

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

5th Floor, "Metro Plaza", Bittan Market, Bhopal - 462016



Petition No. 9 of 2022

PRESENT:

S.P.S. Parihar, Chairman

Mukul Dhariwal, Member

Gopal Srivastava, Member (Law)

IN THE MATTER OF:

In the matter of Petition under Section 86(1)(f) of the Electricity Act, read with Regulation 57 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 for declaration and consequential relief allowing sharing of net savings of interest between the Petitioner and the MPPMCL in the ratio of 50:50 pursuant to tariff order dated 3.5.2021 in P No 43 of 2020 passed by the Commission.

Jaiprakash Power Ventures Limited
(Unit: Jaypee Nigrie Thermal Power Plant),
JA House, 63, Basant Lok, Vasant Vihar,
New Delhi - 110057

Petitioner

//Versus//

- (1) **M.P. Power Management Company Ltd.,**
Block No. 15, Shakti Bhawan, Jabalpur – 482008
- (2) **M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.**
Block No. 7, Shakti Bhawan, Jabalpur – 482008
- (3) **M. P. Madhya Kshetra Vidyut Vitaran Co. Ltd.**
Nishtha Parisar, Govindpura, Bhopal – 462023
- (4) **M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.**
GPH Compound, Pologround, Indore – 452001

- Respondents

ORDER
(Date of Order: 14th July' 2022)

Shri Sakya Singh Choudhary, Advocate and Shri Ajeya Kumar Tripathi appeared on behalf of the petitioner.

Shri Alok Shankar, Advocate and Shri Nitin Kumar Khatri appeared on behalf of Respondent No. 1.

1. M/s Jaiprakash Power Ventures Limited (hereinafter called "JPVL" or "petitioner") has filed this petition seeking sharing of benefits in terms of net savings on interest arising due to restructuring of Loan between the Petitioner and the Respondent No. 1 in the ratio of 50:50 pursuant to pursuant to tariff order dated 03.05.2021 in the Petition no 43 of 2020 passed by the Commission. The subject petition is filed under Section 86(1)(f) of the Electricity Act, read with Regulation 57 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020.
2. The petitioner (JPVL) is an independent Power Producer having a coal based thermal power plant with installed capacity of 2x660 MW at Nigrie, District Singrauli, Unit No. 1 and Unit No. 2 of the petitioner's power plant were declared under commercial operation on 3rd September' 2014 and 21st February' 2015, respectively.
3. The petitioner (M/s JPVL) executed long term Power Purchase Agreement (PPA) with MP Power Management Company Ltd., (hereinafter called "MPPMCL" or "Respondent No. 1") on 5th January' 2011 for supply of 30% power of the installed capacity of the Project at regulated tariff determined by the Commission. The petitioner has also entered into another PPA on 6th September' 2011 with Government of Madhya Pradesh for supply of 7.5% of net generated power at variable cost only determined by the Commission.
4. Madhya Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission or MPERC") issued MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as "the Regulations" 2020) for the new control period i.e. FY 2019-20 to FY 2023-24. These Regulations were notified in the gazette of Madhya Pradesh on 20th February' 2020.
5. Earlier, the petitioner had filed petition No. 43 of 2020 for determination of Multi-year tariff in respect of its 2X660 MW Thermal Power Station at Nigrie for the control period from 1st April' 2019 to 31st March' 2024 under MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020. Vide order dated 3rd May' 2021, the Commission determined the MYT for the control period FY 2019-20 to FY 2023-24

based on the principle and methodology specified under the aforesaid Regulations.

6. The issue involved in the subject petition is sharing of benefit in the ratio of 50:50 between the petitioner i.e. the Generator and the Respondent No. 1 i.e. procurer in terms of the Regulation 57.1 of the MPERC Tariff Regulations, 2020 due to net saving of interest in the loan component, arising from restructuring/refinancing of loan undertaken by the petitioner for its Nigrie thermal power station.
7. Vide letter dated 22.06.2021, the petitioner requested to Respondent No. 1 to share the benefit of loan restructuring / refinancing of Rs. 83.13 Crores in accordance to the Regulation 57 of the Regulations, 2020. However, MPPMCL vide letter dated 27.10.2021 denied the request for sharing of net benefits on the ground that the Commission has not passed any specific direction to this effect in the MYT Order. Such denial to share consequential benefits due to net saving in interest arising out of restructuring/refinancing of petitioner's loan, gives rise to a dispute between the Generator and the beneficiary in terms of mechanism stipulated under Regulation 57.2 of the MPERC Tariff Regulations, 2020.
8. The petitioner broadly submitted the following in the subject petition:
 - 1) *The present petition is being filed by the petitioner under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 57 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 for declaration and consequential relief allowing sharing of net savings of interest between the Petitioner and the Respondents in the ratio of 50:50 pursuant to tariff order dated 03.05.2021 in petition no. 43 of 2020 passed by this Commission in regard to determination of generation tariff under the Multi-year tariff framework in respect of its 2x660 MW super critical coal based thermal power station at Nigrie, District Singrauli, Madhya Pradesh for the control period from FY 20 to FY 24.*
 - 2) *The submissions made by the petitioner in the Petition for determination of Multi Year Tariff ("MYT") for the Control Period comprising FY20 to FY 24 are set out in extenso therein and are not repeated herein again for the sake of avoiding prolixity. The Petitioner also craves leave of the Commission to refer to and rely upon the pleadings and submissions made in petition no. 43 of 2020 at the time of hearing of the instant application, if necessary.*
 - 3) *JPVL had worked out the weighted average rate of interest for the purpose of the MYT petition @11.78% based on actual loan portfolio as on 31.03.2019. This Commission has ultimately allowed rate of interest @9.5% that was provided in the Framework Agreement entered into by JPVL with lenders for restructuring of loan.*

The relevant portion of the order is set out below:

“63. On perusal of the above submission, the Commission observed the following:

.....

iii. In April, 2019, a resolution plan was accepted by the Lenders including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of the petitioner’s company are stabilized and also restating the repayment schedule of outstanding loan subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines.

iv. The resolution plan on completion of all CP’s have become effective from December, 2019.

64. The petitioner has submitted that the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of True Up Petition for FY 2017-18 and FY 2018-19. However, the petitioner is actually paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% is provisionally considered in this order. The petitioner is directed to file actual weighted average rate of interest in the true up petitions for respective year of the control period.

65. Considering the above, the interest on loan capital has been worked out during the control period as under:

i. Opening loan balance as on 01.04.2019 is considered same as admitted by the Commission as on as on 31.03.2019 in the last true-up order for FY 2018-19.

ii. No loan addition/deduction of loan is considered during the control period;

iii. Normative repayment equal to depreciation in accordance to Regulations is considered;

iv. Weighted average rate of interest @ 9.5% based on the re-structuring debt plan.

v. The aforesaid weighted average rate of interest shall be subject to true-up on actual weighted average rate of interest for each year of the control period”.

4) The petitioner had considered 11.78% for tariff for the period since April 2019, which stood liable for adjustment against 9.5% allowed under the Tariff Order. It is pointed out that a generating Company is required to share the benefit from refinancing or restructuring of loan, in terms of net savings of interest with its beneficiaries in the ratio of 50:50 under Regulation 57 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020.

- 5) *It is submitted that the petitioner, in terms of letter dated 22.06.2021 and subsequent letter dated 16.08.2021 to the Respondent No 1 submitted a claim of Rs 83.13 crores in terms of regulation 57 of the Tariff regulations 2020 as laid down above.*
- 6) *It is further submitted that in response to the aforesaid letters dated 22.06.2021 and 16.08.2021, the Respondent No 1 asked the petitioner to submit certain documents vide email dated 16.08.2021. The Respondent's email was duly replied by the petitioner vide email dated 31.08.2021.*
- 7) *However, the Respondent No 1 vide its letter dated 27.10.2021 rejected this claim of 83.13 crores on the ground that the same was not prayed for in petition no. 43 of 2020 and therefore not allowed by the Commission.*
- 8) *It is further submitted that Article 11 of the framework agreement dated 18.04.2019 lays down the Right to Recompense as given herein below:*

"11. RIGHT TO RECOMPENSE

11.1 *The Borrower acknowledges and admits that the Lenders have made sacrifices in granting reliefs and concessions to the Borrower by, inter alia, reducing the rate of interest, waiver of default and/or penal interest, and agreeing to convert all or part of the Convertible Debt into CCPS.*

11.2 *The Borrower further acknowledges and agrees that if in the opinion of the Lenders, the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms.*

Provided that the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate and/or on account of any changes to the repayment schedule.

11.3 *Any determination by the Lenders in this relation shall be binding on the Borrower."*

The resolution plan which was accepted by the lenders in April 2019 and which became effective from December 2019 on completion of all CP's included conversion of part debt into CCPS and payment of interest @9.5% per annum and also restating the repayment schedule of outstanding loan subject to lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines.

- 9) *It is respectfully submitted that under the Tariff Regulations the Petitioner is required to share the benefits from refinancing or restructuring of loan, in terms of net savings of interest with its beneficiaries in the ratio of 50:50. Here an amount of Rs 83.13 Crs. is recoverable/receivable by the Petitioner from the Respondent No. 1 on account of saving in such interest.*
- 10) *It is further submitted that the restructuring of loan is subject to the invocation of Right to Recompense as laid down at Article 11 of the framework agreement dated 18.04.2019 and restated at point 8 herein above. The lender's right to recompense is an intrinsic and inextricable part of the entire restructuring and therefore, is a part of the cost of restructuring. Further, as and when the Right to Recompense is invoked by the lenders, the same will be claimed in tariff from the Respondent.*
- 11) *In light of the above, the rejection of the claim raised by the petitioner under Regulation 57 is not tenable in law. Petitioner prays that receivables of Rs 83.13 Crs be allowed from the Respondents on account of sharing the net savings of interest of Rs 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020 in the ratio of 50:50 under Regulation 57 of the MPERC Tariff Regulation. That the Commission is further requested to direct that as and when the Right to Recompense is invoked by the lenders, the same will be claimed in tariff from the Respondents.*
- 12) *That the Respondent No 1 by its letter dated 27.10.2021 has rejected the claim of the petitioner for adjustment of Rs. 83.13 Crs towards sharing of 50% of the net savings of interest of Rs. 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020. Such sharing has been mandated under Regulation 57 of the MPERC Tariff Regulations. This rejection has given rise to a dispute between the petitioner and the Respondent on behalf of the Discoms. Accordingly, the present petition has been filed u/s 86(1)(f) of the Electricity Act read with Regulation 57 of the MPERC Tariff Regulations.*
9. With the above submissions, the petitioner prayed the following in the subject petition:
- a) *Declare that the petitioner and the Respondent No. 1 are entitled to share the net savings of interest of Rs. 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020 in the ratio of 50:50 under Regulation 57 of the MPERC Tariff Regulations;*
- b) *Direct the Respondent No. 1 to share the net savings of interest of Rs. 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020 in the*

ratio of 50:50 under Regulation 57 of the MPERC Tariff Regulations and consequently adjust an amount of Rs. 83.13 Crs in favour of petitioner towards 50% share of such amount of saving;

c) Declare that the sharing of benefit under the resolution plan dated 18.04.2019 is intrinsically linked and subject to Right to Recompense reserved by the banks/financial institutions and the consequences thereof.

10. Subject petition was admitted in motion hearing held on 29.03.2022. Vide daily order dated 30.03.2022, the petitioner was directed to serve copy of the petition to respondents within seven days. The respondents were directed to file response on the subject petition within two weeks, thereafter. The petitioner was asked to file rejoinder within a week, thereafter.
11. By affidavit dated 29th April' 2022, the Respondent No. 1 (MPPMCL) filed reply to the subject petition. During the hearing held on 10.5.2022, the petitioner sought one week time for filing rejoinder to the reply filed by the Respondent No. 1. The petitioner was directed to file rejoinder within a week with a copy of the aforesaid rejoinder to be served on the respondents. The case was listed for arguments on 31.5.2022.
12. By affidavit dated 23rd May' 2022, the petitioner filed rejoinder to the reply filed by the Respondent No. 1. During the hearing held on 31.5.2022, the petitioner and Respondent No. 1 concluded their arguments and sought one week's time to file a final written submission. The Commission considered their request and directed them to file written submissions accordingly. With the above direction, the case was reserved for order.
13. Having heard the petitioner and the respondents and on considering their written submissions, the Commission has noted that the main issue is regarding sharing of benefits in the ratio of 50:50 between the petitioner, i.e., the Generator and the Respondent No.1 , i.e., Madhya Pradesh Power Management Company Limited being the Procurer in terms of Regulation 57.1 of the MPERC Tariff Regulations, 2020 due to net saving of interest in the loan component, arising from restructuring/refinancing of loan undertaken by the said petitioner.

Submissions by the Parties:

14. By affidavit dated 29th April' 2022, the Respondent No. 1 (MPPMCL) broadly submitted the following in reply to the subject petition:

1) *The present Petition has been filed by Jaiprakash Power Ventures Ltd, a generating*

company which owns and operates the Nigrie Thermal Generating Station. The petition has been filed inter alia praying as under:

Declare that the petitioner and the Respondent No. 1 are entitled to share the net savings of interest of Rs. 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020 in the ratio of 50:50 under Regulation 57 of the MPERC Tariff Regulations;

Direct the Respondent No. 1 to share the net savings of interest of Rs. 166.26 Crs pursuant to tariff order dated 03.05.2021 in Petition No. 43 of 2020 in the ratio of 50:50 under Regulation 57 of the MPERC Tariff Regulations and consequently adjust an amount of Rs. 83.13 Crs in favour of Petitioner towards 50% share of such amount of saving;

Declare that the sharing of benefit under the resolution plan dated 18.04.2019 is intrinsically linked and subject to Right to Recompense reserved by the banks/financial institutions and the consequences thereof;

- 2) It appears that the Petitioner has completely misunderstood the intent of Regulation 57 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as "2020 Regulations"). The 2020 Regulations prescribes that in the event of refinancing of a loan benefit of lower interest accruing shall be shared between the Generator and the procurer in the ratio of 50:50. In other words, if in the tariff order the Commission had considered an interest rate of say 11% to compute the interest on Loan Capital and the generating company thereafter manages to refinance the loan to reduce the actual amount incurred towards interest on Loan Capital, then at the benefit of entire reduction would not be passed on to the procurer. The generator shall be entitled to 50% of the benefit and also recover cost of such refinancing.*
- 3) In the instant matter, this Commission allowed interest on loan capital at the rate of 9.5% was allowed in the Tariff Order dated 03.05.2021 in Petition No 43 of 2020. The Petitioner's case is that the restructures loans which was effective from December 2019 has resulted in interest saving to the procurer and the same is required to be shared between the Procurer and the Generator in accordance with Regulation 57 of the 2020 Regulations. It is submitted that saving can arise only if Tariff Order was issued allowing a higher rate of Interest on Loan Capital and thereafter the generator refinanced to lower the rate of interest. In such cases, in terms of Regulation 57 on true-up not the entire interest payable shall be trued up and the generator shall be entitled to keep 50% of the interest saved after allowing for the cost of such refinancing. Since the interest rate considered for tariff*

determination was 9.5% there is no saving which is accruing to the Respondents which is liable to be shared in terms of Regulation 57 of the 2020 Regulations.

- 4) It is submitted Regulation 57 of the 2020 Tariff Regulation shall never result in actual cash being paid to the generating company but reduce recovery from the generator in the event of true-up of interest of loan capital. Further, it can only happen after the generating company has actually reduced the tariff burden on the procurer by refinancing Loan Capital after tariff determination on a higher rate of interest.*
- 5) Regulation 57 of the 2020 Regulations is intended to incentivise the Generator to lower the interest rate from what was considered in the tariff order. It is not intended to allow additional monies to the generating company where no corresponding benefit is accruing to the consumers through the cost of power being lowered. Admittedly the interest applicable to the generating station for the present control period i.e. FY 2019-20 to FY 2023-24 is 9.5%. Accordingly, in terms of Regulation 33 and 36 of the 2020 Regulations the Tariff Order was passed taking the actual interest rate being charged by the Lenders.*
- 6) The Tariff Order allowed interest rate at 9.5% in accordance with the provisions of the Tariff Regulations. Any grievance against the correctness or the tariff order would have to adjudicated in appropriate proceedings and for the purposes of this proceeding the Tariff Order would have to be assumed to be correct and binding.*
- 7) Regulation 57 comes into picture in the event Tariff Order allowed a higher interest on loan capital and the generating company as a result of refinancing reduced the interest liability. In the instant case interest rate considered in the Tariff order is @ 9.5% which is the actual interest rate being incurred by the petitioner. It is submitted that the entitlement of the generator would have to be in terms of the Tariff Order issued or directly in terms of the Regulations. The claim for sharing of benefit is not as per 2020 Regulations and therefore was denied by the answering Respondent.*
- 8) It is submitted that the finances of Discoms are entirely and the answering respondent No. 1 cannot incur additional expenses that what has been allowed in the Tariff Order. In this case, the tariff order allowed interest on loan capital @ 9.5% which is the actual interest rate payable by the petitioner. Therefore, the answering respondent No. 1 rightly refused to share notional benefit likely to accrue.*
- 9) The sharing of benefit is always contingent on prior actual saving of interest on loan capital. It is submitted that 'saving' can only happen when the allowed interest on loan capital rate is lower than the actual interest incurred by the generating company. In the present case actual interest allowed in the tariff order is being*

claimed as a benefit to the Discoms which is clearly not the intent of the Regulations.

- 10) *The rights of the lenders as agreed between the generator and its lenders are passed on to the Procurers only in terms of the applicable regulations. There cannot be any automatic claim of the Petitioner generating company to recover from the procurer any amounts paid to the lenders.*
 - 11) *The Petitioner has failed to demonstrate how the provision of Regulation 57 have been triggered. There is no question of sharing benefit when the tariff order is based on lower interest rate, which is now being alleged as subject matter of passing on the benefit.*
 - 12) *The alleged dispute between the Parties is based on entirely misconceived interpretation of Regulation 57 of the 2020 Regulations and the petition is without merit and liable to be dismissed. It is important to note that in terms of Section 62(6) of the Electricity Act a generating company cannot recover any amount over and above the tariff determined by the Commission.*
15. In response to the above, the petitioner by affidavit dated 23.5.2022 submitted the following:
- 1) *The petitioner at the outset denies and disputes all contentions of Respondent no. 1/MPPMCL that are contrary to the Petition and except what are matters of record. Any omission on the part of the Petitioner to deal with any specific contention of Respondent no. 1/MPPMCL should not be considered as an admission thereof.*
 - 2) *Under Regulation 57 of the Tariff Regulations, a generating company is entitled to a part of the benefit derived from refinancing or restructuring of loan, in terms of net savings on interest after accounting for cost associated with the refinancing or restructuring of the loan. It is respectfully submitted that the Petition 09 of 2022 filed before this Hon'ble Commission is in compliance with the MPERC Tariff Regulations and applicable laws, and the Reply filed by the Respondent No. 1 has no merit and deserves to be rejected. Respondent No. 1 has made submissions in its Reply premised on misconstrued reading and understanding of the facts and law.*
 - 3) *The reading of the provision sought to be promulgated by the Respondent is ex facie bad and in complete contrast to the express language of the provision, and therefore is not tenable in law.*
 - 4) *In fact, the contention of MPPMCL that Regulation 57 of the MPERC Tariff Regulations, 2020 is applicable only in event the Generator reduces/lowers the rate*

of interest on loan capital than what has been allowed in MYT Order, stands negated in light of the fact that this Hon'ble Commission has categorically recorded the sincere efforts made by the Petitioner in refinancing/restructuring of loan, which resulted in lowering of rate of interest to 9.5% on the loan capital as against the applicable/documentated rate of interest of 11.78% payable to the lenders. The relevant extract of the MYT Order dated 03.05.2021 passed in Petition No. 43 of 2020 is reproduced hereinbelow:

“63. On perusal of the above submission, the commission observed the following:

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- v. Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. **Therefore, to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realise tariff based at document rate of interest and pay only @ 9.5% p.a. for the time being, subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.**”

- 5) Even otherwise, on a bare perusal of Regulation 57.1, it is abundantly clear that the sharing of benefits arising of restructuring/refinancing of loan is an independent exercise which is to be carried out inter-se between the Generator and the Procurer. It is not contingent upon being related to the MYT Order itself. Such an interpretation would render Regulation 57.1 otiose. In fact the Commission while specifying the Regulation has consciously chosen the phrase ‘Net saving’ thereby incentivizing all generators to ensure that refinancing is achieved in the overall interest of all stakeholders. It is trite law that Statute must be read in its plain simple terms and no words can be imposed to render a statute otiose. In this regard reliance is placed on a Three Judge Bench judgment passed by the Hon'ble Supreme Court in the case titled as **Gurudevatta VKSSS Maryadit and others v. State of Maharashtra and others**” 2001 (4) SCC 534, wherein it has been held as follows:

“5. **Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning.**

It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law given”

- 6) *Therefore, with great respect and humility it is submitted that Regulation 57.1 is not contingent/dependent upon any order being passed by this Hon’ble Commission. Furthermore, the said Regulation in no manner prescribes any requirement for approaching this Commission in order to claim the benefits of restructuring/refinancing of loan. Had that been the case there would have been no requirement to provide for a mechanism for resolution of dispute pertaining to sharing of benefit under Regulation 57.2 of the MPERC Tariff Regulations, 2020.*
- 7) *Thus, there is no requirement for passing any order by this Commission allowing the claim for sharing of benefit between the Generator and Procurer. The exercise of sharing of benefit due to loan restructuring is to be undertaken by the parties inter-se and the indulgence of this Hon’ble Commission can only be sought by the affected Party in case any dispute arises in this regard.*
- 8) *The petitioner submits that the requirement of Regulation 57 is (i) re-financing or restructuring of loan; and (ii) net savings on interest on account of such re-financing or restructuring of loan. It is respectfully submitted that interest on loan being recoverable based on the weighted average of interest calculated on the basis of the actual loan portfolio, benefit would ultimately ensure from re-financing or restructuring of loan, where the rates of interest were higher before such re-financing or restructuring, as the Respondent and consequently, the consumer, would have a lower burden on account of interest of loan. The provision does not say that such benefit is to be derived or shared only at the true-up stage. To so contend, expands the express language of the regulation.*
- 9) *Therefore, in light of the aforesaid submissions, the contentions of MPPMCL that Regulation 57 of the MPERC Tariff Regulations, 2020 is applicable only in the event the Generator manages to reduce the rate of interest on loan capital that what has been allowed in the MYT Order is incorrect and devoid of any merit.*
- 10) *It is denied that there is no benefit accruing to the consumers on re-financing or restructuring of loan. As explained herein above, re-financing or restructuring of loan at any stage lowering the interest rates would enure to the benefit of the consumers.*
- 11) *In any case and without prejudice to the submissions made herein above, it is submitted that the financial restructuring by the Petitioner came into effect after the*

commencement of the MYT period, being 01.04.2019. The Rate of Interest was reduced from 11.78% to 9.5% due to restructuring of loans by lenders on the request of JPVL. The reduction in the Rate of Interest is due to restructuring not because of lowering of PLR/MCLR on its own, since as and when the “Right to Recompense” clause of Framework Agreement is invoked by the Lenders they will recover the amount forgone by them at this stage. Thus, the lenders’ right to recompense is intrinsic and an inextricable part of the entire restructuring and therefore, as and when the “Right to Recompense” is invoked by the lenders, the same will be claimed in tariff from the Respondent. Therefore, the reduction in the interest rate has to be treated as having accrued during the MYT period and the sharing of such benefit has to be given effect to accordingly.

16. Having heard the arguments at length placed by the petitioner and Respondent No.1 on 31.5.2022, the parties were allowed to file their final written submissions within a weeks’ time. Accordingly, the petitioner and Respondent No.1 filed their written submission on 06.06.2012 and 07.06.2022, respectively.
17. The petitioner by affidavit dated 06.06.2022 submitted the following in its final written submission:
 - 1) *The petitioner has filed the present petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 57 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 for declaration and consequential relief allowing sharing of net savings of interest between the petitioner and the Respondent in the ratio of 50:50 pursuant to restructuring of loans for its 2x660 MW super critical coal based thermal power station at Nigrie, District Singrauli, Madhya Pradesh. The contents of the petition, and the rejoinder filed by the petitioner may be read as forming part of the present Written Submissions.*
 - 2) *The petitioner had worked out the weighted average rate of interest for the purpose of the MYT petition @11.78% based on actual loan portfolio as on 31.03.2019. This Hon’ble Commission has ultimately allowed rate of interest @9.5% that was provided in the Framework Agreement entered into by the petitioner with lenders for restructuring of loan. The financial restructuring by JPVL came into effect after the commencement of the present MYT period, i.e. after 01.04.2019. Therefore, the reduction in the interest rate has to be treated as having accrued during the MYT period and the sharing of such benefit has to be given effect to accordingly. Such restructuring of loan is subject to the invocation of right to recompense clause as per Article 11.1 of the Framework Agreement by the Financial Institution(s). The Lender’s Right to Recompense is an intrinsic and inextricable part of the entire*

restructuring and therefore, is part of the cost of restructuring. As and when the Right to Recompense is invoked by the lenders, the same will be claimed in tariff.

- 3) It is submitted that as per Regulation 57 of the MPERC Generation Tariff Regulations, 2020, if there is restructuring of debt of a generating company then the net savings on interest that arises out of such restructuring of debt is required to be shared between the generating company and the distribution company in the ratio of 50:50.*
- 4) In the present case, dispute has arisen since the Respondent has refused to pass on 50% of the net savings on interest accrued on account of the restructuring on the ground that no order of sharing has been passed by the Hon'ble Commission in its tariff order. Subsequently, the Respondent has modified its stand in the present proceedings before the Commission by contending that no benefit has accrued out of the restructuring since the tariff computed under the MYT Order dated 03.05.2021 already includes the reduced rate of tariff. As per the Respondent, sharing of benefit can only be allowed in true-up where the actual expenditure is less than what was allowed under the tariff Order.*
- 5) Further, the Respondent has raised an objection that 'in terms of Regulation 57 on true up not the entire interest payable shall be true up and the generator shall be entitled to keep 50% of the interest saved after allowing for the cost of such refinancing'. It is submitted that such objection is misconceived and incorrect. Regulation 57 is part of Chapter 11 Sharing of Benefits of the Tariff Regulations 2020. Regulation 56 provides for sharing of gains due to variation in norms, and Regulation 58 provides for sharing of non-tariff income. Both Regulation 56 and 58 provides for gains and non tariff net income respectively, on annual basis, based on actual performance. In contrast, Regulation 57 does not provide for sharing of net savings on interest on annual basis nor based on actual performance. Therefore, Regulation 57 has to be read based on its plain language and cannot be related to Regulation 56 and 58. It is submitted that the net savings on interest on loan accrues from the date such lower interest is levied till the entire term of the loan, or any other date as the lenders may decide. The reduction in interest rate has directly resulted in reduction in tariff, the benefit of which has since been passed on to the procurer, therefore, the petitioner is entitled to 50% of the benefit. Even otherwise, the net savings on interest is to be distributed irrespective of what impact it may have on tariff. The distribution of benefit has no correlation with tariff. The benefit accrues and retains from the date of such refinancing, and for the entire period and the same has not been subjected to true-up under the Tariff Regulations. Even*

otherwise and without prejudice to the above, it is submitted that if Respondent's arguments were to be accepted, it would result in unfair treatment of petitioner.

- 6) It is submitted that the admitted benefit accrued from the restructuring/ refinancing of the loans, deserves to be shared inter-se between the beneficiaries. The distribution companies cannot be allowed to solely benefit from the same, in light of Regulation 57.*
- 7) The petitioner wrote two letters to the Respondent dated 22.06.2021 and 16.08.2021 requesting the Respondent to adjust the amount of Rs. 5.11 crores (net payable amount) from the monthly bills (in six equal installments), however, the Respondent has ignored such requests of the petitioner. It is submitted that in view of the above, the highhanded conduct of the Respondent is contrary to the provisions of law and must not be allowed. It is submitted that the petitioner is entitled to the payment of the Rs. 5.11 crores, with carrying cost from the date of reduction of rate of interest.*

It is for the aforementioned reasons that the present Petition deserves to be allowed.

18. The Respondent No. 1 (MPPMCL) vide letter dated 7.6.2022 filed final written submission broadly submitted the following:

- 1) It is evident that the present petition has been completely misunderstood the intent of Regulation 57 of the 2020 Regulations. The 2020 Regulations prescribes that in the event of refinancing of a loan benefit of lower interest accruing shall be shared between the Generator and the procurer in the ratio of 50:50. In other words, if in the tariff order the Commission had considered an interest rate of say 11% to compute the interest on Loan Capital and the generating company thereafter manages to refinance the loan to reduce the actual amount incurred towards interest on Loan Capital, then at the benefit of entire reduction would not be passed on to the procurer. The generator shall be entitled to 50% of the benefit and also recover cost of such refinancing.*
- 2) The submission of the petitioner in both the matters is that as a result of loan restructuring, the interest on long term loan of the petitioner for both the generating stations has been reduced to 9.5% from a higher interest in the previous tariff period. This reduction in interest liability is 'saving' in terms of Regulation 57 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 {RG-(IV) of 2020} (hereinafter referred to as "2020 Regulations") and such 'saving'*

is required to be shared with the generating company in the ratio specified in Regulation 57.

- 3) At the outset it is submitted that it is evident that the petitioner is trying to recover an amount more than the tariff determined by the Commission which is not permissible under Section 62(6) of the Electricity Act, 2003 ("Act"). Such sharing shall not result in any saving but an additional burden on the procurer and consumers in the State. It is also not clear how MPPMCL (whose entire revenue is regulated) is required to fund this additional liability of sharing alleged benefit that has accrued to MPPMCL.*
- 4) It is submitted that Section 61 of the Act mandates that the Tariff Regulations framed by electricity regulatory commission must ensure that interests of consumers are protected and at the same time the cost of generation is recovered in a reasonable manner. Accordingly, it is no longer res integra that in cost plus tariff determination under Section 62 of the Act, the lower of normative or actual cost is taken into account while determining tariff of the generating station. In the event Tariff determined by a regulatory commission for tariff block in accordance with extant tariff regulations is lower than the tariff in the previous tariff block due to reduction in loan capital and/or reduction in interest rate the same cannot be a basis to attract the provisions of Regulations mandating sharing of savings as a result of the reduced interest rate.*
- 5) It is submitted that in the event the submission of the petitioner is accepted the working of the Regulation 57 of the 2020 Regulations would become impossible and extremely onerous on the procurers. The submission of the petitioner is that a higher rate of interest (12.25% for Bina and 11.78% of Nigrie) applied in the previous tariff block (FY 2014-15 to FY 2019-20) and reduced as a result of restructuring to 9.5% in the present tariff block (FY 2019-20 to FY 2023-24) has resulted in a year on year saving. It is submitted that in the event the above argument is accepted and petitioner are deemed to entitled to share 'saving on interest' from the going forward tariff blocks including the present tariff block then its not clear whether sharing has to continue for the life of the plant. The above working is clearly not the intent of the Regulations. In the event, tariff determined under the extant regulations considered interest as say Rs.100 Crore in each of the years and the generator refinances the loan and reduces the actual interest paid in each of the financial year to say Rs.80 Crore, then at the time of truing up entire $(100 \times 5) - (80 \times 5) = 100$ Crore would not be trued-up and passed on to the beneficiary but only 50% of the above would be trued-up and cost of refinancing shall also be allowed to be generator.*

- 6) *Regulation 57 of the 2020 Regulations is intended to incentivise the Generator to lower the interest rate from what was considered in the tariff order. It is not intended to allow additional monies to the generating company where no corresponding benefit is accruing to the consumers through the cost of power being lowered from that determined under the original tariff order.*
- 7) *It is submitted that the entire exercise must relate to a tariff block i.e. consideration of higher interest rate in tariff determination, refinancing and consequent lowering of actual interest paid and subsequent true-up to find savings in interest must have happened in a tariff block. In the event 'saving of interest' is interpreted to mean lowering of interest payable in a tariff block in comparison to a previous tariff block the same shall result in generating companies being entitled to benefit of a restructuring of loan for entire life of the generating station. In the event a generating station which initially availed loans at a higher interest rate, would claim 'saving of interest', for the life of the plant thereafter resulting in not just enrichment to the generating company but also lead to absolutely unnecessary financial burden on the consumers of power.*
- 8) *Further, in the event the interpretation of the petitioner is accepted then the cost based tariff determination shall have no meaning and historic data of interest shall have to be applied for the life of the generating station.*
- 9) *In the instant matter, this Commission allowed interest on loan capital at the rate of 9.5% in the Tariff Orders for Nigrie and Bina Stations. The petitioner's case is that the restructured loans have resulted in interest saving to the procurer and the same is required to be shared between the Procurer and the Generator in accordance with Regulation 57 of the 2020 Regulations. It is submitted that saving can arise only if Tariff Order was issued allowing a higher rate of Interest on Loan Capital and thereafter the generator refinanced to lower the rate of interest. In such cases, in terms of Regulation 57 on true-up not the entire interest payable shall be trued up and the generator shall be entitled to keep 50% of the interest saved after allowing for the cost of such refinancing. Since the interest rate considered for tariff determination was 9.5% there is no saving which is accruing to the Respondents which is liable to be shared in terms of Regulation 57 of the 2020 Regulations.*
- 10) *It is submitted Regulation 57 of the 2020 Tariff Regulation shall never result in actual cash being paid to the generating company but reduce recovery from the generator in the event of true-up of interest of loan capital. Further, it can only happen after the generating company has actually reduced the tariff burden (by reducing the interest on loan capital) on the procurer by refinancing Loan Capital after tariff*

determination on a higher rate of interest in a tariff block regulated by one set of tariff regulations.

- 11) *Regulation 57 comes into picture in the event Tariff Order allowed a higher interest on loan capital and the generating company as a result of refinancing reduced the interest liability. In the instant case interest rate considered in the Tariff order is @ 9.5% which is the actual interest rate being incurred by the petitioner. It is submitted that the entitlement of the generator would have to be in terms of the Tariff Order issued or directly in terms of the Regulations. The claim for sharing of benefit in the instant petition is not as per 2020 Regulations and therefore the present petitions are liable to be dismissed.*

Commission's Observations and findings:

19. The petitioner M/s JPVL has sought sharing of benefit in the ratio of 50:50 between the petitioner and the Respondent No. 1 ("MPPMCL") in terms of Regulation 57.1 of the MPERC Tariff Regulations, 2020 due to net saving of interest in the loan component, arising out of restructuring/refinancing of loan undertaken by the petitioner for its Nigrie thermal power station.
20. With regard to restructuring of loan, the Commission has noted the following:
- i. The operation of the petitioner's company was unsatisfactory from FY 2015-16 onwards and petitioner was unable to pay the dues to its Lenders due to continued unsatisfactory operations of its one of the thermal power stations i.e. Nigrie Thermal Power Plant. Due to loss in Nigrie power station the petitioner had not been able to pay dues to its lenders. The said situation required re-structuring of loan of Petitioner and the lenders-initiated Resolution Plan/Debt Restructuring.
 - ii. The repayment schedule of outstanding loan was reinstated, subject to having **right to recompense** for sacrifice made by them in accordance with RBI guidelines.
 - iii. In April 2019, a resolution plan was accepted by Lenders including conversion of part debt into CCPS (compulsory convertible preferential share) with payment of interest @ 9.5% p.a. The aforesaid resolution plan was made effective from Dec. 2019.
 - iv. Considering the difficulty being faced by petitioner, lenders granted reliefs and concessions to the Petitioner by, *inter alia*, reducing the rate of interest, and agreeing to convert part of the Convertible debt into CCPS. Further, petitioner has undertaken that in case the cash flow of petitioner improves in the future, the lenders shall have the right to receive recompense for the sacrifices made by them.
21. In terms of Regulation 57.1 of MPERC Tariff Regulations 2020, the benefit arising out of the loan restructuring / refinancing is to be shared between the petitioner and the

Respondent in the ratio of 50:50, after accounting for the cost associated with refinancing or restructuring of loan.

22. Vide letters dated 22.06.2021 and 16.08.2021, the petitioner requested the Respondent No. 1 to share the benefit on account of loan restructuring / refinancing amounting to Rs. 83.13 Crore. In response to the above letters, vide letter dated 27.10.2021, Respondent No. 1 denied the sharing of benefit of loan restructuring / refinancing with the petitioner on the ground that the Commission in the Multi-year Tariff Order has not allowed the cost of refinancing / restructuring and no saving reflected with reference to MYT Order and Respondent No. 1 on these grounds has not accepted claim of Rs. 83.13 Crore of the petitioner.
23. The Respondent No. 1 has contended that the saving can arise only if in the Tariff Order a higher rate of Interest on Loan Capital was allowed and thereafter, the generator refinanced to lower the rate of interest. Since the interest rate considered for tariff determination was 9.5%; so there is no saving which is accruing to the Respondents and liable to be shared in terms of Regulation 57 of the 2020 Regulations.
24. Let us look into the relevant provisions under MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020 applicable in the subject matter:
- i. With regard to interest on loan, Regulation 36 of the MPERC 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 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.*

- ii. Aforesaid Regulation 36.4 provides that the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio. Regarding sharing of saving in interest due to re-financing or restructuring of loan, Regulation 57 of the MPERC Tariff Regulations, 2020 provides as under:

57.1 *If re-financing or restructuring of loan by the generating company results in net savings on interest after accounting for cost associated with such refinancing or restructuring, the same shall be shared between the beneficiaries and the generating company in the ratio of 50:50.*

57.2 *In case of dispute, any of the parties may make an application in accordance with the MPERC (Conduct of Business) Regulations, 2004, as amended from time to time:*

Provided that the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of any dispute arising out of re-financing of loan.

25. In the subject matter, as contained by the petitioner, Respondent No. 1 has denied sharing of benefit earned due to restructuring / refinancing of loan claimed by the petitioner. Therefore, the petitioner has approached the Commission under Section 86(1)(f) of the Electricity Act, 2003.

26. Respondent No. 1 in its response has broadly placed the following grounds for not sharing net benefit on interest due to restructuring of loan:

- i. The Commission allowed interest on loan capital at the rate of 9.5% in the Tariff Order dated 03.05.2021 in Petition No 43 of 2020. Saving can arise only if Tariff Order was issued allowing a higher rate of Interest on Loan Capital and thereafter, the generator refinanced to lower the rate of interest. In such cases, in terms of

- Regulation 57, interest payable shall be trueed up and the generator shall be entitled to keep 50% of the interest saved after allowing for the cost of such refinancing. Since the interest rate considered for tariff determination was already 9.5% hence, there is no saving which is accruing to the Respondents which is liable to be shared in terms of Regulation 57 of the 2020 Regulations.
- ii. Regulation 57 shall never result in actual cash being paid to the generating company but reduce recovery from the generator in the event of true-up of interest of loan capital. Further, it can only happen after the generating company has actually reduced the tariff burden on the procurer by refinancing Loan Capital after tariff determination on a higher rate of interest in a tariff block regulated by one set of tariff Regulations. The aforesaid Regulation intended to incentivise the Generator to lower the interest rate from what was considered in the tariff order. It is not intended to allow additional monies to the generating company where no corresponding benefit is accruing to the consumers through the cost of power being lowered.
 - iii. Respondent No. 1 cannot incur additional expenses which has not been allowed in the Tariff Order. In this case, the tariff order allowed interest on loan capital @ 9.5% which is the actual interest rate payable by the Petitioner. Therefore, the Respondent No. 1 refused to share notional benefit accruing.
 - iv. The petitioner is trying to recover an amount more than the tariff determined by the Commission which is not permissible under Section 62(6) of the Electricity Act, 2003. Such sharing shall not result in any saving but an additional burden on the procurer and consumers in the State.
 - v. Respondent No. 1 is not responsible for the precarious financial conditions of the petitioner. All amount due to the petitioner has been timely paid by the Procurer and no case for sharing lower interest rate is made out in the instant petition.
27. The petitioner had filed MYT Petition No.43 of 2020 before the Commission for determination of Multi-year tariff (MYT) for its 2x660MW Coal Based Power Project at Nigrie, for the Control Period from FY 2019-2020 to FY 2023-2024 under MPERC Tariff Regulations, 2020. In aforesaid petition, petitioner had claimed interest on loan by considering the weighted average rate of interest @ 11.78% which had been worked out by the petitioner based on actual loan portfolio as on 31.03.2019. The Commission had issued the MYT order for the petitioner's Project on 03.05.2021 considering the rate of interest @9.5% on the Loan Capital being actually charged by lenders. However, the Respondent No. 1 has denied the sharing of benefit of loan restructuring / refinancing with the petitioner on the ground that the Commission in the MYT Order has not allowed

the cost of refinancing / restructuring. Therefore, let us examine the issue in this petition in light of the aforesaid MYT order dated 03.05.2021:

- i. During the proceeding in MYT petition, the petitioner was asked to file the detailed calculation of actual weighted average rate of interest during FY 2019-20 along with supporting documents in respect of actual weighted average rate of interest claimed in the petition.
- ii. In response to above, by affidavit dated 29th October' 2020, the petitioner had submitted the following:

“JPVL has implemented 300MW Baspa II HEP, 400MW Vishnuprayag HEP, 1000MW Karcham, Wangtoo HEP, 500MW BINA TPP and 1320MW NIGRIE STPP. The operation of the company had been unsatisfactory for FY 2015-16 onwards and had not been able to pay the dues to its lenders in respect of Interest and Principal. The unsatisfactory operations of the Company primarily have been on account of loss in Nigrie STPP.

JPVL divested two of its Hydro Project namely Baspa II- 400MW HEP and Karcham Wangtoo HEP-1000MW in 2015, the proceeds were utilized mainly to pay dues of the lenders. However, the operation could not improve mainly due to unsatisfactory operations of Nigrie STPP.

The above situation required re-structuring of debt of JPVL for which JPVL was working with the Lenders for long. Lenders initiated Resolution Plan/Debt Restructuring from July, 2016.

In April 2019, a resolution plan was accepted by the Lenders inter alia including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operations of JPVL are stabilized and also restating the repayment schedule of outstanding loan subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines. The said resolution plan on completion of all CP's have become effective from December, 2019.

The relevant clause of Framework Agreement dated 18.04.2019 for Lender's right to recompense is as under:

“RIGHT TO RECOMPENSE

11.1 The Borrower acknowledges and admits that the Lenders have made sacrifices in granting reliefs and concessions to the Borrower by, inter alia, reducing the rate of interest, waiver of default and/or penal interest, and agreeing to convert all or part of the Convertible Debt into CCPS.

11.2 The Borrower further acknowledges and agrees that if in the opinion of the Lenders, the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms.

Provided that the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate.

11.3 Any determination by the Lenders in this relation shall be binding on the Borrower.

*Lowering of Interest @ 9.5% p.a. was necessary to ensure the lenders did not have to convert a higher amount into Equity/CCPS. Therefore, to ensure servicing of the debt with the assumption that since this lowering of interest is not resultant of credit up gradation of the Company, JPVL will continue to realize tariff based at documented rate of interest and **pay only @ 9.5% p.a. for the time being**, subsequently Lenders under the recompense clause will recover the amount foregone by them at this stage.*

In view of above the rate of interest for computation of tariff will be on the basis of last available weighted average rate of interest i.e. rate of interest applicable at the time of True Up Petition for FY 2017-18 and FY 2018-19.

28. In view of the above, the Commission has noted that in April 2019, a resolution plan was accepted by the Lenders including conversion of part debt into CCPS payment of interest @ 9.5% p.a. till the operation of the petitioner's company is stabilized and also restating the repayment schedule of outstanding loan subject to Lenders having right to recompense for the sacrifice made by them in accordance with the RBI guidelines. The resolution plan become effective from December, 2019 however, the petitioner was actually paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% was provisionally considered in the MYT order issued on 03.05.2020.
29. The Commission has further noted that the petitioner had filed true-up petitions for FY 2019-20 (P-40/2021) and FY 2020-21 (P-60/2021) for its Nigrie thermal power station and vide orders dated 07.12.2021 and 20.04.2022, the Commission had issued true-up orders on aforesaid petitions, respectively. In the aforesaid true-up petitions, the petitioner had not raised this issue before the Commission. The petitioner has now approached the Commission and first time raised this issue of sharing the benefit earned from restructuring/refinancing of loan.
30. In accordance to the **Right to Recompense** clause mentioned in the Framework Agreement, it is observed that the Lender's have right to recompense this lower rate of

interest being allowed by him. In the aforesaid document, it is mentioned that, if the profitability and cash flows of the Borrower improves, the Lenders shall have the right to receive recompense for the sacrifices made by them in accordance with the IRAC Norms and the maximum amount of recompense should be limited to the sum of waivers provided by the Lenders and the present value of future economic loss on account of reduction in interest rate.

31. In view of the above, the Commission has observed that the such type of restructuring/ refinancing of loan is temporary in nature. This restructuring/ refinancing may not be applicable for the balance life of the project since there is no specific timeline provided under the Framework Agreement. Therefore, lower rate of interest applicable on account of temporary nature of loan restructuring and which has already been allowed in the MYT Order, can not be considered at this stage for sharing of benefit under Regulation 57.1 of the MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. With regard to prayer made by the petitioner to allow amount as and when paid to the lenders under 'right to recompense' clause of restructuring agreements in the tariff, the petitioner is at liberty to approach the Commission as and when such amount is paid to the lenders under right to recompense clause along with all supporting documents.

With the above observations, the subject petition No. 09 of 2022 is dismissed and disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S Parihar)
Chairman