

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**

**5<sup>th</sup> Floor, "Metro Plaza", Bittan Market, Bhopal - 462 016**



**Review Petition No. 47 of 2016 in Petition No. 70 of 2015**

**PRESENT:**

**Dr. Dev Raj Birdi, Chairman**  
**A. B. Bajpai, Member**  
**Alok Gupta, Member**

**IN THE MATTER OF:**

**In the matter of Review petition under Regulation 40 of MPERC (Conduct of Business) Regulations, 2004 r/w Section 94(1) (f) of the Electricity Act, 2003 for review of Commission's order dated 03.06.2016 in Petition No. 70 of 2015 in the matter of True up of Generation Tariff of 2x250 MW (Phase-I) coal based Thermal Power Project at Bina, District Sagar for FY 2014-15.**

**M/s Jaiprakash Power Ventures Ltd., Uttar Pradesh**

**Petitioner**

**Versus**

- 1. M. P. Power Management Co. 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 25<sup>th</sup> September' 2017)***

1. M/s. Jaiprakash Power Ventures Ltd. (here in after called “review petitioner” or “JPVL”) has filed the subject petition on 1<sup>st</sup> August’ 2016 for review of the order dated 03.06.2016 passed by the Madhya Pradesh Electricity Regulatory Commission (here in after called “the Commission” or “MPERC”) in petition No. 70 of 2015 in the matter of true-up of generation tariff of 2x250 MW (phase-I) coal based power project at Bina, District Sagar (M.P.) for FY 2014-15.
2. The subject review petition has been filed under Regulation 40 of the MPERC (Conduct of Business) Regulations, 2004 and section 94 (1) (f) of Electricity Act, 2003 seeking review of the Commission’s order dated 3<sup>rd</sup> June’ 2016 to the extent of disallowed grossing up of the base rate of Return on Equity with Minimum Alternate Tax during FY 2014-15. The petitioner also filed an Interlocutory Application (IA) in the subject review petition at the fag end of the proceedings and raised an additional issue for review on disallowance of O&M expenses for the dedicated transmission line of its project.
3. The Petitioner’s Power Plant (Phase-I) under the subject petition comprises of two generating units of 250 MW each. Date of Commercial Operation (CoD) of both the units of the petitioner’s power plant under Phase-I is 31<sup>st</sup> August’ 2012 and 07<sup>th</sup> April’ 2013 respectively.

**Background:**

4. Vide order dated 26<sup>th</sup> November’ 2014 in Petition No. 40 of 2012, the Commission determined the final generation tariff for 2 x 250MW (Phase-I) of Petitioner’s Power Plant at Bina for FY 2012-13 and FY 2013-14 based on Annual Audited Accounts. The generation tariff for FY 2014-15 and FY 2015-16 was determined on provisional basis subject to true-up on availability of Annual Audited Accounts.
5. On 23<sup>rd</sup> January’ 2015, the petitioner had filed a review Petition No. 05 of 2015, seeking review of the aforesaid Commission’s order dated 26<sup>th</sup> November’ 2014. Considering review on only one issue i.e. interest and finance charges, the Annual Capacity (fixed) charges were revised vide Commission’s order dated 8<sup>th</sup> May’ 2015.
6. On 26<sup>th</sup> November’ 2015, the petitioner had filed a petition (Petition No. 70 of 2015) for true-up of the Generation Tariff of its same Thermal Power Plant determined for FY

2014-15 vide Commission's order dated 26<sup>th</sup> November' 2014 and order dated 08<sup>th</sup> May' 2015 on review petition No. 05 of 2015.

7. Vide order dated 3<sup>rd</sup> June' 2016, the Commission determined the true-up of generation tariff for FY 2014-15 of the Petitioner's Power Plant under subject matter. The details of the Annual Capacity (fixed) charges allowed in the aforesaid true-up order are as given below:

**Head wise Annual Capacity Charges at normative availability allowed in true-up order dated 3.6.2016: (Rs. Crores)**

Particulars/Years	MPERC order dated 08.05.2015 for FY 2014-15	Allowed for FY 2014-15 on Normative Availability	True-up amount at Normative Availability
Depreciation	172.20	171.81	(0.39)
Interest on Loan	272.65	265.88	(6.77)
Return on Equity	204.24	161.72	(42.52)
Interest on Working Capital	55.05	53.91	(1.14)
O & M Expenses	99.50	99.50	-
Secondary Fuel Oil expenses	22.47	22.47	-
Lease rent payable for land (yearly)	-	0.24	0.24
<b>Annual Capacity (fixed) charges</b>	<b>826.10</b>	<b>775.53</b>	<b>(50.57)</b>
Less: Non-Tariff Income	-	5.77	5.77
<b>Net Annual Capacity charges</b>	<b>826.10</b>	<b>769.76</b>	<b>(56.34)</b>
<b>Annual Capacity (fixed) charges corresponding to 65% of the installed capacity of the units</b>	<b>536.96</b>	<b>500.34</b>	<b>(36.62)</b>

8. Aggrieved by the aforesaid true-up order dated 3<sup>rd</sup> June' 2016, the petitioner has filed the subject review petition No. 47 of 2016 seeking review on disallowed grossing up of the base rate of Return on Equity with Minimum Alternate Tax during FY 2014-15. Subsequently, the petitioner has filed an Interlocutory Application (IA) in the subject petition raising another issue for review with regard to disallowance of O&M expenses for the dedicated transmission line of its project. By affidavit dated 5<sup>th</sup> June' 2017, the petitioner filed a consolidated and amended review petition in the subject matter.

**Proceedings:**

9. The motion hearing in the subject review petition was held on 24<sup>th</sup> January', 2017 when the representative appeared on behalf of the petitioner sought adjournment in the matter.

10. Further, motion hearing was held on 21<sup>st</sup> March' 2017. Vide order dated 21<sup>st</sup> March' 2017, the petition was admitted and petitioner was directed to serve copies of the petition on all Respondents in the matter. The respondents were also asked to file their comments/ response on the petition at the earliest but not later than 28<sup>th</sup> April' 2017.
11. Vide Commission's letter dated 28<sup>th</sup> March' 2017, the information gaps and requirement of additional details / documents were conveyed to the petitioner and it was directed to file its reply to all the queries/issues at the earliest but not later than 25<sup>th</sup> April' 2017.
12. By affidavit dated 19<sup>th</sup> April' 2017, the petitioner filed its reply to the issues raised by the Commission. The response of the petitioner on each issue raised by the Commission is mentioned in **Para 30** of this order.
13. By affidavit dated 1<sup>st</sup> May' 2017, the Respondent No. 1, M.P. Power Management Company Ltd. filed its response/comments on the subject review petition.
14. The petitioner has also filed an Interlocutory Application in aforesaid review petition No. 47 of 2016 at the fag end of the proceedings in the subject review petition raising an additional issue for review on disallowance of O&M expenses for the dedicated transmission line of its project.
15. Motion Hearing in the IA was held on 30<sup>th</sup> May' 2017 when the Interlocutory Application was admitted by the Commission. Vide Commission's order dated 30<sup>th</sup> May' 2017, the IA was disposed of with the following directions:

*“Subject IA is filed at fag end of proceedings in the review petition and such filing at this stage may delay in disposal of main petition. However, the subject IA is admitted in the interest of justice to provide an opportunity to the applicant. The **applicant is directed to file a consolidated revised review petition incorporating all issues raised in the main review petition and also in the subject Interlocutory Application.** The copy of consolidated revised review petition be served to all the Respondents in the matter. The Respondents are also directed to file their response on the amended /revised review petition by 30<sup>th</sup> June' 2017.”*

16. In compliance with the above directions, by its affidavit dated 5<sup>th</sup> June' 2017 the review petitioner filed a Consolidated and Amended review petition.
17. By affidavit dated 15<sup>th</sup> July' 2017, the respondent M.P. Power Management Company Limited filed its comments on the amended / consolidated review petition.

18. By affidavit dated 21<sup>st</sup> July' 2017, the review petitioner filed its rejoinder to the reply dated 15<sup>th</sup> July' 2017 filed by Respondent No. 1 i.e. M.P. Power Management Company Limited. The review petitioner's response on each comment offered by the Respondent No. 1 (MPPMCL) are mentioned in **Annexure-I** with this order.
19. During the course of hearing held on 25<sup>th</sup> July' 2017, Counsel on behalf of the petitioner and respondents placed their final arguments. Vide Commission's order dated 26<sup>th</sup> July' 2017, the review petitioner and respondents were directed to file their written submission by 10<sup>th</sup> August' 2017. With the above directions, the case was reserved for order.
20. Vide letter dated 5<sup>th</sup> August' 2017, the review petitioner filed its written submission. Vide letter dated 8<sup>th</sup> August' 2017, the respondent M.P. Power Management Company Ltd. also filed its written submission in the subject matter.
21. In the aforesaid amended / consolidated review petition, the petitioner prayed the following:
  - a) *Review its order dated 03<sup>rd</sup> June, 2016, to the extent Impugned by the Review Petitioner by allowing grossing up RoE by MAT, passed in Petition No. 70 of 2015;*
  - b) *Review its order dated 03<sup>rd</sup> June, 2016, to the extent Impugned by the Review Petitioner by allowing the O&M Expense for the Dedicated Transmission Line built by the Review Petitioner as part of JP Bina Project.*
  - c) *Pass such order, further relief/s in the facts and circumstances of the case as this Commission may deem just and fit and equitable in favor of the Review Petitioner.*

### **Analysis of the petition:**

22. In the subject petition the review petitioner has raised following two issues:
  - (i) Disallowance of grossing up Return on Equity by MAT in Commission's order dated 3<sup>rd</sup> June; 2016.
  - (ii) Disallowance of the O&M Expenses for the Dedicated Transmission Line
23. The Commission has examined this petition in light of the provisions under MPERC (Terms and Conditions for determination of generation tariff) Regulations, 2012 and consolidated Annual Audited Accounts of the generating company i.e. JPVL vis-a-vis Jaypee Bina Thermal Power Project for FY 2014-15.

24. In terms of Regulation 40 (1) of the MPERC (Conduct of Business) (Revision-I) Regulations, 2016,

*“The Commission may on its own motion or on the application of any of the person or parties concerned, within 60 days from the date of making any decision, direction or order, review such decision, direction or orders and pass such appropriate order as the Commission thinks fit.”*

25. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:
- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
  - (b) An error apparent on the face of the record;
  - (c) For any other sufficient reason.

Keeping in view of the above provisions and the submissions made by the review petitioner and the respondent in this matter, the Commission has examined each issue raised in the review petition as discussed below:

**Issue No. 1: Disallowed grossing up RoE by MAT.**

**Petitioner Submission:**

26. Regarding the tax rate, the review petitioner in the subject review petition has broadly submitted the following grounds:
- (i) *“In the impugned order, the Commission has arbitrarily disallowed grossing up the base rate of return on equity with Minimum Alternate Tax (MAT) on the pretext that in the annual audited accounts of M/s. Jaypee Bina Thermal Plant the payment towards income tax or MAT has been shown NIL during FY 2014-15.*
  - (ii) *According to Regulation 22.3 of MPERC (Terms and Conditions for determination of Tariff) Regulations, 2012, the rate of RoE is to be computed by grossing up the base rate with the normal tax rate applicable to the Generating Company. In the instant case, Jaypee Bina Thermal Power Station is neither generating company nor the corporate legal entity. It is only a division/ generating station of JPVL.*

- (iii) *That JPVL is a Company registered under the Companies Act 1956 and is obligated to pay MAT. In the present case MAT was only payable by JPVL (Generating Company) and therefore it has paid MAT for assessment year 2015-16 relevant to FY 2014-15 and the income tax incidence is on the corporate legal entity and not on its division or branches.*
- (iv) *That, the Commission at Para 66(ix) of the impugned Order has erroneously held that Jaypee Bina Thermal Power Plant is a group Company of Jaypee Power Ventures Limited and therefore Jaypee Bina cannot be allowed for grossing up RoE with MAT on the pretext that JPVL being its group Company is paying tax. In view of the above it is submitted that Jaypee Bina Thermal Power Plant is not a group Company of Jaypee Power Ventures Limited but is one of the Generating Stations of the JPVL (Generating Company). The aforesaid finding of the Hon'ble Commission clearly falls under the foremost ground for exercise of Review Jurisdiction under Order 47 Rule 1 i.e. Error Apparent on the face of the record.*
- (v) *During the proceedings of Petition No. 40 of 2012 the Commission was informed that Bina Power Supply Company Limited (BPSCL) was acquired by the Review Petitioner in 2008 and as such it was merged into Review Petitioner vide Order dated 25.07.2011 passed by the Hon'ble High Court of Himachal Pradesh. Therefore, the said findings of the Commission appear to be an error apparent on face of the record as the Commission has failed to give effect to the true import of Regulation 22.3 of Tariff Regulation 2012 and has erroneously held that Jaypee Bina is a group company of JPVL.*
- (vi) *In accordance with the provision of the Regulation, the Review Petitioner was justified and correct to claim MAT as per the consolidated financial statement of JPVL because MAT is paid by a Company as a whole. Therefore, the aforesaid consideration of Jaypee Bina to be an assessee taxable under the Income Tax Act for the purpose of payment of MAT is an error apparent on the face or record warranting Review jurisdiction being exercised by the Hon'ble Commission.*
- (vii) *It is most respectfully submitted that MAT was introduced under Section 115 JB of the Income Tax Act, w.e.f. 01.04.2001. The intention behind the introduction of MAT was that where the income tax payable by a company on its total income, as computed under the Income Tax Act, for any financial year is less than a specified percentage of the book profit of the company for that year, the book profit of the company is deemed*

- to be the total income of the company for that year and income tax is payable at the specified rate on such total income which is known as the MAT. Upon a plain reading of Section 115 JB of the Income Tax Act, it is unequivocal that MAT is payable by a company as a whole when the normal tax liability of the company is below 18.5% of its book profit and, therefore, MAT is a tax on income computed in a manner different from the regular income tax. It is further submitted that MAT is a way of making Companies pay minimum amount of tax and it is applicable to all companies.*
- (viii) *The Review Petitioner (JPVL) took over and acquired the erstwhile BPSCL to develop the said project in 2008. Subsequently the Review Petitioner and BPSCL decided to consolidate their business through amalgamation. The respective companies filed a Petition for Amalgamation before the Hon'ble High Court of Himachal Pradesh at Shimla through Company Petition No. 2 of 2011. The Hon'ble High Court vide Order dated 25.07.2011 passed a final Order in the petition filed by the Review Petitioner and BPSCL and merged BPSCL into the Review Petitioner. Therefore, the present Project is now being developed in the books of the Review Petitioner Company who has always been the Petitioner before the Hon'ble Commission.*
- (ix) *In view of the above it is most respectfully submitted that Jaypee Bina Thermal Power Plant is not a group Company of Jaypee Power Ventures limited but is one of the Generating Stations of the JPVL (Generating Company). It is further pertinent to mention that the above facts were within the knowledge of the Hon'ble Commission as the same were pleaded in details by the Review Petitioner in Petition No. 40 of 2012 which was filed before the Hon'ble Commission for determination of Tariff of the 2x250 MW (Phase I) Coal Based Power Project at Bina, Dist. Sagar, Madhya Pradesh for period commencing from June 2012. Therefore, the Hon'ble Commission was well versed with the fact that Jaypee Bina Thermal Power Plant is not a group company of JPVL. In view of the above background it is unequivocal that there is error apparent on face of record in the Impugned Order passed by the Commission and the same needs to be reconsidered.*
- (x) *Because the Commission has failed to take into consideration that Tax incidence at MAT rate i.e. 20.96% was applicable on JPVL Corporate profit of Rs. 137.21 Crores which **includes JBTPP Profit of Rs. 210.86 Crs.** Disallowance of the grossing up of*



*MAT rate with base rate of RoE was done on basis of auditor's note on page no. 267 of the petition, which read as under:*

*“there is no taxable profit upto 31<sup>st</sup> March' 2015, no income Tax has been provided”. (Note No. 32 of Standalone balance sheet of JBTPP”*

*In this regard, it is also to be noted that on the basis of above statement, on one hand, Hon'ble Commission relied on above statement to disallow the grossing up of MAT rate with base rate of RoE, but they failed to appreciate that had JBTPP been assessed as separate entity, the tax incidence would have been at normal tax rate i.e. 33.99% and same would have been grossed up with base rate of RoE. On the other hand, Hon'ble Commission also did not take into the fact that if the profit of Rs. 210.86 Crs. of JBTPP had not been clubbed with the profit or loss of other units of the JPVL Corporate profit, then JPVL Corporate would have suffered a loss of Rs.73.65 Crs. (Emphasis supplied)*

- (xi) *The Commission in passing the Impugned Order has committed a factual error i.e. Hon'ble Commission has misunderstood the profit of Rs. 137.21 Crs (at page 70 of the JPVL Corporate Balance Sheet) with Rs. 137.18 Crs profit as given in Income Tax Return (page No. 54 of Reply dated 30.03.2016 to the MPERC letter dated 23.03.2016) (Page No. 25 of Order dated 03.06.2016). Both these figures are seemingly identical but they are not.*

**Provision under Regulations:**

27. Regulation 22 of MPERC (Terms and Conditions for determination of Generation tariff) Regulations, 2012, provides as under:

*“Return on equity shall be computed in rupee terms, on the paid up equity capital determined in accordance with Regulation 21.*

*Return on equity shall be computed on pre-tax basis at the base rate of 15.5% to be grossed up as per Regulation 22.3 of this Regulation:*

*Provided that in case of Projects commissioned on or after 1<sup>st</sup> April, 2013, an additional return of 0.5% shall be allowed if such Projects are completed within the timeline specified in Appendix-I :*

*Provided further that the additional return of 0.5% shall not be admissible if the Project is not completed within the timeline specified above for reasons whatsoever.*

*The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the Year 2014-15 applicable to the Generating Company:*

*Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately.*

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

*Rate of pre-tax return on equity = Base rate / (1-t)*

*Where t is the applicable tax rate in accordance with Regulation 22.3.”*

***Illustration.-***

(i) *In case of Generating Company paying Minimum Alternate Tax (MAT) say @ 20.01% including surcharge and cess:*

*Rate of return on equity = 15.50 / (1-0.2001) = 19.377%*

(i) *In case of Generating Company paying normal corporate tax say @ 33.99% including surcharge and cess:*

*Rate of return on equity = 15.50 / (1-0.3399) = 23.481%*

**Commission's Analysis:**

28. On preliminary scrutiny of the subject review petition, it is observed by the Commission that the M/s JPVL has come up with some new facts about the profit and loss of its Company as a whole and Jaypee Bina Thermal Power Plant (JBTTP) in FY 2014-15. The review petitioner has mentioned that the JPVL's Corporate profit of Rs. 137.21 Crores includes JBTTP Profit of Rs. 210.86 Crs.
29. The review petitioner further stated that if the profit of Rs. 210.86 Crs. of JBTTP had not been clubbed with the profit or loss of other units of the JPVL Corporate profit, then JPVL Corporate would have suffered a loss of Rs.73.65 Crs. Thus, the profit of Rs. 137.21 Crs as indicated in the JPVL Corporate Balance Sheet and Rs. 137.18 Crs profit as given in Income Tax Return of the Company is due to JBTTP profit during the year.

30. Vide letter dated 28<sup>th</sup> March' 2017, the information gaps and requirement of additional details / documents were conveyed to the review petitioner and it was directed to file the reply of all the queries/issues by 25<sup>th</sup> April' 2017. Accordingly, by affidavit dated 19<sup>th</sup> April' 2017, the petitioner has filed its reply on the issues raised by the Commission. The issue-wise response filed by the petitioner is as given below:

**Issue:**

- (i) At page 22 Para 'M' of the subject review petition, it is mentioned about the difference in figures of profit in JPVL Corporate Balance Sheet and Income tax return i.e. Rs.137.21 Crore and Rs.137.18 Crore, respectively. The petitioner is required to explain the reasons for difference in aforesaid figures along with detailed computation for the purpose of MAT.

**Petitioner's Response:**

*It is most respectfully submitted by the Petitioner that the statement submitted in the earlier petition stating that "the figures reflected at Pg. No. 70 of JPVL Corporate Balance Sheet and those reflecting in Income Tax Return are seemingly identical but they are not" is due to the rounding off difference where figures in absolute numbers are converted in Lacs or Crores for reporting.*

**Issue:**

- (ii) At page no. 54 in Annexure 2 of reply filed by petitioner by its affidavit dated 30<sup>th</sup> March' 2016 in Petition No. 70/2015, the petitioner has shown the profit of Rs.1371793696 in M/s. JPVL. The break up and allocation of income, expenditure and profit/ loss of M/s. JPVL among all its power stations duly certified by statutory auditor to arrive at overall profit of Rs.1371793696 in M/s. JPVL be submitted.

**Petitioner's Response:**

*The break up and allocation of income, expenditure and profit/ loss of M/s. JPVL among all its power stations duly certified by statutory auditor to arrive at overall profit of Rs. 1,37,17,93,696 in M/s. JPVL is attached as Annexure - 2.*

**Issue:**

- (iii) The station wise break up of table showing the "Profit (loss) from operating activities after tax" at Page No. 70 of Annual Report 2014-15 of JPVL, filed with the Petition No. 70 of 2015 be submitted.

**Petitioner's Response:**

The station wise breakup of table showing the “Profit (loss) from operating activities after tax” provided at Page No. 70 of Annual Report 2014-15 of JPVL, filed with the Petition No. 70 of 2015 is being submitted by the petitioner..

**Issue:**

- (iv) With regard to Bina thermal Power Station, the petitioner is required to furnish the amount of accumulated carry forward loss of past years upto FY 2013-14. It needs to clarify whether the same has been adjusted against current year profit to arrive at profit of Rs. 1371793696 for the purpose of MAT.

**Petitioner’s Response:**

With regard to Bina Thermal Power Station the amount of accumulated carry forward loss up to FY 2013 – 14 is as under:

<i>Particulars</i>	<i>Amount (In Rs.)</i>
<i>Accumulated Losses up to 31<sup>st</sup> March 2013</i>	<i>1,21,54,70,668.00</i>
<i>Loss During 2013-14</i>	<i>69,02,39,367.00</i>
<i>Total Accumulated Losses up to FY 2013-14</i>	<i>1,90,57,10,035.00</i>

It is hereby confirmed that the above losses have not been adjusted against the current year profit to arrive at the profit of Rs. 1,37,17,93,696.00 for the purpose of MAT.

**Issue:**

- (v) Deduction of Rs.1699083968 in respect of profit undertaking 1 u/s 80IA was indicated at page 51 of the Income tax return submitted by the petitioner in Annexure-2 of its affidavit dated 30<sup>th</sup> March’ 2016. In view of aforesaid, the petitioner is required to mention the power station for which the aforesaid deduction has been claimed. It also needs to confirm whether the above profit pertains to Bina Thermal Power Station?

**Petitioner’s Response:**

The petitioner submits that the Deduction of Rs. 1,69,90,83,968 in respect of profit of undertaking 1 u/s 80-IA as mentioned in Income Tax Return for Assessment Year 2015-16 (FY 2014-15) submitted by the Petitioner as Annexure-2 of its affidavit dated 30<sup>th</sup> March’ 2016 has been claimed for Jaypee Vishnuprayag HEP. Furthermore the petitioner hereby confirms that the above profit does not pertain to Bina TPS.

**Issue:**

- (vi) **The petitioner is required to furnish the audit report u/s 80IA of Income Tax Act 1961, dated 28/11/2015 as mentioned at page no.23 of the Income Tax Return submitted by it as annexure-2 in its affidavit dated 30<sup>th</sup> March' 2016.**

**Petitioner's Response:**

*Audit Report u/s 80IA of Income Tax Act 1961, dated 28/11/2015 as mentioned in Income Tax Return for Assessment Year 2015-16 (FY 14-15) submitted by the Petitioner as Annexure-2 of its affidavit dated 30<sup>th</sup> March' 2016 is attached as Annexure 4.*

31. While passing the true-up order for FY 2014-15 of Jaypee Bina thermal power project, the Commission allowed return on equity without grossing up the base rate of return with MAT. In Para 66 of the aforesaid order, the following were mentioned:
- i. *The petitioner has filed the Annual Audited Accounts including balance sheet, profit and loss accounts and annexure thereto, of Jaypee Bina Thermal Power Plant (JBTPP) along with Consolidated Financial Statement of Jaypee Power Ventures Limited (JPVL) as on March 31<sup>st</sup>, 2015.*
  - ii. *The Consolidated Financial statement of Jaypee Power Ventures Limited (JPVL) comprises of the financials of following power plants also including 500 MW Bina TPS in the subject petition:*
    - (a) *300 MW Jaypee Baspa-II Hydro Electric Project (HEP),*
    - (b) *400 MW Jaypee Vishnuprayag HEP,*
    - (c) *1091 MW Jaypee Karcham Wangtoo HEP,*
    - (d) *500 MW Bina TPS*
    - (e) *1320 MW Jaypee Nigrie Super Thermal Power Station.*
  - iii. *In the Annual Audited Accounts of Bina Thermal Power Plant, the payment towards Income Tax or MAT has been shown as NIL during FY 2014-15. While carrying out the true up exercise, the base rate of ROE is required to be grossed up with the actual tax rate. In the instant matter of Jaypee Bina Thermal Power Plant, the payment towards income tax or MAT is NIL. Thus, the Commission does not find any basis for grossing up the base rate of ROE with MAT.*
  - iv. *It is observed that the petitioner has submitted the income tax return of Jaypee Power Ventures Limited (JPVL) for FY 2014-15. It is observed at page 54 of the said income tax return, the MAT has been calculated on the profit of **Rs. 137 Crores.***

- v. The above profit of Rs. 137 Crores has been shown at page 70 of the Annual Audited Accounts of JPVL. The relevant part is reproduced below:

**Table 1: JPVL Consolidated Profit: (Rs. in Crores)**

<b>Particulars</b>	<b>Continuing operations</b>	<b>Discontinuing Operations</b>		<b>Total (A+B+C)</b>
	<b>(JPVL) (A)</b>	<b>Baspa HEP (B)</b>	<b>Karcham HEP (C)</b>	
<b>Profit (Loss) from Operating Activities After Tax</b>	<b>(298.41)</b>	<b>106.79</b>	<b>328.83</b>	<b>137.21</b>

- vi. In the above table, the said profit of Rs. 137 Crores has been computed by way of clubbing the JPVL loss of Rs. 298.41 Crores from continuing operation with the profit of Rs. 106.79 Crores (Baspa) and Rs. 328.83 Crores (Karcham) from Discontinuing Operation.
- vii. From the above, it is evident that JPVL's financial statement includes the profit and loss of business other than the Bina Thermal Power Plant also. Therefore, the claim of petitioner for MAT in the subject petition of Bina thermal power station, based on JPVL financial statement is not appropriate. And considerable.
- viii. While processing the subject true up petition, the Commission has considered the Assets, Liabilities, Income and Expenditure as per the Audited Financial Statement of Bina Thermal Power Plant (JBTPP). Therefore, for the purpose of actual tax, the Commission has considered the Audited Financial Statement of Bina Thermal Power Plant (JBTPP) instead of Jaypee Power Ventures Limited (JPVL).
- ix. It is pertinent to mention here that Jaypee Bina Thermal Power Plant cannot be allowed for grossing up with the base rate of ROE with MAT merely on the pretext that the group company (JPVL-consolidated balance sheet) is paying the tax."
32. On perusal of the review petition and the additional details/documents filed with the subject review petition, the Commission has observed that the review petitioner has now filed a Chartered Accountant's certificate dated 12<sup>th</sup> July' 2016 which was not filed during the proceedings of true-up petition No. 70 of 2015. In the aforesaid certificate, the Auditor has mentioned the following:

- (i) As per the examination of the Books of Account and the Income Tax Return of M/s JPVL and the divisional Balance Sheet of JBTPP for the year FY 2014-15, it is confirm that the corporate legal entity i.e. JPVL was assessable to Income Tax for the year 2014-15 relevant to AY 2015-16 under section 115 JB of the Income Tax Act, 1961 i.e. under Minimum Alternate Tax.
- (ii) JBTPP, a division of the corporate legal entity JPVL, also had taxable income as the profit and loss account for the period FY 2014-15 **had a net profit of Rs. 210.86 Crores.**
- (iii) *Since the stand alone Balance Sheet of JBTPP is not a statutory Balance Sheet and also due to the fact that the incidence of taxability is on the corporate legal entity and not on divisions or branches, no Income Tax provision was made in the stand alone Balance Sheet.*
- (iv) *It is also confirmed by the Auditor that JPVL, as a corporate legal entity has paid Income Tax for the previous year 2014-15 at 20.96% i.e. on MAT under Section 115 JB of the Income Tax Act.*
33. By affidavit dated 19<sup>th</sup> April' 2017, the review petitioner filed the following break-up/ statement of Income, Expenditure and profit/(loss) of M/s JPVL among all its power stations for the financial year 2014-15 certified by statutory auditor to arrive at/ indicating the overall profit of M/s JPVL as Rs. 137.18 Crores and profit of JBTPP as Rs.210.87 Crores:

<b>Sr. No.</b>	<b>Unit</b>	<b>Profit/(loss) from operations in Rs. Crores</b>
1	Vishnuprayag HEP	146.67
2	Baspa HEP	136.78
3	Head Office	(479.46)
4	Nigrie STPP	(271.46)
5	Bina Thermal Power Plant	<b>210.87</b>
6	Karcham HEP	393.78
7.	M/s. JPVL as whole	<b>137.18</b>

34. The review petitioner has also filed the following power station-wise break-up / statement showing the profit/(loss) from operating activities after tax as per the Annual Report for FY 2014-15:

<b>Sr. No.</b>	<b>Unit</b>	<b>Profit/(loss) from operations in Rs. Crores</b>
Continuing Operations	Vishnuprayag HEP	146.65
	Corporate	(384.47)
	Nigrie STPP	(271.46)
	Bina TPP	210.87
	<b>Total</b>	<b>298.41</b>
Discontinuing Operations	Baspa HEP	106.79
	Karcham HEP	328.83
<b>M/s. JPVL as whole</b>		<b>137.18</b>

35. By affidavit dated 19<sup>th</sup> April' 2017, the review petitioner has filed the Audit report u/s 80 IA for Income Tax Act 1961, dated 28<sup>th</sup> November, 2015 for assessment year 2015-16 (FY 2014-15) indicating the income tax deduction on behalf of M/s JPVL.
36. The review petitioner in para C of the petition submitted that the Jaypee Bina Thermal Power Plant is neither the generating company and nor a corporate legal entity, it is only a division/generating station of JPVL. Therefore the MAT has been paid by the company as per the corporate financial statement of JPVL. The review petitioner has further submitted that the MAT is not paid separately by every single generating station of the generating company.
37. On perusal of the details and documents now filed by the review petitioner in the subject review petition, the Commission has observed the following:
- (i) The overall **profit** of M/s JPVL being a corporate legal entity for FY 2014-15 is **Rs. 137.18 Crores** as indicated in the Balance Sheet.
  - (ii) Jaypee Bina Thermal Power Plant, a division of the corporate legal entity JPVL, also had taxable income as the profit and the loss account for the period FY 2014-15 had a net profit of **Rs. 210.86 crores** and the same has been certified by the auditor.
  - (iii) Statement of Profit/(loss) from operations indicate that the total profit of JPVL of Rs. 137.18 crores includes the profit of Rs. 210.86 crores from JBTPP.
  - (iv) Income tax statement shows that the M/s JPVL has paid MAT for FY 2014-15.



38. The Commission has found from the above observation that M/s. Jaiprakash Power Ventures Ltd. being a legal corporate entity (company) has recorded a profit of Rs. 137.18 Crores during FY 2014-15 as well as the power plant i.e. Jaypee Bina Thermal Power Project (for which the tariff/ true-up exercises is being undertaken) has also recorded a profit of Rs. 210.86 Crores during FY 2014-15 in their respective audited accounts.
39. Secondly, M/s. JPVL has paid Minimum Alternate Tax (MAT) during the same financial year i.e. FY 2014-15. Further, the profit of Rs. 210.87 Crores of Jaypee Bina Thermal Power Project has contributed to the overall profit of Rs. 137.18 Crore recorded in the balance sheet of M/s. JPVL, a legal corporate entity. Therefore, the base rate of Return on Equity shall be grossed up with Minimum Alternate Tax (MAT) while determining the true-up amount of Jaypee Bina Thermal Power Project for FY 2014-15. Hence the review of the Commission's order dated 3<sup>rd</sup> June' 2016 is allowed on this count.

**Issue No. 2: Disallowed the O&M Expense for the Dedicated Transmission Line.**

**Petitioner's Submission:**

40. In the amended/ consolidated review petition the petitioner has raised an additional issue for review on disallowance of O&M expenses for the dedicated transmission line of its project. The petitioner broadly submitted the following on the aforesaid issue:
- (i) *The Commission in passing the Impugned Order has erred in disallowing O&M Expenses with regard to the dedicated transmission line due to the following reasons:*
- (a) *The Tariff Order dated 26.11.2014 passed by the Hon'ble Commission had included the cost of Transmission Network created by the Petitioner as part of the Capital Cost for determining fixed charges for the entire project. The said determination in no manner affected the right of the Petitioner to claim O&M Expenditure of the Transmission Line.*
- (b) *Further, the Order dated 26.11.2014 as held in Para 95 does not anywhere hold that the Petitioner/Applicant shall not be entitled for O&M Expenses because its Dedicated Transmission Line is part of the Total Capital Cost of the Project. Hence, the finding of the Hon'ble Commission on this premise is an error apparent on the face of record and warrants exercise of Review Jurisdiction.*

- (c) *Further, the Hon'ble Commission in disallowing the claim of the Petitioner has held that MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2012 does not provide for any O&M expenses of dedicated transmission line separately and therefore the Claim of the Petitioner cannot be granted. With respect the said contention is incorrect as even the Central Commission and its Regulations do not provide specifically for O&M Expense of Dedicated Transmission Line to be given. However, CERC owing to various projects having such requirement provides the same. CERC in Petition No. 308 of 2009 in its Order dated 11.03.2010 has held as follows:-*

*“51. The petitioner has submitted that O&M charges for dedicated transmission lines and sub-stations /bays for captive power generating station has not been provided in the O&M expenses for thermal power generating stations under the 2009 regulations specified by the Commission. Hence, the petitioner has claimed the following O&M expenses for the dedicated transmission line:*

*...*

*52. The petitioner has submitted that out of the 7 no. of bays for associated transmission system, 3 no. of bays fall within the side of the petitioner and the rest 4 no. of bays fall within the Raipur sub-station of Power Grid Corporation of India for connection to the double bus scheme. The petitioner has also submitted that the assets included in the 4 bays at Raipur sub-station belonged to the petitioner and it has awarded the O&M contract to PGCIL for O&M of these 4 bays. The submission of the petitioner is found to be in order and the O&M expenses claimed is allowed. Accordingly, the total O&M expenses allowed for the generating station and transmission system is as under :”*

- (d) *From the perusal of the above quoted extracts of the Order of the Hon'ble CERC it is evident that as a matter of practice the Central Commission allows O&M on dedicated Transmission Lines as if the same is not allowed then it will lead to under-recovery for the generator. Further, it is most respectfully submitted that neither the CERC 2009 Regulations or the recently 2014 Regulations provide for such dispensation. Hence, the Hon'ble Commission's reasoning that because the MPERC Regulations, 2012 did not provide for the same the Commission will not grant O&M is contrary to the principles of Tariff determination to be undertaken under Section 62 of the Act.*

- (e) *Further, in terms of the PPA dated 05.01.2011 signed between the Petitioner and the Respondents the entire onus of evacuating power beyond the inter-connection point vests with the Respondents. Hence, the O&M Expense for such line also has to be borne by the Respondents. The relevant extracts of the PPA are being reproduced as follows:-*

*“3.2 -Satisfaction of Conditions Subsequent by the Procurer*

*The Procurer shall have established the necessary evacuation infrastructure beyond the Interconnection Point, necessary for evacuation of the Contracted Capacity at least 201 days prior to COD.*

- (f) *The Hon’ble Commission in passing the Impugned Order dated 03.06.2016 in Petition No. 70 of 2015 has disallowed the O&M Expenditure claimed by the Applicant/Review Petitioner on ‘Dedicated Transmission Line’ built for supplying power to the Respondents on the incorrect premise that the O&M Expense allowed for the Power Plant will also cover the O&M Expense required for the Transmission Line. It is pertinent to mention that the Normative O&M expenses of a power plant is a complete package determined after considering all the elements/components of Operation and Maintenance and other overhead costs of a generating stations. The O&M expenses of a generating station does not include any cost incurred by the generator with regards to maintenance of the Dedicated Transmission Line. Therefore, such cost have to be allowed separately to the generator.*
- (g) *The Applicant is entitled to the O&M expenses with regards to the Dedicated Transmission Line as these lines are installed, owned and maintained by the Applicant. The Applicant incurs substantial amount of cost in maintaining these dedicated Transmission lines and disallowance of the same would lead to under recovery of the cost to the Applicant, which is against the mandate of Act and the National Tariff policy.*
- (h) *Section 10 of the Electricity Act 2003 mandates the Generating Company to establish, operate and maintain the Dedicated Transmission Lines. These dedicated transmission lines are required for evacuation of power from the generating station of the Applicant. Therefore, any cost incurred with regards to such activity must be adequately recovered so that the Generator can effectively run its business of power generation. The Hon’ble Tribunal in its Judgment dated 23.05.2012 in Appeal No. 145 of 2011 has held as below: -*

“14.....On the contrary, Section 10 of the 2003 Act mandates that generating company shall establish, operate and maintain the dedicated transmission lines connected therewith in accordance with the provisions of this Act. Thus, the Section 10 of the 2003 Act becomes mandatory by which the generating company is mandated to construct its own dedicated transmission lines which connect the substation of the Appellant”.

- (i) *It is submitted that the Hon’ble Commission has failed to appreciate that the cost of Dedicated Transmission Line is to be fully serviced through the Tariff, as any under recovery with regards to the cost of installing and maintain the Dedicated Transmission Line will result in significant drop in the Return on Equity allowed in the tariff of the Applicant and the project of the Applicant will not be commercially viable. The Hon’ble Appellate Tribunal for Electricity vide its Judgment dated 17.11.2015 in Appeal No. 220 of 2014 titled as ‘Chhattisgarh State Power Distribution Co. Ltd Vs Chhattisgarh State Electricity Regulatory Commission &Ors’ has held as under: -*

“6.....

*xx. In our opinion it is now not open to the Appellant to raise issues on consideration of the additional capital cost on account of conversion from 32 KV Dedicated Transmission Line to 132 KV Dedicated Transmission Line at the stage of determination of the tariff. This being a very small power plant and has been set up to promote renewable energy and would not be able to sustain after such an additional cost for conversion is not allowed. **We have also noticed if a cost on Dedicated Transmission Line is not fully serviced through the tariff there will be significant drop in the Return on Equity allowed in the tariff of the Respondent no.2 and the project of the Respondent no. 2 will not be commercially viable**”.*

- (j) *In view of the above it is submitted that the Applicant is mandated under the Act to install and maintain the Dedicated Transmission Line. Further as per the Hon’ble Tribunal Judgment, the Applicant must be allowed to recover the entire cost with regards to the installation and maintenance of the Dedicated Transmission Line. It is pertinent to mention that the CERC being cognizant of the above fact allows such cost, even without there being any specific provision in its Regulation.*

(k) *It is settled position that in a cost plus Tariff the State Commission must allow all the reasonable expenditure to the Generator after prudence check. In view of the above it is most respectfully submitted that the Hon'ble Commission in complete disregard of this settled position, Hon'ble Tribunal's Judgment and Hon'ble CERC's Orders has erred by disallowing the O&M cost for the Dedicated Transmission Line.*

(l) *It is further submitted that the Applicant's Power Plant operates under the tariff determined through Section 62 of the Electricity Act, 2003. Therefore, the Applicant as enshrined under Section 62 is entitled to reimbursement of all legitimate costs incurred by it in generation and supply of power to the Respondent No.1/MPPMCL.*

**Commission's Analysis:**

41. With regard to the O&M expenses for the Dedicated Transmission Line, the Commission has observed the following chronology of the tariff petitions filed by the petitioner and orders issued by the Commission:

<b>Petition No.</b>	<b>Subject</b>	<b>Date of Order</b>
Petition No. 40 of 2012	Petition for determination of provisional generation tariff of Jaypee Bina Thermal Power Project from CoD of Unit No. 1 to 31 <sup>st</sup> March' 2013..	12.12.2012
Application for reinstatement of petition No. 40 of 2012	Determination of provisional tariff for Unit No. II of the generating station from its CoD to 31 March' 2014..	29.06.2013
Petition No. 40 of 2012	Petition for approval of final generation tariff in respect of Jaypee Bina (2x250 MW) Thermal Power Station, Stage-I for the period from COD of each unit to 31.3.2016.	26.11.2014
Petition No. 05 of 2015	Review of the aforesaid Commission's order dated 26 <sup>th</sup> November' 2014	08.05.2015
Appeal No. 25 of 2016	Aggrieved with the aforesaid order, the petitioner has filed an appeal with the Hon'ble Appellate Tribunal for Electricity, New Delhi.	13.02.2017

42. In view of the above, it is observed that the review petitioner had neither raised this issue of “O&M expenses for the Dedicated Transmission Line” in any aforesaid petitions filed with the Commission nor raised this issue before Hon’ble Appellate Tribunal for Electricity in its aforesaid Appeal No. 25 of 2016. The review petitioner had for the first time raised this issue in true-up petition for FY 2014-15.
43. Impugned order dated 3<sup>rd</sup> June’ 2016 on the aforesaid true-up petition is the true-up of Commission’s order dated 26<sup>th</sup> November’ 2014 read with Commission’s review order dated 8<sup>th</sup> May’ 2015. However, the review petitioner had never made any claim in respect of “O&M expenses for the Dedicated Transmission Line” while issuing the main order dated 26.11.2014 and review order dated 08.05.2015.
44. With regard to O&M Expense for the Dedicated Transmission Line, the following has been mentioned in para 94 to 96 of the true-up order dated 3<sup>rd</sup> June’ 2017:
94. *It is evident from the above submission of the petitioner that the Transmission line in the subject petition is a dedicated line and its cost has been appropriately included in the capital cost of the 2x250 MW (Phase-I) of petitioner’s power plant while determining its final tariff vide Commission’s order dated 26.11.2014. Further, the petitioner had never claimed the operation and maintenance (O&M) expenses for the said dedicated transmission line in its any of the petitions filed for determination of provisional tariff of each generating unit and also the final tariff of the petitioner’s power plant. For the first time in the subject true-up petition, the O&M expenses of dedicated transmission line is claimed by the petitioner.*
95. *The status of the aforesaid dedicated transmission line has already been dealt with in para 27 to 30 of the Commission’s first order dated 12<sup>th</sup> December’ 2012 in Petition No. 40 of 2012. Further, the remaining issue has been dealt with in relevant paras of Commission’s order dated 26.11.2014.*
96. *The extract of the above-mentioned paragraphs of Commission’s order is that the dedicated transmission lines is neither a transmission line in terms of sub-section (72) of Section 2 of the Electricity Act’ 2003 nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of Section 2 of the Act. The O&M expenses of a transmission line are part of the Annual Fixed Cost of the line of a transmission licensee whereas, the petitioner is not a transmission licensee. The cost of dedicated line has been*

*considered in the capital cost of the petitioner's power plant and the tariff of the said power plant has been determined in terms of MPERC (Terms and Conditions for determination of Generation Tariff) Regulations' 2012 which does not provide for any O&M expenses of dedicated transmission line separately. In view of the aforesaid, the claim of petitioner for O&M expenses of dedicated transmission line has no merit hence not considered in this order.*

45. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:
- (a) On discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at a time when the order was made;
  - (b) An error apparent on the face of the record;
  - (c) For any other sufficient reason.
46. In view of the above, the Commission has observed that the issue regarding disallowance of O&M expenses of dedicated transmission line raised in the subject review petition is not covered under any of the aforesaid circumstances for review. Therefore, the review on this issue is not considered in this order.
47. As detailed in the foregoing paragraphs, only one issue related to “grossing up the base rate of Return with MAT” raised by the review petitioner is considered for review in terms of the above findings. Therefore, the Annual Capacity (fixed) Charges is now re-determined by the Commission by considering the impact of grossing up the base rate of return with Minimum Alternate Tax. Accordingly, the Return on Equity and interest on working capital is now worked out by the Commission as given below:

**Return on Equity:**

48. Considering the grossing up the base rate of return on equity with MAT as considered by the Commission, the Return on Equity for FY 2014-15 is revised as under:

**Revised Table No. 15 of the main true-up order: Return on Equity for Unit I&II:**

<b>Sr. No.</b>	<b>Particular</b>	<b>Unit</b>	<b>FY 2014-15</b>
1	Opening Normative Equity	Rs. Cr.	1041.52
2	Normative Equity addition during the year	Rs. Cr.	3.72
3	Closing Normative equity	Rs. Cr.	1045.24

4	Average equity	Rs. Cr.	1043.38
5	Base rate of Return on Equity	%	15.50 %
6	Tax rate considered MAT	%	20.96 %
7	Rate of Return on Equity	%	19.61 %
<b>8</b>	<b>Annual Return on equity</b>	<b>Rs. Cr.</b>	<b>204.61</b>

**Interest on working capital:**

49. On account of the above change in Return on Equity, receivable of the working capital have been worked out on the basis of two months' fixed and variable charges. For this purpose, the operational parameters and weighted average price of fuel as considered in order dated 03.06.2016 has been retained. The rate of interest on working capital is also considered same as considered in order dated 03.06.2016. The necessary details in support of calculation of interest on working capital are as under:

**Revised Table in para 103 (iii) of the main order: Receivables for two months:**

Particular	FY 2014-15 Rs. Crores
Variable charges – 2 months (As considered in order dated 26.11.2014)	119.39
Annual Fixed Charges – 2 months (Worked out in this order)	136.57
<b>Total</b>	<b>255.96</b>

**Revised Table No. 25 of the main true-up order: Interest on working capital**

Sl. No.	Particulars	Norms	FY 2014-15 (Rs. in Cr.)
1	Cost of Coal	2 months of coal purchase	119.39
2	Cost of Main Secondary Fuel Oil	2 months of sec oil purchase	3.10
3	O & M expenses	1 month of O&M	8.29
4	Maintenance Spares	20% of O&M	19.90
5	Receivables	2 months of total revenue	255.96
6	Total Working Capital		<b>406.64</b>
7	Rate of Interest		13.50%
8	Interest on Working Capital		<b>54.90</b>

50. Accordingly, the Annual Fixed (Capacity) charges for FY2014-15 are revised as under:



**Revised Table No. 28 of the main true-up order: Revised Annual Capacity Charges:**

Particular/years	Unit	Allowed in order dt. 8/5/2015 for FY 2014-15	Allowed in this order for FY 2014-15 on normative availability	True-up amount at Normative Availability
<b>Capacity Charges or Fixed Charges</b>				
Depreciation	Rs. Cr.	172.20	171.81	(0.39)
Interest charges on loan	Rs. Cr.	272.65	265.88	(6.77)
Return on equity	Rs Cr.	204.24	204.61	0.37
Interest on working capital	Rs. Cr.	55.05	54.90	(0.15)
Operation & Maintenance expenses	Rs. Cr.	99.50	99.50	0.00
Secondary Fuel Oil expenses	Rs. Cr.	22.47	22.47	0.00
Lease rant payable for land	Rs. Cr.	0.00	0.24	0.24
<b>Annual capacity (fixed) charges</b>	Rs. Cr.	<b>826.10</b>	<b>819.41</b>	<b>(6.70)</b>
Less: Non tariff income	Rs. Cr.	0.00	(5.77)	(5.77)
<b>Net Annual Capacity Charges</b>	Rs. Cr.	<b>826.10</b>	<b>813.64</b>	<b>(12.47)</b>
<b>AFC of 65% of contracted Capacity</b>	<b>Rs. Cr.</b>	<b>536.96</b>	<b>528.86</b>	<b>(8.11)</b>

51. The difference between the Annual Capacity (Fixed) charges determined in this order and those determined vide Commission's earlier true up order dated 03.06.2016 in Petition No.70 of 2015 shall be recovered from the respondents in this matter in terms of applicable Regulations in the ratio of energy supplied to them in six equal monthly installments during FY 2017-18.
52. Except above, all other terms contained in Commission's order dated 03.06.2016 in Petition No. 70 of 2015 shall remain unchanged.
53. With the above directions, this review petition is disposed of.

**(Alok Gupta)**  
Member

**(A. B. Bajpai)**  
Member

**(Dr. Dev Raj Birdi)**  
Chairman

**Date: 25<sup>th</sup> September' 2017**

**Place: Bhopal**

**Annexure- I**

**Comments offered by the Respondent No. 1 (MPPMCL) and response of the petitioner on each comment:**

**MPPMCL Comment:**

- 1. That, the Petitioner had filed the present Review Petition under Regulation 40 of MPERC (Conduct of Business) Regulations, 2004 r/w Section 94 (1) (f) of the Electricity Act, 2003 for Review of the order dated 03.06.2016 passed by the Commission in Petition No. 70/2015 in the matter of True-up of Generation Tariff of 2x250 MW (Phase-I) coal based power project at Bina, District Sagar for FY 2014-15 determined by MPERC vide Order dated 26<sup>th</sup> November, 2014 and subsequently revised vide order dated 8<sup>th</sup> May 2015.**
- 2. In the present Review Petition the Petitioner, *inter-alia*, has made following prayers before this Hon'ble Commission:**
  - (a) Review its order dated 03<sup>rd</sup> June, 2016, inter-alia, to the extent impugned by the Review Petitioner by allowing grossing up RoE by MAT, passed in Petition No. 70 of 2015.**
  - (b) Review its order dated 03<sup>rd</sup> June, 2016, to the extent impugned by the Review Petitioner by allowing the O&M expense for the Dedicated Transmission Line built by the Review Petitioner as part of JP Bina Project.**
  - (c) Pass such order, further relief/s in the facts and circumstances of the case as this Hon'ble Commission may deem just and fit and equitable in favour of the Review Petitioner.**

**Petitioner's response:**

*That the contents of Para 1 and 2 are matters of record and hence merit no rejoinder.*

**MPPMCL Comment:**

- 3. The Commission, in passing the order dated 3<sup>rd</sup> June 2016, has disallowed grossing up of the base rate of Return on Equity (ROE) with Minimum Alternate Tax (MAT) on the pretext that in the Annual Audited Accounts of Jaypee Bina Thermal Power Plant (hereinafter referred to as the "JBTPP"), the payment towards Income Tax on MAT has been shown NIL during F.Y. 2014-15.**
- 4. The contention of the petitioner is that Jaypee Bina Thermal Power Station is neither a Generating Company nor a corporate legal entity but is a division of Jaypee Power Ventures Limited (hereinafter referred to as the "JPVL"), and therefore, MAT would be applicable to JPVL as a whole and not to JBTPP**

**separately. Since MAT is applicable to Companies and JBTPP not being the same, should not be allowed grossing up of the ROE.**

**Petitioner's response:**

*That the contents of Para 3 and 4 are wrong and denied and has been dealt in detail in Para 6 of the preliminary submissions and is therefore not repeated herein for the sake of brevity.*

*Para 6 of the preliminary submissions is reproduced as under:*

*“It is most respectfully submitted that tariff is determined as per the provision of the Regulations applicable upon the Review Petitioner's generating station. It is further submitted that in the instant case, the applicable Regulation shall be MPERC (Terms and Conditions for determination of Generation Tariff) Regulation 2012 (hereinafter referred to as the “**Tariff Regulation 2012**”).*

6.1 *It is most respectfully submitted that Regulation 22.3 of the Tariff Regulation 2012 unequivocally provides for grossing up the RoE with the Normal Tax Rate or MAT Rate applicable to the Generating Company that is Jaypee Power Ventures limited (hereinafter referred to as ‘JPVL’) who was the Petitioner in Petition No. 70 of 2015 and not the Generating Station i.e. JBTPP. The relevant extract of the Tariff Regulation 2012 is reproduced as below: -*

*“22.3 The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate for the Year 2012-13 applicable to the Generating Company:  
Provided that return on equity with respect to the actual tax rate applicable to the Generating Company, in line with the provisions of the relevant Finance Acts of the respective Year during the Tariff period shall be trued up separately”.*

6.2 *That in view of the above it is unequivocal that for the purpose of tariff determination of a generating station of the Review Petitioner, its ROE is computed by grossing up the base rate with the normal tax rate applicable to the Generating Company only. It is pertinent to mention that in the present case, the generating company is JPVL which has paid a tax on its profit of Rs.1,37,17,93,696/- and MAT has been paid on the said amount. However, it is also pertinent to mention herein that profit in JBTPP division is concerned, the same is Rs. 2,10,86,56,958/-. Hence, admittedly the owing to loss in other generating Stations of JPVL the actual profit of JPVL is much lesser as compared to the profit of JBTPP and the benefit of the same in terms of lower reimbursement of tax is being passed on to the Respondent No.1 and its consumers.*

6.3 *It is most respectfully submitted that according to Regulation 22.3 the rate of RoE has to be computed by grossing up the base rate with the normal tax rate applicable to the Generating Company. In the present case Jaypee Bina Thermal Power Station is not the*

*Generating Company and neither a corporate legal entity, it is only a division/Generating Station of JPVL. It is further submitted that in accordance with the provision of the Regulation the Review Petitioner was justified and correct to claim MAT as per the consolidated financial statement of JPVL because MAT is paid by a Company as a whole.*

6.4 *The above rationale has been affirmed by the Commission in its Order dated 21.06.2017 passed in Petition No. 62 of 2016 wherein owing to the fact that JPVL was in loss and did not pay MAT even when JBTPP itself had made profit no reimbursement of tax has been permitted. The relevant extracts of the Order are being reproduced as follows:-*

*“60. On perusal of the aforesaid response filed by the petitioner on MAT, the Commission observed the following:*

- i. The petitioner filed the Annual Audited Accounts including balance sheet, profit and loss accounts and annexure thereto, of JaypeeBina Thermal Power Plant (JBTPP) along with Consolidated Financial Statement of Jaypee Power Ventures Limited (JPVL) as on 31st March, 2016.*
- ii. The Consolidated Financial statement of Jaypee Power Ventures Limited (JPVL) comprises of the financials of following power plants also including 500 MW Bina TPS in the subject petition:*
  - a) 300 MW Jaypee Baspa-II Hydro Electric Project (HEP),*
  - b) 400 MW Jaypee Vishnuprayag HEP,*
  - c) 1091 MW Jaypee Karcham Wangtoo HEP,*
  - d) 500 MW Bina TPS*
  - e) 1320 MW Jaypee Nigrie Super Thermal Power Station.*
- iii. In FY 2015-16, Generating Company i.e. M/s. Jaypee Power Ventures Ltd. (JPVL) has shown a loss of Rs. 294.50 Crore in its Books of Account and has not paid any tax, therefore, the grossing up of ROE with MAT is not considerable as the company (JPVL) has not paid income tax.*
- iv. Moreover, in the Annual Audited Accounts of Bina Thermal Power Plant, the payment towards Income Tax or MAT during FY 2015-16 is shown as NIL. While carrying out the true up exercise, the base rate of ROE is required to be grossed up with the actual tax rate. In the subject matter of Jaypee Bina Thermal Power Plant, the payment towards income tax or MAT is NIL. Thus, the Commission does not find any basis for grossing up the base rate of ROE grossing up with MAT.*

61. *In view of the observations, the Commission has not considered grossing up the base rate of ROE with MAT. Accordingly, the Return on equity for FY 2015-16 is worked out as given below:” (Emphasis added)*

**MPPMCL Comment:**

5. **It is pertinent to mention that as MAT is paid by the company as a whole, grossing up should be allowed at the Company level and not at the division level which is being desired by the petitioner as payment of tax is showing NIL in the audited standalone Balance Sheet of JBTPP.**

**Petitioner’s response:**

*That the contents of Para 5 are wrong and denied. It is most respectfully submitted that the contention of the Respondent No.1 is contrary to the Tariff Regulation 2012 and hence cannot be acceptable. It is further submitted that tariff is always determined for a particular generating station and not for a company as a whole as a generating company may have multiple stations and each station tariff is independent of each other. However, in so far as reimbursement of tax is concerned, the same as per the Regulations is based on the Generating Company who is indeed paying tax. Hence, the two concepts are mutually exclusive and either one of them cannot be read into each other.*

**MPPMCL Comment:**

6. **In this context, Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation 2012 states that:**

**The rate of return on equity shall be computed by grossing up the base rate with the normal tax rate applicable to the Generating Company. [Emphasis supplied]**

**It is pertinent to note that Hon’ble Commission here has allowed grossing up of ROE only in case of Generating Company. Here, it is not mentioned tax rate applicable to Respective or Relevant Generating Company. Had it been so, grossing up would have been applicable to divisions of the Generating Company as well. In the absence of the same, grossing up would only be allowed in case of generating companies and no other entity whatsoever. Therefore, the Commission has not passed impugned order in this regard.**

**Petitioner’s response:**

*That the contents of Para 6 are wrong and denied. It is most respectfully submitted that the Tariff Regulation 2012 provides that ROE has to be allowed for every generating station in their tariff, although the same has to be computed by grossing up the base rate with normal tax rate applicable to the Generating Company. In the instant case the applicable tax rate is MAT and the generating company is JPVL. It is further submitted that tariff is determined separately for*

*every generating station and not for a company as a whole. It is pertinent to mention that the intent of the Commission cannot be to allow ROE only for generating company as ROE has to be allowed for every generator, as ROE is a part of tariff.*

**MPPMCL Comment:**

- 7. That, it is significant that as JBTPP is not a generating Company, Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation 2012 cannot be made applicable and grossing up of ROE with either MAT or Normal Tax Rate (as the case may be) cannot be done as the identity as a Generating Company is a prerequisite for the same.**

**Petitioner's response:**

*The Respondent further repeats in the Para 7 of its reply that grossing up of RoE with MAT is not applicable on JBTPP due to the fact that JBTPP is not a Generating Company is unfounded and is only a misinterpretation of the Regulation. The Regulations provide for Grossing up of RoE for the Generating Station based on the tax rate applicable to the Generating Company.*

**MPPMCL Comment:**

- 8. That, without prejudice to the above, it is also submitted that the instant review petition is not maintainable as there is no error apparent prima facie on the face of the record. With respect to the first issue of MAT as raised by the Review Petitioner, it is submitted that this Hon'ble Commission, in the Impugned Order dated 3.6.2016, has fully and entirely dealt in detail with all the averments and submissions of the Petitioner herein. In this regard, the Hon'ble Commission has specifically dealt in para 64 to 67 with the issue and held that the claim for grossing up of with base rate of ROE with MAT cannot be allowed. Once this specific finding and direction is given, the same cannot be a ground for review.**

**Petitioner's response:**

*That the contents of Para 8 are wrong and denied. It is most respectfully submitted that the said contention of the Respondent No.1 is flawed and contrary to the established principle of tariff determination.*

**MPPMCL Comment:**

- 9. Further with respect to the second issue raised by the Petitioner with respect to the O&M Expenses for its Dedicated Transmission Line, it is submitted that the Review Petition is not maintainable for deciding this issue, as the same has been dealt in detail in para 91-96 of the Impugned Order dated 3.6.2016. It is submitted that this Hon'ble Commission has specifically held that the same is not a Dedicated Transmission Line as per the Hon'ble Commission earlier order dated 12.12.2012.**

**Therefore, the issue of deciding the instant issue does not arise. Moreover there is no error apparent on the face of the record.**

- 10. It is, therefore, submitted without prejudice that the instant petition filed for review of the order dated 3.6.2016 is, *inter-alia*, not maintainable.**

**Petitioner's response:**

*That the contents of Para 9 and 10 are wrong and denied and have been dealt in detail in Para 7 and 7.1 of the preliminary submissions and is therefore not repeated herein for the sake of brevity.*

*Para 7 and 7.1 of the preliminary submissions is reproduced as under:*

*“It is the contention of the Respondent No.1 that the 400KV Transmission Line is not a Dedicated Transmission Line. It is most respectfully submitted that such contention of the Respondent No.1 is completely flawed, misleading and erroneous as the Order dated 12.12.2012 clearly stipulates that if a Dedicated Transmission Line is erected by a generating company than it would form part of the generation system and the cost incurred by the generating company for construction of such Dedicated Transmission Line would be included in the generation tariff of the generating company. The Commission also held that the Generating Company cannot be deprived of its lawful dues under any garb. The relevant extract of the Order dated 12.12.2012 is reproduced as below: -*

- “26. At the outset, it is expedient to dispose of the issue related to transmission cost raised by both, the Energy Department, GoMP and Respondent No.1. The Commission is of the view that the contentions of neither has any merit for consideration at this stage since the subject petition for determination of generation tariff is before the Commission pursuant to the same PPA wherein the provision regarding **“Interconnection and Transmission Facilities”** under **Para 4.8 provides for sharing of the cost of dedicated Transmission line of 400 kV laid by the petitioner for evacuation of contracted capacity as decided mutually between the petitioner and GoMP.** Such provisions in PPA which have bearing on the cost components in the subject petition may not be left unresolved to create any dispute for the future since the PPA was also filed with the Commission for approval.*
- 27. It would be relevant here to refer to the Electricity (Removal of Difficulty) Fifth Order, 2005. The preamble to this Order states, interalia,*

*“And whereas a dedicated transmission line in terms of sub-section (16) of section 2 of the Act is an electrical supply line for point-to-point transmission for connecting a captive generating plant or a generating station to any transmission line or sub-stations or generating stations or the load centre, as the case may be;*

*And whereas such a dedicated transmission line is neither a transmission line in terms of sub-section (72) of section 2 of the Act nor it is a distribution system connecting the point of a connection to the installation of consumer in terms of sub-section (19) of section 2 of the Act;”*

29. *It follows therefore, that such dedicated transmission line would be a part of the generation system, if it is erected by the Generating Company. Obviously, the generation tariff would then have to be decided after taking into account the costs incurred for the construction of such dedicated transmission lines.*

30. *A reading of sub-section (16) of section 2 of the Act would lead to no other conclusion. The argument that transmission tariff should be dealt with separately is in this context without basis. Transmission tariff can only be determined in case of a transmission licensee. It might be noted that most PPAs that the Respondent has executed with IPPs provide for evacuation of electricity ex-bus bar by the Respondent. In this peculiar case, the Generating Company cannot be deprived of its lawful dues under any garb.*

*In view of the abovementioned facts, the Energy Department, GoMP and the parties in the subject petition are directed to resolve this issue in terms of PPA before the final tariff petition is filed in the matter.*

31. ....

*(iii) The issue related to sharing the cost of Rs.61.17 crore presently incurred by the petitioner for dedicated transmission line of 400 kV for evacuation of contracted capacity in terms of clause 4.8 of the PPA has not attained finality.*

7.1 *It is most respectfully submitted that the Commission in its Order dated 26.11.2014 have categorically recognized the Transmission Line of the Petitioner as the Dedicated Transmission Line. It is further submitted that the Commission in view of the same has allowed the costs towards transmission line. The relevant extract of the Order may be noted below:*

***“4.20. Accordingly, the following costs towards transmission line/ system associated with Bina Thermal Power Plant are allowed in this order.”***

**MPPMCL Comment:**

11. **As to para 1 and 2.1 to 2.20:**

No comments. Contents of these paras are matter of record.

12. **As to Para 2.21 (Wrongly mentioned again as 2.20 in Revised Petition)**

No comments. Contents of this para are matter of record.



**Petitioner's response:**

*That the contents of Para 11 and 12 merit no rejoinder.*

**MPPMCL Comment:**

13. As to para 3:

Contents of this para are denied. The Hon'ble Commission has rightly passed its order dated 03.06.2016 in Petition No. 70/2016 whereby disallowed grossing up of the base rate of Return on Equity (hereinafter referred to as the "ROE") with Minimum Alternate Tax (hereinafter referred to as the "MAT") on the pretext that in the annual Audited Accounts of Jaypee Bina Thermal Power Plant, the payment towards Income Tax or MAT has been shown NIL during FY 2014-15. Further, the second issue raised by the Petitioner with respect to the O&M Expenses for its Dedicated Transmission Line, this Hon'ble Commission has specifically held that the same is not a Dedicated Transmission Line as per the Hon'ble Commission earlier order dated 12.12.2012. Therefore, the issue of deciding the instant issue does not arise. Moreover, there is no error apparent on the face of the record.

**Petitioner's response:**

*That the contents of Para 13 are wrong and denied and has been dealt in detail in Para 6 and 7 of the preliminary submissions and is therefore not repeated herein for the sake of brevity.*

**MPPMCL Comment:**

14. As to Grounds A to M

Contents are denied. The Hon'ble Commission has rightly disallowed grossing up of ROE with MAT as per Regulation 22.3 of MPERC (Terms and Conditions for determination of Generation Tariff) Regulation 2012 (hereinafter referred to as the "Tariff Regulation 2012). The petitioner has wrongly stated that Jaypee Bina Thermal Power Station is not the Generating Company and neither a corporate legal entity. In fact it is division of M/s JPVL and MAT would be applicable to M/s JPVL as a whole and not to JBTPP separately. Since MAT is applicable to companies and JBTPP not being the same, should not be allowed grossing up of the ROE, hence the petitioner is not entitled to claim MAT.

Contents are repetitive in nature hence denied. The petitioner is not entitled to claim MAT because Power Purchase Agreement dated 05.01. 2011 has been exclusively executed with "M/s Bina Power Supply Company Limited", which is a separate Company incorporated under the Companies Act, 1956.

It is submitted that as per section 115 JB, every taxpayer being a company is liable to pay MAT, if the Income tax (including surcharge and cess) payable on the total

income, computed as per the provisions of the Income-tax Act in respect of any year is less than 18.50% of its book-profit + surcharge (SC) + education cess (EC) + secondary and higher education cess. From the above, it can be observed that the provisions of MAT are applicable to every company, whether public or private.

The Hon'ble Commission, vide its order dated 3<sup>rd</sup> June 2016, has rightly held that Jaypee Bina Thermal Power Plant is a Group Company of Jaypee Power Ventures Limited and, therefore, Jaypee Bina cannot be allowed for grossing up RoE with MAT on the pretext that JPVL being its group Company is paying tax, hence, rest of the contention of the petitioner is denied.

The petitioner has wrongly cited/interpreted the judgement of Hon. APTEL dated 2<sup>nd</sup> May, 2014 in Appeal no. 330 of 2013. This judgement has no direct nexus with this case, hence denied.

The petitioner has wrongly contended in affidavit filed in Petition No. 70 of 2015 regarding MAT. This Hon'ble Commission, after considering the facts of the case, has rightly appreciated the fact of merger of M/s Bina Power Supply Co. Ltd. and M/s Jaiprakash Power Ventures Limited and accordingly held that Jaypee Bina is a group Company of JPVL. Thus, the petitioner has no basis to claim MAT or sought review of order passed in Petition No. 70/2015.

**Petitioner's response:**

*Reply to the Para 14 is as under:-*

*8.11.1 Contents of opening Paragraph of Para 14 is in stark contradiction with the submission made by the Answering Respondent vide Para 7. In Para 7, the Respondent No. 1 asserts that JBTPP is not a generating company whereas in the third sentence of Para 14 they allege that the Petitioner has wrongly stated that the JaypeeBina Thermal Power Station (JBTPP) is not the generating company.*

*Relevant excerpts of Para 7 are reproduced as under:-*

***“7. That, it is significant that as JBTPP is not a generating Company,.....as a Generating Company is a prerequisite for the same.”***

*Relevant excerpts of Para 14 are reproduced as under:-*

***“14. Contents.....Tariff Regulations. The Petitioner has wrongly stated that JaypeeBina Thermal Power Station is not the Generating Company and neither.....”***

*It is very much clear that, when the above extracted portion of Respondent's submissions are read together, it appears that the Answering Respondent contradicts itself.*

*However, their contention that grossing up of RoE with MAT should not be allowed, is strongly contested for the reasons discussed in previous paragraphs.*

8.11.2 *The Contention of the Respondent No.1 given in second Paragraph of Para 14 that since Power Purchase Agreement dated 05-01-2011 was exclusively executed with "M/s Bina Power Supply Company Limited" and, therefore, the Review Petitioner is not entitled to claim MAT in not correct. It is most respectfully submitted that the expression "M/s Bina Power Supply Company Limited" includes its successors as well, which in this case is "Jaiprakash Power Ventures Limited", after the Amalgamation of "Jaiprakash Power Ventures Limited", "Jaypee Karcham Hydro Corporation Limited" and "Bina Power Supply Company Limited" pursuant to Order of the High Court at Shimla dated 25-07-2011 in Company Petition No.2 of 2011.*

*It seems that the Respondent No.1, through second and third paragraphs of the Para 14, is trying to prove that the Petitioner Plant (JBTPP) is a Company, hence is liable to pay MAT/Income Tax and by not having paid MAT/Income Tax, the grossing up of RoE with MAT is not allowed. Whereas it is again repeated that JBTPP is a unit of "Jaiprakash Power Ventures Limited (JPVL) (Generating Company)".*

8.11.3 *Regarding the contention of the Respondent No.1 in the fourth paragraph of Para 14 referring to Order dated 3<sup>rd</sup> June, 2016, it is again contested. Jaypee Bina Thermal Power plant is not a group Company of Jaiprakash Power Ventures Limited but is one of the Generating Station/ Division of Jaiprakash Power Ventures Limited (Generating Company).*

8.11.4 *Respondent No. 1 has contended that the judgement of Hon'ble APTEL dated 2<sup>nd</sup> May, 2014 in Appeal No.330 of 2013 has no direct nexus with the present proceedings. However, while making such contention the Respondent No.1 has not provided any reasoning. Neither has the Respondent sought to distinguish the judgement factually or on the basis of law. Therefore, such unsubstantiated contention of the Respondent No.1 has no merit and ought to be rejected.*

8.11.5 *Contents of the sixth paragraph of Para 14 are denied for the reasons explained in Para 8.11.2 & 8.11.3 above. It is again reiterated that Petitioner Plant i.e. (JBTPP) (Erstwhile Bina Power Supply Co. Ltd.) lost its status as "Company" after the Amalgamation of "Jaiprakash Power Ventures Limited", "Jaypee Karcham Hydro Corporation Limited" and "Bina Power Supply Company Limited" pursuant to Order of the High Court at*

*Shimla, dated 25-07-2011, and it is a unit of “Jaiprakash Power Ventures Limited” instead of being a group Company of JPVLs contended by the Respondent and the Hon’ble Commission vide its Order dated 03-06-2016.*

**MPPMCL Comment:**

15. **As to Ground N:**

**Contents of this para are denied. This Hon’ble Commission has specifically held that the same is not a Dedicated Transmission Line as per the Hon’ble Commission earlier order dated 12.12.2012. Therefore, the issue of deciding the instant matter does not arise. Moreover, there is no error apparent on the face of the record. The petitioner has wrongly cited/interpreted the Order of Hon. CERC dated 11<sup>th</sup> March, 2010 in Pet. no. 308 of 2009 and judgements dated 23.05.2012 & 17.11.2015 passed by Hon. APTEL for Appeal nos. 145 of 2011 & 220 of 2014 respectively. These Orders have no direct nexus with this case, hence denied.**

**Petitioner’s response:**

*That the contents of Para 15 are wrong and denied and the same has been dealt in detail in Para 7 and 7.1 of the preliminary submission and is therefore not repeated for the sake of brevity.*

**MPPMCL Comment:**

16. **That, the contentions made in grounds are false, fictitious and baseless, hence denied. This Hon’ble Commission has rightly passed the order dated 03.06.2016 in Petition No.70/2015. Hence, the petitioner is not entitled to any relief. It is also pertinent to mention that the per MW cost of the Plant is on very high side and not in line with other plants of similar capacity.**
17. **That, in view of the aforesaid fact and circumstances of the case, the petitioner is not entitled to any relief, hence, the instant review petition filed by the petitioner is liable to be dismissed summarily.**

**Petitioner’s response:**

*That the contents of Para 16 and 17 are wrong and denied and has been dealt in detail in the preliminary submissions and is therefore not repeated herein for the sake of brevity.*

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