

Generating Company is entitled for Additional Capital Expenditure despite availing Special Allowance



SKV Law Offices successfully represented National Thermal Power Corporation Limited. (“NTPC”) in the case of NTPC Limited. v. Central Electricity Regulatory Commission & Ors., Appeal No. 25 of 2017 & Batch of four other Appeals (“Appeals”) before the Hon’ble Appellate Tribunal for Electricity (“Hon’ble APTEL”).

The issue in the said Appeals was that the Central Electricity Regulatory Commission (“CERC”), had disallowed and amended various claims/ factors of NTPC namely O&M expenses incurred for the FY 2009-14 & FY 2014-19, Gross Station Heat Rate (“GSHR”), various Additional Capital Expenditure and Extension of Cut Off Date.

While appreciating the case and submissions of NTPC, the Hon’ble APTEL allowed all the claims of NTPC and further rendered the matters back to CERC for fresh consideration and also directed CERC to decide the case of NTPC within 4 months of the said Judgment.

Pertinently, the Hon’ble APTEL, while setting aside the Impugned findings passed by CERC, has settled an important question of law pertaining to Special Allowance and Additional Capital Expenditure.

The narrow issue for the Hon’ble APTEL to consider was whether an ‘Additional Capital Expenditure’ projected to be incurred/ incurred by NTPC in relation to Regulation 14 (3) (i) to (iv) of the Tariff Regulations 2014, can be directed to be met by the Special Allowance i.e. granted to NTPC under Regulation 16 of the Tariff Regulations, 2014 provided that the claimed works squarely fall under the Regulation 14(3) of the Tariff Regulations 2014.

CERC on the premise that NTPC is entitled to Special Allowance has refused to allow the expenditure as per Regulation 14 (3) of the Tariff Regulations 2014.

The Hon’ble APTEL while setting aside the findings of CERC, held that under no circumstances any co-relation can be derived by CERC between Regulation 16 and Regulation 14 to deny the legitimate claim of the generating station. Further, the Hon’ble APTEL held that CERC has misconstrued the applicability of Regulation 16 with respect to the applicability of Regulation 14 of the Tariff Regulations, 2014 and that the intent of Regulation 14 and Regulation 16 is different and unique.

Pertinently, apart from the above, the Hon’ble APTEL had also allowed various claims of NTPC and set aside the Impugned Findings of CERC challenged by NTPC in batch of the said the Appeals.

NTPC was advised and represented by Mr. Shri Venkatesh, Managing Partner, Mr. Anant Singh Ubeja, and Mr. Rishabh Sehgal, Associates.

The Order passed by the Hon’ble APTEL can be accessed [here](#).