

Appellate Tribunal for Electricity Allows Pass Through of Cost of Imported Coal Procurement to L&T's Nabha Power Limited



On 24.06.2025, the Appellate Tribunal for Electricity ("APTEL") decided the cross appeals filed by L&T's Special Purpose Vehicle, Nabha Power Limited ("NPL") and the Punjab State Power Corporation Limited ("PSPCL"). The appeals arose from an order dated 04.12.2019 ("Impugned Order") passed by the Punjab State Electricity Regulatory Commission ("PSERC") disallowing the cost of 1.18005 lakh metric tonnes of alternate coal procured during October 2017 to March 2018, pursuant to shortfall in supply of linkage coal. While, NPL challenged the partial disallowance of their claim, PSPCL sought reversal of the post facto approval and pass through granted by PSERC for procurement of 2.36995 LMT.

NPL's 2 x 700 MW Thermal Power Station at Rajpura in Patiala District was awarded under Case 2 Scenario 4, which means that the responsibility for arranging adequate coal linkage was that of the procurer of power, i.e., PSPCL. Under the New Coal Distribution Policy, 2007, PSPCL arranged fuel linkage for 5.55 MTPA from South Eastern Coalfields Limited ("SECL"); however, the same was not even adequate to cover the Plant's coal requirement.

The situation was further aggravated because the Plant faced significant shortfalls in supply of even linkage coal due to inadequate supplies under the linkage, restricted allocation by SECL, and also due to the scarcity of railway rakes to transport the coal.

In view of the above, pursuant to orders issued by APTEL and PSERC, NPL had been permitted to procure coal from alternate sources, including imported coal, for the Plant to meet the expected shortfall in supply from linked sources in order to operate the Plant as per the terms and conditions of the Power Purchase Agreement with PSPCL ("PPA"). Whilst procuring such alternate coal NPL was required to follow the steps mandated by APTEL and PSERC, including oversight by a Standing Committee comprising representatives of the Government of Punjab, the PSPCL and NPL. This arrangement was established with the consent on NPL and PSPCL both by APTEL vide its order dated 16.03.2016.

In 2017, the Standing Committee approved procurement of 1.5 Lakh Metric Tonnes ("LMT") of imported coal for the paddy season, as against NPL's projected shortfall of 5.05 LMT for 2017-18. To make matters worse, the Standing Committee failed to reconvene to enhance the approved alternate coal procurement despite repeated requests from NPL, resulting in a compulsion for NPL to shut down one of its units for 54 days between September and October 2017.

Subsequently, NPL took proactive steps to procure a total of 3.55 LMT of imported coal between October 2017 and March 2018, following due process and providing advance intimation to PSPCL to keep the Plant operational. PSPCL accordingly continued to schedule power from NPL's plant without objection during this period, with complete knowledge of the use of imported coal.

NPL then approached PSERC seeking post-facto approval for the cost of this imported coal and requested a full cost pass-through under the energy charge component of the PPA. PSERC in the Impugned Order, allowed the claim in part, approving only 2.36995 LMT out of the total 3.55 LMT procured by NPL. PSERC based this allowance on its assumptions and estimations of coal stock and consumption rather than the figures provided by the NPL based on actuals. PSERC also expanded the period under review from the claimed window of October 2017 to March 2018 to the entire financial year of 2017-18, thereby introducing elements that were not part of the original dispute.

However, APTEL ruled that PSERC erred in both its reasoning and methodology. APTEL held that the entire quantum of 3.55 LMT of alternate coal procured by NPL was necessary, prudent, and in line with prior approvals. It also held that PSERC's assumption that coal procured in earlier months could be carried forward was speculative and not supported by actual stock data. Further, PSERC's extension of the dispute period to April 2017–March 2018 was without basis, as the procurement in question occurred only from October 2017 onwards. APTEL held that once the Standing Committee had cleared the procurement and NPL followed all procedural requirements, denial of post-facto approval was unsustainable.

In dismissing PSPCL's appeal, APTEL upheld that the mechanism of alternate coal procurement had been judicially validated, and that NPL's actions were transparent and timely. APTEL emphasized that prudence checks by regulators must be evidence-based and cannot substitute the commercial judgment of a generator acting in good faith and in public interest.

Accordingly, APTEL allowed NPL's appeal, directed pass-through of the entire 3.55 LMT of alternate coal with applicable interest, and dismissed PSPCL's challenge in totality.

This decision reinforces key principles of regulatory certainty, sanctity of contractual frameworks, and judicial deference to prudent commercial decisions by generating companies, particularly in scenarios involving fuel supply disruptions.

L&T's Nabha Power Limited was represented before the APTEL by Shri Venkatesh (Founding Partner & Head of Disputes Practice), Priya Dhankhar (Counsel), Harsh Vardhan (Associate), and Drishti Rathi (Associate) of the SKV Law Offices Team.