non-tariff income of Rs. 0.04 Crore for FY 2019-20 after deducting some adjustments such as surcharge bills raised on MPPMCL, etc. Therefore, the total non-tariff income of Rs 0.04 Crore as claimed by the petitioner is considered by the Commission in this order. The break-up of non-tariff income considered is as given below:

**Table 27: Non-tariff Income during FY 2019-20: (Amount in Rupees )**

Particulars	Amount FY 2019-20
Scrap Sale	0.03
Other Miscellaneous Receipts	0.01
<b>Total Non tariff Income during FY 2019-20</b>	<b>0.04</b>
<b>50% of Non-tariff Income</b>	<b>Rs 0.02 Crore</b>

### Other Charges:

128. In the subject true-up petition, the petitioner claimed following other charges:
- (i) Allow the recovery of the filing fees paid to the Commission and also the publication expenses from the beneficiaries;
  - (ii) Allow recovery of Electricity Duty and Energy Development Cess on power being scheduled by the MPPMCL and Plant Auxiliary Consumption
  - (iii) Allow recovery of water charges paid to Water Resources Department, Government of Madhya Pradesh.
129. Regarding the other charges, In Para 144 to 146 of the order dated 8<sup>th</sup> May' 2021, the following was mentioned by the Commission:
- In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.
  - In view of the above, the petitioner is allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.
130. With regard to Application fee, publication expenses and other statutory charges, Regulation 65 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 provides as under:

*65.1 "The following fees, charges and expenses shall be reimbursed directly by the beneficiary in the manner specified herein:*

- 1. The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company directly from the beneficiaries.*
- 2. The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.*
- 3. SLDC Charges and Transmission Charges as determined by the Commission shall be considered as expenses, if payable by the generating stations.*

4. RLDC/NLDC charges as determined by the Central Commission shall also be considered as expenses, if payable by the generating station.

65.2 Electricity duty, cess and water charges if payable by the Generating Company for generation of electricity from the power stations to the State Government, shall be considered and allowed by the Commission separately by considering normative parameters specified in these Regulations and shall be trued-up on actuals:

*Provided that in case of the Electricity duty is applied in the auxiliary consumption, such amount of electricity duty shall apply on normative auxiliary consumption of the generating station (excluding colony consumption) and apportioned to the each beneficiaries in proportion to their schedule dispatch during the month.*

131. In view of the above, the petitioner is allowed to recover the fee paid to MPERC and publication expenses as per Regulation 65.1 (i) of the Regulations, 2020 on submission of documentary evidence.
132. The petitioner is also allowed to recover the electricity duty on plant auxiliary consumption, Energy Development Cess on energy supplied to MPPMCL and water charges paid to Water Resources Department, Government of MP as per Regulation 65.2 of MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 on submission of documentary evidence.

**Summary of Annual Capacity (fixed) charges:**

133. The details of the Annual Capacity (fixed) Charges for FY 2019-20 allowed in this true-up order vis-a-vis those determined in the MYT order dated 8<sup>th</sup> May' 2021 at normative Plant Availability Factor are summarized in the following table:

**Table 28: Head wise Annual Capacity Charges at normative availability: - (Rs in Crore)**

S. No.	Particulars	Allowed in MYT Order dated 8 <sup>th</sup> May' 2021 for FY 2019-20	Allowed for FY 2019-20 in this order	True-up amount
1	Return on Equity	153.14	153.15	0.01
2	Interest on Loan	322.78	322.67	-0.11
3	Depreciation	202.37	202.37	0.00
4	Interest on Working Capital	52.39	52.39	0.00
5	O & M Expenses	121.56	121.56	0.00

<b>6</b>	<b>Total Annual Capacity (Fixed) Charges</b>	<b>852.24</b>	<b>852.15</b>	<b>-0.09</b>
7	Less:-Non Tariff Charges	0.11	0.02	-0.09
<b>8</b>	<b>Annual Capacity (Fixed) Charges</b>	<b>852.13</b>	<b>852.13</b>	<b>0.00</b>
<b>9</b>	<b>Annual Capacity(fixed) Charge corresponding to 30% of the installed capacity of the Units</b>	<b>255.64</b>	<b>255.64</b>	<b>0.00</b>

134. The Annual Capacity (Fixed) Charges as determined above for FY 2019-20 are at Normative Availability and these charges are based on Annual Audited Accounts of Jhabua Power Ltd for FY 2019-20.
135. The above Annual Capacity (Fixed) Charges are determined corresponding to the contracted capacity under long term PPA. The recovery of Annual Capacity (Fixed) Charges shall be made by the petitioner in accordance with Clause 42.2 of the Tariff Regulations, 2020 on pro rata basis with respect to actual Annual PAF.
136. Regarding the performance-based truing-up of energy charges on account of controllable parameters, Regulation 56.1 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations 2020 provides that the generating company shall work out gains based on the actual performance of applicable controllable parameters as under:
- Station Heat rate
  - Secondary Fuel Oil Consumption
  - Auxiliary Energy Consumption
137. In view of the above Regulations, it was observed by the Commission that the generating company shall carry out the truing-up of tariff of generating station based on the controllable performance parameters like Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy consumption. Vide letter dated 21<sup>st</sup> September' 2021, the petitioner was asked to file the annual details of aforesaid performance parameters actually achieved vis-à-vis normative parameters under the Tariff Regulations, 2020. The petitioner was also asked to file the details of financial gain if any, on account of controllable parameters and shared with the beneficiaries in light of the Regulations 56.2 of the Regulations, 2020.
138. In response to above, by affidavit dated 16<sup>th</sup> October' 2021, the petitioner submitted the following:

*“The details of the Controllable Performance Parameters Viz. Station Heat Rate, Secondary fuel oil consumption and Auxiliary Energy Consumption actually achieved vis-a-vis normative parameters under MPERC Tariff Regulations, 2020 are attached as Annexure 10. From the computation shown in Annexure 10, it can be observed that there has been no gain to the petitioner on account of actual performance parameters for the period FY 2019-20”.*

139. On perusal of the details filed by the petitioner, it is observed that the petitioner incurred loss of Rs. 2.81 Crore on account of the inferior performance and poor actual operating parameters achieved by it during FY 2019-20.
140. However, the Regulation 56.2 of the Tariff Regulations, 2020 provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating company and the beneficiaries in the ratio of 50:50 on annual basis. The aforesaid Regulations do not provide for sharing of loss incurred by the generating company. Therefore, the loss incurred by the petitioner on account of inferior operating parameters shall not be passed on to the beneficiary.

#### **Implementation of the order**

141. The petitioner must take steps to implement the order after giving seven days public notice in accordance with clause 1.30 of MPERC (Details to be furnished and fee payable by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 and its amendments and recalculate its bills for the energy supplied to Distribution Companies of the State/ M.P. Power Management Company Ltd. since 1<sup>st</sup> April' 2019 to 31<sup>st</sup> March' 2020. The petitioner is also directed to provide information to the Commission in support of having complied with this Order.
142. With the above directions, this Petition No. 37 of 2021 is disposed of.

**(Shashi Bhushan Pathak)**  
**Member**

**(Mukul Dhariwal)**  
**Member**

**(S.P.S Parihar)**  
**Chairman**

**Date: 7<sup>th</sup> December' 2021**

**Place: Bhopal**

**Annexure-I**

**Petitioner's Response on the comments offered by the Respondent No.1 (MPPMCL) along with the observations**

• **MPPMCL Comment**

The petitioner has claimed Additional Capitalisation to the tune of Rs. 17.56 Crores on cash basis under Table 2 in the petition. The said Additional Capitalisation is denied and disputed as the same was incurred after the cut-off date for no reasons attributable to the beneficiaries of the project. The lack of financial arrangements or delay caused in arranging the same was never on account of the beneficiaries but on account of lack of competency and creditability on the part of the petitioner. Such a reason cannot also be a basis for claiming additional capitalisation after the cut-off date. The expenditure which ought to have been incurred by the cut-off date were deferred as the management of the Petitioner was not performing up to the mark and had lost trust of the lenders and as a result the insolvency proceedings were initiated against the petitioner and the management got vested with the Interim Resolution Professional. The petitioner by timely deploying expert managerial could have avoided such a situation. Moreover, appointment of an Interim Resolution Professional is expected to deliver expert and better management to the Petitioner. The beneficiaries of the project cannot be held responsible for the same and made to suffer additional capitalisation after the cut-off date. The Additional Capitalisation claimed by the Petitioner is denied and disputed and ought not to be allowed.

**Petitioner's Response**

*The averments made by MPPMCL are not admitted except to the extent of facts stated therein. In reply to the averment made by MPPMCL that the claim of additional capitalization was incurred after the cut-off date, the Petitioner submits that the works claimed under additional capitalization by the Petitioner are mandatory in nature and are part of Original Scope of Works and were required to run the plant more efficiently and safely therefore ensuring reliable supply to the Respondents. All necessary supporting documents to substantiate the Petitioner's claim have already been provided by the Petitioner to the Hon'ble Commission.*

*With regard to the Respondent's comments on deterioration of Petitioner's financial condition it is humbly submitted that, MPPMCL which had sparingly scheduled the power from the petitioner during the initial years after the Commissioning of the Project thereby reducing the revenue which was further worsened by stopping of all*



*the payments to be made to petitioner from October 2016 for almost 18 months. The above reason was one of the primary cause for the poor financial health of the petitioner.*

*It is further submitted that the additional capital cost due to spilling over of expenditure beyond the cut-off date is indirectly advantageous to the Respondents considering that prior to the incurring of the expenditure the power is being supplied at a comparatively lower rate by reducing the front loading of tariff since the price of power is a function of the actual expenditure incurred as on date. Therefore, the Respondent's submission that it is made to suffer because of additional capitalisation post cut-off date is factually incorrect and hence not a ground to deny rightful claim of the Petitioner.*

*The Petitioner denies the averment that the delay in works is on account of lack of competency and credibility on the part of petitioner and the petitioner submits that the circumstances faced by the petitioner were extraordinary which were handled by the Petitioner efficiently to ensure reliable plant performance of the petitioner. Further, the actions taken by the Lenders were also on account of extraordinary circumstances and nowhere related to the general performance/actions of the petitioner. The above facts were duly considered by this Commission while disposing off the Petition No. 19 of 2019 (Filed by the petitioner) and had directed the petitioner to approach it with proper justification at a subsequent time.*

*In view of the above, the petitioner hereby re-iterates that the additional capitalization claimed by the Petitioner is only on account of works envisaged in the Original Scope of Works and are necessary for functioning of Petitioner's plant safely and efficiently as per the design. Accordingly, the Petitioner requests the Hon'ble Commission not to admit the submissions of MPPMCL and approve the additional capitalization considering the information provided by the Petitioner.*

### **Observation**

The Commission has examined the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and project cost approved by BoD of the petitioner's company and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Cut-off date of the project has been considered in accordance to the provisions under

the Tariff Regulations. Accordingly, the additional capitalization has been examined and considered in this order.

- **MPPMCL Comment**

That, the Petitioner is seeking capitalisation of spares after the cut-off date under Regulation 27.1 (vi). The petitioner has stated that earlier it had procured spares, till the cut-off date 31-03-2019, to the extent of Rs. 38.63 Crs. (Rs. 23.54 Crs during FY 2016-17 and Rs. 15.09 Crs. during FY 2018-19) which is much less than the ceiling limit of Rs. 90.79 Crs and therefore, it be permitted to capitalise initial spares amounting to Rs. 9.66 Crs. during FY 2019-20, i.e. after the cut-off date. The petitioner has assigned no reasons for procuring the initial spares at a belated stage after the cut-off date.

**Petitioner's Response**

*The averments made by MPPMCL are denied except to the extent of facts stated therein. The Respondent's submission that the Petitioner has not submitted any reason for delay in capitalisation of initial spares is factually incorrect. The petitioner would like to submit that the petitioner in the instant Petition had already submitted that all the works claimed under the additional capitalization for FY 2019-20 were delayed on account of the reasons beyond the control of the petitioner which have already been detailed out in Para 6.2 to Para 6.19 of the petition and hence not repeated for the sake of brevity. As the premise of the contentions raised by the Respondent is devoid of facts hence liable to be rejected.*

**Observation**

The Commission has examined the additional capitalization towards initial spares claimed in the subject petition in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

- **MPPMCL Comment**

That, merely for the reasons that the initial spares capitalised till 31<sup>st</sup> March, 2019 were much less than the ceiling limit, the Petitioner cannot be permitted to claim the differential or short capitalisation of initial spares after the cut-off date. If permitted so, it would be against the regulatory provisions of Regulation 27.1(6) governing capitalisation of initial spares. It would have a cascading effect on the higher side on

the capital, depreciation, equity, notional loan and other components of tariff and ultimately lead to an artificially escalated tariff. Therefore, such a capitalisation of initial spares beyond the cut-off date to the tune of Rs. 9.66 crs. is denied and disputed. The same ought not to be allowed.

### **Petitioner's Response**

*The averments made by MPPMCL are denied except to the extent of facts stated therein. It is submitted that MPPMCL has misinterpreted that the claim of petitioner with regard to capitalized initial spares till March 2019 was merely on the grounds that the amount claimed is less than the ceiling limit. It is submitted that the petitioner has already submitted the detailed reasons in Para 6.2 to Para 6.19 of instant Petition for delay in executing the works. It is submitted that as the contentions raised by the Respondent is on account of misinterpretation of facts as brought out above, the same is liable to be rejected.*

*Therefore, the petitioner requests the Commission to approve initial spares as claimed by the Petitioner.*

### **Observation**

The Commission has examined the additional capitalization with regard to initial spares claimed by the petitioner in light of the provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

- **MPPMCL Comment**

That, the petitioner has claimed an amount of Rs. 8.73 crs. towards additional capitalisation towards BTG, AHP and Main Silo, Road and Drainage, Chemical and Electrical Lab and misc. Electrical & Mechanical works u/r. 27.1(6) without offering any justification for the same. Hence, the same be disallowed.

### **Petitioner's Response**

*The averments made by MPPMCL are denied except to the extent of facts stated therein. MPPMCL has again misinterpreted that the petitioner has claimed the additional capitalization of Rs. 8.73 Crore towards BTG, AHP and Main Silo, Road and Drainage and other works is without offering any justification. It is submitted that the petitioner has already placed on record that all the works claimed under the additional capitalization were delayed on account of reasons already submitted in*

detail in Para 6.2 to Para 6.19 of the Petition and not repeated for the sake of brevity. It is further submitted that the Petitioner has also provided the actual bills and other supporting documents as sought by the Hon'ble Commission in support of these claims. It is therefore submitted that as the contentions raised by the Respondent is on account of misinterpretation of facts as brought out above, the same is liable to be rejected. Accordingly, the Petitioner requests the Commission not to approve the claim of Petitioner.

### **Observation**

The Commission has examined the additional capitalization claimed by the petitioner in light of the Annual Audited Accounts, Asset-cum-Depreciation Register for the project, original scope of work of the project and project cost approved by BoD of the petitioner's company, cut-off date of the project and provisions for additional capitalisation under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.

- **MPPMCL Comment**

That, the debt-equity ratio as claimed by the Petitioner should be rejected and reckoned back in view of submissions made in preceding paragraphs

### **Petitioner's Response**

With regard to normative Debt Equity is denied considering that the claim of Debt (70:30) is in accordance with Regulation of MPERC MYT Tariff Regulations, 2020 and therefore needs to be approved.

### **Observation**

Debt Equity Ratio is allowed as per Regulation 33 of Tariff Regulations, 2020.

- **MPPMCL Comment**

**RETURN ON EQUITY:** That, the petitioner has claimed Rs. 5.27 crs. as increase in equity due to additional capitalisation. For the reasons stated in preceding paragraphs, the same is denied and disputed and ought not to be allowed.

**INTEREST ON NORMATIVE LOAN:** That, on account of additional capitalisation, which has been strongly opposed herein, the Petitioner has claimed increase in Normative Loan to the tune of Rs. 12.30 crs. For the reasons that the Additional

Capitalisation is not reasonable and *bonafide*, as stated in preceding paragraphs, the same is disputed and denied and the same should not be allowed.

**DEPRECIATION:** That, for similar reasons as stated in preceding paragraphs, depreciation on addition on opening gross block of assets to the tune of Rs. 17.56 crs. should also not be allowed

**Petitioner's Response**

*The averments made in Para 7 to 9 by MPPMCL with regard to incremental impact of additional capitalisation on RoE, Interest on Loan, Depreciation are denied considering the submissions made by the Petitioner in earlier Paras regarding the claim of additional capitalization. Accordingly, the Petitioner requests the Commission not to admit the submissions of MPPMCL and consider the claim of Petitioner.*

**Observation**

Return on Equity, Interest on Loan, Depreciation is allowed as per relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

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