

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

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



Petition No. 7 of 2022

PRESENT:

S.P.S. Parihar, Chairman

Mukul Dhariwal, Member

Gopal Srivastava, Member

IN THE MATTER OF:

Petition under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 57.2 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 and Regulation 9 of the MPERC Conduct of Business) Regulations, 2004 seeking sharing of benefits in terms of net savings on interest arising due to restructuring of Loan.

Jaiprakash Power Ventures Limited
(Unit: Jaypee Bina Thermal Power Plant),
Sector 128, Noida, Uttar Pradesh -201304

Petitioner

//Versus//

M.P. Power Management Company Ltd.,
Block No. 15, Shakti Bhawan,
Rampur, Jabalpur – 482008

Respondent

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

Shri Venkatesh, 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 the Respondent.

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. The subject petition is filed under Section 86(1)(f) of the Electricity Act, read with Regulation 57.2 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 2x250 MW at Bina District Sagar (M.P). Unit No. 1 and Unit No. 2 of the petitioner's power plant were declared under commercial operation on 31st August' 2012 and 07th April' 2013, 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") on 5th January' 2011 for supply of 65% power of the installed capacity of the Project for 25 years at regulated tariff determined by the Commission. The petitioner has also entered into another PPA on 20th July, 2011 with Government of Madhya Pradesh for supply of 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. 44 of 2020 for determination of Multi-year tariff in respect of its 2X250 MW Coal Based Thermal Power Station at Bina 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 30th April' 2021, this Commission determined Multi-year tariff for the control period of FY 2019-20 to FY 2023-24 based on the principles and methodology specified under the aforesaid Regulations.

6. The issue raised in the subject petition is related to sharing of benefit in the ratio of 50:50 between the petitioner i.e. the Generator and the Respondent i.e. 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 petitioner for its Bina thermal power station.
7. Vide letter dated 22.06.2021, the petitioner requested the Respondent to share the benefit of loan restructuring / refinancing of Rs. 36.86 Crore in accordance to the Regulation 57 of the MPERC 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 from restructuring/refinancing of petitioner's loan has caused a dispute between the Generator and the beneficiary in terms of mechanism stipulated under Regulation 57.2 of the MPERC Tariff Regulations, 2020.
8. In the subject petition, the petitioner broadly submitted the following:
 - 1) *The present Petition has been filed by the Petitioner i.e., M/s Jaiprakash Power Ventures Limited ("JPVL"/ "Petitioner") under Section 86(1)(f) of the Electricity Act, 2003 read with Regulation 57.2 of the MPERC (Terms and Conditions for Determination of Generation Tariff) Regulations, 2020 ("MPERC Tariff Regulations, 2020") and Regulation 9 of the MPERC (Conduct of Business) Regulations, 2004 seeking sharing of benefit in the ratio of 50:50 between the Petitioner and the Respondent 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.*
 - 2) *It is imperative to note that the Commission vide its Tariff Order dated 30.04.2021 passed in Petition No. 44 of 2020 observed that the operation of the Petitioner's company was unsatisfactory from FY 2015-16 onwards and owing to the said fact, the Petitioner had not been able to pay the dues to its lenders. The said situation required re-structuring loan of the Petitioner and the lenders initiated Resolution Plan/Debt Restructuring. The said restructuring of loan resulted into Lowering of Interest loan @ 9.5% p.a.*
 - 3) *It is highlighted that in terms of Regulation 57.1 of the Tariff Regulations 2020, the benefit arising out of the loan restructuring / refinancing is mandated to be shared in the ratio of 50:50 between the Petitioner and the Respondent, after accounting for the cost associated with the refinancing or restructuring of the loan.*

- 4) *In view of the above, the Petitioner vide its letter dated 22.06.2021 requested the Respondent to share the benefit of loan restructuring / refinancing amounting to Rs. 36.86 Crores. However, in blatant disregard to Regulation 57.1 of the MPERC Tariff Regulations 2020, the Respondent No .1 vide its letter dated 27.10.2021 (“Impugned Letter”) denied the legitimate sharing of benefit of loan restructuring/ refinancing with the Petitioner on the sole ground that this Commission in the Tariff Order has not allowed the cost of refinancing / restructuring. Therefore, the claim of Rs. 36.86 Crores of the Petitioner was not admitted by the Respondent.*
- 5) *Being aggrieved by the aforesaid conduct of the Respondent, the Petitioner is preferring the present Petition imploring this Commission to pass necessary orders/ directions on the following grounds: -*
 - (a) *The denial on the part of the Respondent, to share the benefit accruing from loan restructuring undertaken by the Petitioner, is in violation and stark contravention of the clear and unambiguous provisions of Regulation 57.1 of the MPERC Tariff Regulations, 2020;*
 - (b) *The denial by Respondent of the legitimate claim of the Petitioner, merely on the ground that this Commission in its Tariff Order has not allowed the net benefits of refinancing of loan, is completely arbitrary and illegal. This Commission categorically recognized in its Tariff Order that the petitioner undertook refinancing of the loan and due to such refinancing, the interest on loan has been revised to 9.5%. Therefore, in terms of Regulation 57.1 of the MPERC Tariff Regulations, 2020 the consequential benefit was to be shared between the Respondent and the petitioner;*
 - (c) *The Respondent while issuing the Impugned Letter completely ignored and overlooked the fact that the notification of a Regulation by Commission in exercise of its delegated legislative power brings into effect a statutory instrument having force of law; and*
 - (d) *Such a Regulation is binding on all the parties. Therefore, the Respondent could not have issued the Impugned Letter that is inconsistent and contrary to the MPERC Tariff Regulations, 2020. The Respondent by way of the Impugned Letter has given go by to the mandate envisaged under MPERC Tariff Regulations, 2020, such conduct of the Respondent is impermissible under law.*
- 6) *On 20.02.2020, this Commission issued MPERC Tariff Regulations, 2020 for the Control Period of FY 2019-20 to FY 2023-24 which were notified in Madhya Pradesh Gazette on 28.02.2020. In terms of Regulation 57 of the MPERC Tariff Regulations 2020, if re-financing or restructuring of loan by the generating company results in net saving 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.

- 7) On 18.06.2020, Petitioner filed the MYT Petition bearing No. 44 of 2020 for determination of Tariff for the Project of the petitioner for the period of FY 2019-20 to FY 2023-24. On 16.12.2020, this Commission passed an Order in Petition No. 47 of 2019 vide which the True up of the generation tariff of the Project for FY 2018-19 based on the Annual Audited Accounts for FY 2018-19 was determined.*
- 8) It is submitted that since the operation of petitioner's company was unsatisfactory from FY 2015-16 onwards and petitioner was unable to pay the dues to its Lenders, the petitioner in such compelling circumstances divested two of its Hydro Power Projects viz. Baspa II- 400MW HEP and Karcham Wangtoo HEP-1000MW in 2015, and the proceeds were utilized mainly to pay dues of the Lenders. However, the operation of the Petitioner could not improve due to continued unsatisfactory operations of Nigrie Thermal Power Plant.*
- 9) The above situation warranted re-structuring of debt of the Petitioner. Accordingly, the Petitioner to achieve savings in the interest component of the loan, applied its sincere efforts and undertook refinancing/ restructuring of the existing loan. Thereafter, the Lenders initiated a Resolution Plan / Debt Restructuring.*
- 10) In April 2019, a resolution plan was accepted by the Lenders including conversion of part debt into CCPS with payment of interest @ 9.5% p.a.. Further, the repayment schedule of outstanding loan was reinstated, subject to lenders having the right to recompense for the sacrifice made by them in accordance with the RBI Guidelines. The resolution plan on completion of all Condition Precedents ("CPs") was made effective from December 2019.*
- 11) On 30.04.2021 this Commission passed the Tariff Order determining the Tariff for the Project of the Petitioner for FY 2019-20 to FY 2023-24 under MPERC Tariff Regulations, 2020. Vide the said Tariff Order this Commission allowed the rate of interest @9.5% upon the Loan Capital being charged by lenders against applicable/documented rate of interest of 12.25% due to debt restructuring of the Petitioner for the Project.*
- 12) Further, Commission categorically observed in the said Tariff Order that the rate of interest for computation of tariff will be based on 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. As the Petitioner was paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% was provisionally considered in the Tariff Order. Further, this Commission also directed the Petitioner to file actual weighted average rate of interest in the true up petitions for respective year*

of the control period.

- 13) Pursuant to the passage of the MYT Order dated 30.04.2021, Petitioner vide its letter dated 22.06.2021 requested Respondent, in terms of Regulation 57.1 of the MPERC Tariff Regulations, 2020, to adjust an amount of Rs. 36.86 Crores accrued due to net saving of interest in the loan component, arising from restructuring/ refinancing of loan from the amount of Rs. 61.09 Crores payable by the Petitioner in terms of the Tariff Order dated 30.04.2021.*
- 14) In the said letter, Petitioner further apprised the Respondent that the total remaining amount payable by the Petitioner after the aforesaid adjustment, in terms of the MYT Order is of Rs. 24.23 Crores (Rs. 61.09 Crores – 36.86 Crores) and the same be adjusted against outstanding bills in 6 equal instalments.*
- 15) On 16.08.2021, Petitioner vide its letter to Respondent reiterated its request as communicated vide letter dated 22.06.2021, and once again requested for adjustment of the benefit from the amount payable by the Petitioner in terms of the Tariff Order dated 30.04.2021. Further, the Petitioner also intimated the Respondent that the benefit from refinancing or restructuring, in terms of net savings on interest is required to be shared between Generator and Procurer in the ratio of 50:50, as per Regulation 57.1 of MPERC Tariff regulations, 2020.*
- 16) On 19.08.2021, one of the Lenders i.e., ICICI Bank issued a letter/certificate conveying that it has charged and received interest on Rupee Term Loan @9.5% p.a. from the Petitioner for the period from April 2019 to April 2021 for the Project. In the said letter, the lender specifically stated that the said letter/certificate has been issued for the purpose of submissions to the office of Respondent*
- 17) On 27.10.2021, Respondent, in response to Petitioner's letter dated 22.06.2021 and letter dated 19.08.2021, issued the Impugned Letter thereby, denying Petitioner's claim of sharing the Benefit of loan structuring in blatant disregard to Regulation 57.1 of the MPERC Tariff Regulations 2020. The Respondent denied the legitimate claim of the Petitioner on the alleged ground that this Commission in its Tariff Order has not allowed the benefits of refinancing of loan to the Petitioner and therefore the same cannot be claimed from the Respondent. Accordingly, the Respondent in contravention and violation of the provisions envisaged under Regulation 57.1 of the MPERC Tariff Regulations, 2020 denied to admit the claim of the Petitioner.*
- 18) The denial by Respondent to share the benefit from loan restructuring with Petitioner qua the Impugned Letters in violation and stark contravention of Regulation 57.1 of the MPERC Tariff Regulations, 2020. The evasive approach adopted by the Respondent by the Impugned Letter forfeits the cardinal principles*

of benefit sharing envisaged under MPERC Tariff Regulations, 2020.

19) *It is submitted that Ld. CERC has upheld the principle of benefit sharing amongst the parties in various Judgments / Orders. In this regard, reliance is being placed upon the Order dated 26.12.2017, passed by the Ld. CERC in Petition No. 152/GT/2015. The relevant extract of the said Order is reproduced herein under:*

“44. The petitioner has submitted that it has refinanced the loan and the same has resulted in substantial benefits to the respondents on account of lower interest rates and the benefits of refinancing will be calculated and shared between the beneficiaries and the petitioner in the ratio of 2:1 in terms of Regulation 26 (7), (8) & (9) of the 2009 Tariff Regulations. Accordingly, Interest on loan is worked out as under:

- (a) The petitioner has claimed the weighted average rate of interest of 12.24%, 13.73%, 13.47% for the years 2011-12, 2012-13 and 2013-14 respectively.*
- (b) As stated, the petitioner has been paying additional rate of interest for non-compliance of the term of the loan agreement regarding securitization. It is noticed that for calculation of the weighted average rate of interest, the petitioner has used the rate of interest in the same manner, i.e. including the additional rate for non-compliance. Accordingly, the weighted average rate of interest has been re-worked, considering the rate of interest mentioned in the letters of the bank, excluding the additional rate charged.*
- (c) The repayment for the year has been considered equal to the depreciation allowed for that year.*
- (d) The interest on loan has been calculated on the normative average loan of the year by applying the weighted average rate of interest”.*

20) *In furtherance to the above, the Respondent while issuing the Impugned Letter completely ignored and overlooked the fact that the notification of a Regulation by the State Electricity Regulatory Commission in exercise of its delegated legislative power brings into effect a statutory instrument having force of law.*

21) *Such a Regulation is binding on all the parties. Therefore, the Respondent could not have issued the Impugned Letter that is inconsistent and contrary to the MPERC Tariff Regulations, 2020. The Respondent by way of the Impugned Letter has given go by to the mandate envisaged under MPERC Tariff Regulations, 2020, such conduct of the Respondent is impermissible under law.*

22) *It is a settled principle of law that law comes into existence not only through legislation but also by regulation and litigation. Law from all three sources are binding on all the parties. In this regard, reliance is placed upon the Judgment of*

the Constitutional Bench of the Hon'ble Supreme Court in *PTC India Limited v. Central Electricity Regulatory Commission* (2010) 4 SCC 603 ("PTC Judgment"). The relevant portion of the PTC Judgment is reproduced below: -

- "47. On the above submissions, one of the questions which arises for determination is—whether trading margin fixation (including capping) under the 2003 Act can only be done by an order under Section 79(1)(j) and not by regulations under Section 178? According to the appellant(s) it can only be done by an order under Section 79(1)(j), particularly when under Section 178(2) power to make regulations is co-relatable to the functions ascribed to each authority under the said 2003 Act.
48. In every case one needs to examine the statutory context to determine whether a court or a tribunal hearing a case has jurisdiction to rule on a defence based upon arguments of invalidity of subordinate legislation or administrative act under it. There are situations in which Parliament may legislate to preclude such challenges in the interest of promoting certainty about the legitimacy of administrative acts on which the public may have to rely.
49. On the above analysis of various sections of the 2003 Act, **we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding.** According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See *Shri Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 223].
- 23) In view of the above, it is submitted that Respondent being a Distribution Licensee in the instant case is also bound by the Regulations. The provisions of a Regulation cannot be given a complete go-by or made ineffective on account of a mere denial by the Respondent.
- 24) In addition to the above, reference may also be made to the Clause 5.11(d) of the National Tariff Policy dated 28.01.2016 ("NTP, 2016"). The said Clause categorically provides that in case of structuring of debt, including its tenure, with a view to reducing the tariff should be encouraged. Further, the said Clause also provides that in case of any savings in costs on account of subsequent

restructuring of debt should be suitably incentivised by the Regulatory Commissions keeping in view the interests of the consumers.

- 25) *From the conjoint reading of Regulation 57.1 of the MPERC Tariff Regulations, 2020 read with Clause 5.11(d) of the NTP, 2016, it is evident that the intent behind formulating the regulation pertaining to sharing of benefit on account of loan restructuring, is to incentivise the concerned entity for its sincere efforts, resulting into saving in the interest component of loan. However, the Impugned Letter issued by the Respondent denying the benefit of refinancing of loan to the Petitioner disincentivises and discourages the Petitioner from applying its sincere efforts towards refinancing of loan. Such a conduct of the Respondent not only forfeits the cardinal principles of benefit sharing envisaged under Regulation 57.1 of the MPERC Tariff Regulations, 2020 but also the principle of incentivisation included under the NTP, 2016.*
- 26) *In this regard, it is submitted that it is a settled principle of law that NTP, 2016 is a statutory document being issued under Section 3 of the Act and have the force of law. The said principle was laid down by the Hon'ble Supreme Court in Energy Watchdog v. CERC, (2017) 14 SCC 80.*
- 27) *In view of the above, it is submitted that the Impugned Letter issued by the Respondent is completely illegal being violative and contradictory to the provisions of MPERC Tariff Regulations, 2020 and NTP, 2016. Further, appropriate orders may be passed by this Hon'ble Commission thereby directing the Respondent to pay Rs. 36.86 Crores towards sharing of benefit in Tariff of the Project.*
9. With the above submission, the petitioner prayed the following in the subject petition:
- a) *Pass directions to the Respondent to share 50% of the benefit from refinancing of the loan with petitioner, as per Regulation 57 of the MPERC Tariff Regulations, 2020; and*
- b) *Allow amount as and when paid to the lenders under right to recompense clause of restructuring agreement in the tariff.*
10. The subject petition was admitted on 29.03.2022. Vide daily order dated 30.03.2022, the petitioner was directed to serve copy of the petition to Respondent within seven days. The Respondent was directed to file response on the subject petition within two weeks, thereafter. The petitioner was asked to file its rejoinder within a week, thereafter.
11. By affidavit dated 6th May' 2022, the Respondent (MPPMCL) filed reply to the subject

petition. During the hearing held on 10.5.2022, the petitioner sought one week's time for filing rejoinder to the reply filed by the Respondent. The petitioner was directed to file rejoinder within a week with a copy of the aforesaid rejoinder to be served on the respondent. 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. During the hearing held on 31.5.2022, the petitioner and Respondent 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. Vide letter dated 7th June' 2022, the petitioner filed final written submission. Vide letter dated 7th June' 2022, the Respondent also filed its final written submission.
14. 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, 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.

Respondent Submission:

15. By affidavit dated 23rd May' 2022, the Respondent (MPPMCL) broadly submitted the following in reply to the subject petition:
 - i. *The present Petition has been filed by Jaiprakash Power Ventures Ltd, a generating company which owns and operates the Bina Thermal Generating Station. The petition has been filed inter alia praying that pass directions to the Respondent to share 50% of the benefit from refinancing of the loan with Petitioner, as per Regulation 57 of the MPERC Tariff Regulations, 2020.*
 - ii. *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 (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.

- iii. *In the instant matter, this Commission allowed interest on loan capital at the rate of 9.5% was allowed in the Tariff Order dated 30.04.2021 in Petition No 44 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.*
- iv. *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.*
- v. *As submitted herein above 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.*
- vi. *It is submitted that the finances of Discoms are entirely and the answering respondent 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 rightly refused to share notional benefit accruing.*
- vii. *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. Regulation 36 of the 2020 Regulations are extracted hereunder for ready reference:*

- viii. *The averment that interest on loan capital shall be based on last available weighted average rate of interest is false and denied. In terms of Regulation 36.4 rate of interest is equal to weighted average rate of interest on actual loan portfolio.*
- ix. *The letter of the Petitioner requesting adjustment of notional benefit was not in terms of Regulation 57. Subsequent letters from ICICI Bank cannot enable a claim that's not due in terms of the applicable regulations. Accordingly, the answering respondent refused to make payments of the demanded amount.*
- x. *While there is no dispute that the CERC Tariff Regulations 2019 also contains a similar provision regarding sharing of benefits, the order of CERC relied on by the Petitioner is obviously under the 2014 Regulations. In any event the principle relied on by the Petitioner that if loan are restructured whether benefit is to automatically flow to the generating company without any actual saving to the procurer is clearly not established by the order relied on.*
- xi. *The answering respondent most humbly submits that it is not responsible for the precarious financial conditions of the petitioner. The precarious financial condition of the Discom can in any event not be a defence to claim additional amounts from the procurers. 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. In light of the above, it is prayed that the current petition is devoid of merits and is liable to be dismissed.*

Petitioner's Rejoinder:

- 16. In response to the reply filed by the Respondent, the petitioner by affidavit dated 23.5.2022 filed its rejoinder has broadly submitted the following:
 - 1. *Regulation 57.1 of the MPERC Tariff Regulations, 2020 mandates the sharing of benefits arising out of loan restructuring/refinancing between the Generator and Procurer/Beneficiary in the ratio of 50:50, after accounting for the cost associated with such refinancing/restructuring of loan.*
 - 2. *Keeping in view the mandate of Regulation 57.1 of the MPERC Tariff Regulations, 2020, the Petitioner had addressed letters dated 22.06.2021 and 16.08.2021 to MPPMCL requesting the latter to share the benefits in the ratio of 50:50 which had arisen on account of lowering/reduction of interest on the loan capital to 9.5% p.a. as a result of the restructuring/refinancing of loan done by the lenders so as to provide respite to the Petitioner from the unsatisfactory operations from FY 2015-2016 onwards.*
 - 3. *However, in blatant violation of the aforesaid mandate, MPPMCL vide the Impugned Letter dated 27.10.2021 denied the legitimate share of benefits to the*

Petitioner arising out of loan restructuring/refinancing on the purported ground that this Commission had not allowed the cost of refinancing/restructuring in the Multi Year Tariff Order dated 30.04.2021 ("MYT Order") passed in Petition No. 44 of 2020 preferred by the Petitioner.

- 4. Vide the Reply dated 04.05.2022, MPPMCL has broadly raised the following contentions:*
 - (a) The present Petition filed by the Petitioner is based on incorrect interpretation of Regulation 57 in as much as the same is applicable only in event the Generator manages to reduce the rate of interest on the loan capital as a result of the restructuring/refinancing of loan than the rate of interest on the Loan Capital allowed in the MYT Order.*
 - (b) The intent of Regulation 57 is to incentivise the Generator to lower the rate of interest on loan capital from what has been considered in the tariff order. Since the Commission vide the MYT Order dated 30.04.2021 has allowed the interest on loan capital @ 9.5% which is the actual rate of interest payable by the Petitioner, the question of sharing of benefit on account of net of saving of interest on the loan component does not arise.*
 - (c) While there is no dispute that the MPERC Tariff Regulations, 2020 are binding on the Respondent No.1, however in terms of Section 62(6) if a generating company has recovered a price or charge exceeding the tariff determined under the said provision, the excess amount is recoverable by the party having paid the same along with interest equivalent at the bank rate.*
- 5. At the outset, it is most respectfully submitted that the averments made by MPPMCL in their Reply dated 04.05.2022 are denied in toto. Nothing contained therein may be deemed to be admitted unless specifically admitted in the present Rejoinder. The facts leading to filing of the present Petition have already been set out in detail in the Petition. Therefore, the Petitioner craves liberty to refer and rely on the contents of the same, which are not being repeated here for the sake of brevity and may be read as part and parcel of the present Rejoinder.*
- 6. Before advertng to a detailed issue wise Rejoinder, the Petitioner most respectfully submits that the Reply filed by MPPMCL is misreading of Regulation 57 of the MPERC Tariff Regulations, 2020 as notified by this Commission.*
- 7. MPPMCL vide its Reply dated 04.05.2022 have contended that the present Petition is based on an incorrect interpretation of Regulation 57 of the MPERC Tariff Regulations, 2020 in as much as the same is applicable only in the event the Generator manages to reduce the rate of interest on loan capital as a result of restructuring/refinancing of loan than the rate of interest allowed in the MYT Order*

7.1. *In the respectful submission of the petitioner, the said contentions are wholly misconceived and denied in toto in as much as the true intent and import of Regulation 57 of the MPERC Tariff Regulations, 2020 is to incentivise the Generator for its sincere efforts in restructuring/refinancing of loan. 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 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/documented rate of interest of 12.25% payable to the lenders. The relevant extract of the MYT Order dated 30.04.2021 passed in Petition No. 44 of 2020 is reproduced herein below:*

“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.”

7.2. *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”

7.3. The aforesaid settled principle of law has been followed by the Hon’ble High Court of Madras in the case titled as “A.Ram Mohan vs. State”, wherein it has held as follows:

“13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323] and ShyamKishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678] (xxxiv)In Sri Jeyaram Educational Trust &Ors., v. A.G. Syed Mohideen & Ors. reported in 2010 CIJ 273 SC (1), it is held that, "6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be”

- 7.4. *Therefore, with great respect and humility it is submitted that Regulation 57.1 is not contingent/dependent upon any order being passed by this 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.*
- 7.5. *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 Commission can only be sought by the Affected Party in case any dispute arises in this regard.*
- 7.6. *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.*
8. *MPPMCL vide its reply dated 04.05.2022 has contended while MPERC Tariff Regulations, 2020 are binding upon it, however the provisions of Section 62(6) of the Act provides for recovery of excess amount from the Generator/Licensee having been charged over and above the tariff determined by the Commission under the said provision.*
- 8.1. *In this regard, it is most respectfully submitted that MPPMCL's reliance on the provisions of Section 62(6) of the Act, is wholly misconceived and untenable in as much as MPPMCL has not furnished any valid and/or plausible justification as to how the said provision is attracted to the present subject matter at hand.*
- 8.2. *In order to demonstrate the applicability of Section 62(6) of the Act, reliance must be placed upon a judgment passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 117 of 2013 titled as 'DNH Power Distribution Company Limited vs. Joint Electricity Regulatory Commission', the relevant extract whereof is reproduced hereinbelow for ready reference:*
- "24. In view of the above, it cannot be contended that the Appellant deliberately has recovered a tariff more than tariff determined under section 62 of the Act.*
25. *In this context, it would be appropriate to refer to the judgment of Hon'ble*

Supreme Court dated 28.9.2011 in the case of NTPC Limited Vs. MP State Electricity Board & Ors., Civil Appeal No. 2451 of 2007 wherein it has been held that the question of interest under section 62(6) arises only when the Generating Company or the Licensee deliberately over charged tariff in excess of what has been determined by the Regulatory Commission and it does not apply to the cases where the tariff itself has been revised by the Regulatory Commission. The relevant portion of the judgment is extracted below:

...

The words 'tariff determined under this section' indicates that the prohibition from charging excess price is dependent on the determination of the price under the preceding five sub-sections. The counsel for the Electricity Boards submitted that this sub-section should be applied even during the period when the tariff was being determined (as in the present case), and if in the final determination the price fixed is lesser than what was charged during the intervening period, then interest should be read as recoverable for the excess amount collected during the intervening period. In this connection, we must note that this subsection does not refer to the period during which the tariff is being determined. It also does not state that if the finally determined tariff is less than the provisional tariff or an existing tariff continued by a statutory notification, then interest shall be payable on the differential amount.

That is why the Appellate Tribunal has observed that it is only when a licensee or generating company deliberately recovers or extracts from a person a price or charge in excess of the price determined under section 62(6), that such person can claim the excess price or charge paid by him along with interest. For the reasons stated above we are unable to accept the submission on behalf of the Electricity Boards, and are in agreement with the view taken by the Appellate Tribunal that Section 62(6) cannot be pressed into service to claim interest on the differential amounts in the present case.

....

26. *The above judgment would squarely apply to the present facts of the case so long as the tariff is charged as per the Formula specified by the Joint Commission. Merely because the same has been amended subsequently, it would not render the levy illegal so as to invoke Section 62(6) of the Electricity Act.*

27. *In view of the above, the portion of the impugned order with reference to the payment of interest is not valid in law and the same is liable to be set-aside.*

28. Summary of Our Findings:

The reading of the entire Section 62(4) and 62(6), would make it clear that in order to invoke Section 62(6), one has to establish that the Appellant had charged the tariff more than what had been approved. We are only concerned with the term 'tariff and not the 'amount'. Of course, in the present case, it has been established that the Appellant had collected amount in excess of the approved amount. But the question is 'Whether the Appellant charged higher tariff or Power Purchase Cost Adjustment than the approved. The records submitted by the Appellant would show that it had charged the Power Purchase Cost Adjustment rate strictly as per the Power Purchase Cost formula stipulated in the Order dated 13.9.2011. Mere availability of surplus does not prove that it had wrongly applied the formula.'

- 8.3. *Thus from a bare reading of ratio laid down in the aforesaid judgment, it is suffice to state that in order to invoke the provisions of Section 62(6) of the Act, one has to establish beyond reasonable doubt that the Generator/Licensee has actually charged tariff than what has been approved by the concerned commission. Unless the same is proved, the rigors of Section 62(6) would not be attracted.*
- 8.4. *In the present set of facts, the dispute that has arisen for consideration is with respect to the sharing of benefits arising out of restructuring/refinancing of loan due to lowering of interest on loan capital, in the ratio of 50:50 between the Generator and the Procurer/Beneficiary. The said issue is no where related to the charging of any amount by the Generator over and above the tariff fixed/determined by this Commission vide its MYT Order dated 30.04.2021. Hence, the question of applicability of Section 62(6) to the facts of the present case does not arise.*
- 8.5. *In light of the submissions made hereinabove and the ratio laid down in the judgment passed by the Hon'ble Tribunal, it can be safely concluded that no case for applicability of Section 62(6) of the Act has been made out of MPPMCL. Hence, any reliance thereof is wholly misconceived, untenable and unjustified.*
17. The petitioner by affidavit dated 7.6.2022 submitted its final written submission reiterating its contentions in the petition and rejoinder to the reply filed by MPPMCL. The petitioner has quoted some relevant paras of the MYT order dated 30.04.2021 and also cited some judgments in support of its contention.
18. The Respondent (MPPMCL) vide letter dated 7.6.2022 filed final written submission reiterating its contentions filed in its reply to the subject petition.

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 ("MPPMCL") in terms of Regulation 57.1 of the MPERC Tariff Regulations, 2020 due to net saving of interest amount in the loan component, arising out of restructuring/refinancing of loan undertaken by the petitioner for its Bina 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 the Petitioner, lenders granted reliefs and concessions to 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 the loan.
22. Vide letters dated 22.06.2021 and 16.08.2021, the petitioner requested the Respondent to share the benefit on account of loan restructuring / refinancing amounting to Rs. 36.86 Crore. In response to the above letters, vide letter dated 27.10.2021, Respondent 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 on these grounds has not accepted claim of Rs. 36.86 Crore of the petitioner.

23. The Respondent 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 Respondent 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 petitioner, the Respondent has denied for 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. The Respondent in its response has broadly placed the following grounds for not sharing net saving 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 30.04.2021 in Petition No 44 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 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 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. The respondent 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 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. The Respondent 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. Multi-year Tariff (MYT) order for petitioner's Project was issued on 30.04.2021 for control period FY 2019-20 to FY 2023-24 under MPERC Tariff Regulations, 2020 considering the rate of interest @9.5% on the Loan Capital being actually charged by lenders. Let us examine the issue raised in this petition in light of the MYT order dated 30.04.2021:
- i. The petitioner had filed MYT Petition No.44 of 2020 before the Commission for determination of Multi-year tariff for its 2x250MW Coal Based Power Project at Bina, for the Control Period from FY 2019-2020 to FY 2023-2024 under MPERC Tariff Regulations, 2020. In aforesaid petition, the petitioner had claimed interest on loan by considering the weighted average rate of interest @ 12.25% which had been worked out by the petitioner based on actual loan portfolio as on 31.03.2019. 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 became effective from December, 2019 however, the petitioner was actually paying interest @ 9.5%, therefore, the actual weighted average rate of interest @ 9.5% was considered in the MYT order issued on 30.04.2021.
29. The Commission has further noted that the petitioner had filed true-up petitions for FY 2019-20 (P-39/2021) and FY 2020-21 (P-63/2021) for its Bina thermal power station and vide orders dated 07.12.2021 and 19.05.2022, 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 for the first time on 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 lenders have right to recompense this lower rate of interest being allowed by them. 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 (Income Recognition and Asset Classification) 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. The petitioner has also prayed in this petition to allow amount as and when paid to the lenders under right to recompense clause of restructuring agreements in the tariff.

32. 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. 7 of 2022 is dismissed and disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S Parihar)
Chairman