

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

ThiruM.Chandrasekar

.... Chairman

and

ThiruK.Venkatasamy

.... Member (Legal)

**D.R.P. No.2 of 2018**

M/s TheRamco Cements Limited  
Represented by its General Manager-Legal  
Auras Corporate Centre  
V Floor, 98-A, Dr. RadhakrishnanSalai  
Mylapore,  
Chennai – 600 004.

... Petitioner  
(Thiru. Rahul Balaji  
Advocate for the Petitioner)

Vs.

1. Tamil Nadu Generation and  
Distribution Corporation Limited  
Represented by its Chairman and  
Managing Director  
No. 144, Anna Salai,Chennai – 600 002.
2. State Load Dispatch Centre  
Tamil Nadu Generation & Distribution  
Corporation Limited  
144, Anna Salai, Chennai – 600 m002.
3. The Superintending Engineer  
Perambalur Electricity Distribution Circle  
255-B, 19A, N.S.K. Mahal  
Vadakkumathavi Road  
Perambalur.

....Respondents  
(Thiru. M.Gopinathan,  
StandingCounsel for Respondents)

**Dates of hearing** :17-09-2019; 22-10-2019; 10-12-2019;  
25-02-2020; 13-10-2020; 17-11-2020;  
22-12-2020; 05-01-2021; 09-02-2021;  
09-03-2021; 15-04-2021; and  
07-09-2021

**Date of Order** :12-04-2022

The DRP No.2of 2018 came up for final hearing on 07-09-2021. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent and after hearing both the parties passes the following:-

**ORDER**

**1. Prayer of the Petitioner in D.R.P.No.2 of 2018:-**

The prayer of the petitioner in D.R.P. No. 2 of 2018 is to pass an order directing the Respondents to pay a sum of Rs.3,89,55,341/- towards excess energy pumped and consumed by the Respondents and surcharge of Rs.1,68,06,240/- payable from December, 2015 till date of filing of petition and further surcharge as per Clause 8 of the Letter of Acceptance dated 05-11-2015.

**2. Facts of the Case:-**

The petitioner is the successful bidder in the Tender No. 7 of 2015, based on which executed PPA with the respondent for supply of power during the period from 06-11-2015 to 31-05-2016. This petition has been filed to pass an order directing the Respondents to pay a sum of Rs.3,89,55,341/- towards excess energy pumped and consumed by the Respondents and surcharge of Rs.1,68,06,240/- payable from December, 2015 till date of filing of petition and further surcharge and pass such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the case.

**3. Contention of the Petitioner:-**

3.1. The petitioner has stated that the petitioner's company is mainly engaged in the business of manufacturing and sales of cement. The petitioner has established captive power plants inside its cement manufacturing unit and the power so generated is predominantly used for captive use of the petitioner only. Thereafter, any excess power remaining after satisfying the petitioner's captive requirements are sold to third parties.

3.2. The present petition is filed seeking for a direction, directing the Respondents to pay a sum of Rs.3,89,55,341/- towards excess energy pumped from the Petitioner's Ariyalur, Alathiyur and RR Nagar Plants, which has been caused due to the erratic and frequent back down/pick up instructions issued by the Respondents.

3.3. The respondents had vide Tender Number 07/2015 dated 21.09.2015 called for suitable bidders for the sale and supply of electricity to the first respondent TANGEDCO. The petitioner had participated in the bid and emerged as a successful bidder. Pursuant to the award of the tender, the respondents had issued a Letter of Award (LOA) bearing reference number CE/PPP/SE/E1/Tender07-2015/D.328/ dt.05.11.2015, for the supply of energy from the petitioners units at Ariyalur, Alathiyur and RR Nagar respectively(hereinafter referred to as "PPA"), for the sale and supply of electricity to the first respondent company, for the period from 06.11.2015 to 31.05.2016.

3.4. During the contract period, the Petitioner herein has supplied to the Respondents, 3,64,41,600 units of energy at RS.5.05/- per unit from its Ariyalur unit,

against which had raised invoices to the total tune of Rs.18,40,30,080/- . The Respondents have so far paid RS.15,91,20,601/- and the balance sum of Rs.2,49,09,479/- remains due and payable for Ariyalur. Similarly, the petitioner had supplied to the respondents 1,92,85,381 units and 71,87,000 units of energy at Rs.5.05/- per unit from its Alathiyur and RR Nagar units respectively, against which the petitioner had raised invoices to the total tune of Rs.9,73,91, 175 for Alathiyur and Rs.3,62,94,350 for RR Nagar respectively. Against these invoices, the respondents have paid Rs.8,80,28,263/- for Alathiyur and Rs.46,49,450 for RR Nagar respectively and the balance sum of Rs.93,62,912/- for Alathiyur (Excess pumping) and Rs.3,16,44,900/- for RR Nagar (Excess pumping Rs.46,82,950/- and payment for the months from February 2016 to May 2016 for the amount of Rs.2,69,61,950/-) remains due and payable. The total outstanding sums upto Rs.6,59,17,291/- which is payable by the respondents to the petitioner.

3.5. During the export period, the Respondents herein had issued backing down and pick up instructions and the instructions were given in a short notice. Therefore, the Petitioner was not in a position to respond immediately and such instructions were received 10-13 times on an average per day from the Respondents. On account of the backing down instructions issued, the Petitioner's Power Plants faced huge fluctuations in its operation and this resulted in deviations of export in 96 time blocks.

3.6. Due to the backing down and the deviations of export, the export units from the Petitioner's Plant exceeded the percentage of quantum, as required by the 2<sup>nd</sup> Respondent herein. On account of the same, the 1<sup>st</sup> Respondent herein treated the excess exported units as un-requisitioned units and deducted the amounts from the

sums payable to the Petitioner. However, on the other hand, the deviations caused by TANGEDCO have not been taken into account and no compensation has been provided for the deviations caused by TANGEDCO to the petitioner as per agreement.

3.7. Further, during the period of contract, the petitioner had claimed a sum of Rs.2,49,09,479/-, Rs.93,62,912/- and Rs.46,82,950/- respectively from Ariyalur, Alathiyur and RR Nagar, which is a total sum of Rs.3,89,55,341/- towards excess pumping of energy generated due to back down/ pick up activities, which the Respondents have failed to pay. The relevant clauses of the Letter of Acceptance dated 05.11.2015 are extracted below:

*“8. Payment Terms:*

*The invoices raised by the seller will be settled by the respective Superintending Engineer / EDCs where generating plant is located.*

*The date for payment of monthly energy bills will be 30 days from the date of receipt (excluding the date of receipt) of bill in complete shape from the seller. If the payment is made within 7 (seven) working days from the date of receipt of invoice TANGEDCO will avail 2% rebate on each monthly billed amount raised by the supplier or will avail 1% rebate on billed amount, if the payment is made within the due date. If 7<sup>th</sup> working day or 30<sup>th</sup> day (Due date) happens to be a holiday for TANGEDCO / Banks, then payment will be made on the next working day for which TANGEDCO will avail the appropriate rebate. If payment is outstanding beyond the due date by TANGEDCO, then surcharge as applicable on daily basis at 15% per annum will be payable.”*

3.8. The erratic scheduling of the thermal plants results in unsafe operation due to the following reasons:-

- i) Thermal generating stations are designed and engineered for operation as base load power plants. Cyclic load fluctuation would have an adverse impact on O&M, machine health, life, efficiency & economy.
- ii) Operational & Maintenance issues:
  - a. Increased equipment damages: like faster boiler tube metal degradation resulting in tube leakages etc.
  - b. Increased maintenance requirements
  - c. Higher Repair & Maintenance costs
  - d. Variation in operational parameters
  - e.. Continuous partial load operation without oil support increases the likelihood of unit tripping (Unscheduled outages) on flame failure which may also endanger grid security.
  - f. Unit running only on TDBFP becomes highly unstable at lower loading.
  - g. The generation of a unit operating at technical minimum/below technical minimum could get further reduced automatically due to operation of auto controllers.
  - h. Since safe and stable boiler operation is of paramount importance at all times, the operators may at times choose to operate at a slightly higher level to cater for the uncertainty.
  - i. Higher Emission levels
- J. additional safety concerns.

3.9. The actual operating conditions are more complex and different and it would not be possible to achieve the same in real time of prevailing operating conditions.

Added to this, there is uncertainty introduced due to the variation in coal quality actually supplied from the design coal specified in the technical specifications. The tender rates are quoted based on various factors like heat rate, auxiliary power consumption and specific secondary fuel oil consumption. The erratic operation particularly at technical minimum or below technical minimum will lead to higher cost of generation resulting in huge loss to the generator apart from making the operations harmful to the generating plant. The CERC 4<sup>th</sup> amendment to the Indian Electricity Grid Code dated 06-04-2016 provided certain parameters as well. However, there is no compensation mechanism under the tenders and therefore the generators are not expected to receive such erratic start-stop instructions. The coal generating units cannot be subjected to erratic scheduling so as to avoid severe damage to the equipment besides affecting adversely efficiency parameters and the grid security.

3.10. The Petitioner is entitled to payment of interest on account of delay in releasing payments to the Petitioner in a timely manner as per the PPA. Furthermore, there is a specific provision in the PPA, which provides for payment of interest on delayed payments, and hence the Petitioner is entitled to the payment of interest. It is submitted that the Hon'ble Supreme Court in TANGEDCO v PPN Power Generation Co Ltd Civil Appeal No. 4126 of 2013 has recently adjudicated the issue of payment of interest and the relevant extract has been set out below:

*"We are also not able to accept the submission of Mr.Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5% for having made part payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by the respondents. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective*

years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices. With regard to the issue raised about the interest on late payment, APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in Central Bank of India vs. Ravindra&Ors. In this judgment it has been held as follows:

“ .....The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd. All ER at p.472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab 2002 (1) SCC 367 speaking through Tek Chand, J. in CIT v. Or Sham LalNarula thus articulated the concept of interest the words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. "Interest" in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money ..... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable”

56. Similar observations have been made by this Court in Indian Council of Enviro-Legal Action Vs. Union of India &Ors. wherein it has been held as follows:

178 To do complete justice, prevent wrongs, remove incentive for wrong doing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above – or to simply levelise-a convenient approach is calculating interest. But here interest has to be calculated on compound basis-and not simple-for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of

*prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.*

*180. Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice. However, the power of the Court to order compound interest by way of restitution is not fettered in any way. We request the Law Commission to consider and recommend necessary amendments in relevant laws.*

*57. The late payment clause only captures the principle that a person denied the benefit of money, that ought to have been paid on due dates should get compensated on the same basis as his bank would charge him for funds lent together with a deterrent of 0.5% in order to prevent delays. It is submitted by Mr. Salve and Mr. Bhushan that bankers of the respondents have applied quarterly compounding or monthly compounding for cash credits during different periods on the basis of RBI norms. Article 10.6 of the PPA has followed the norms of the bank. This cannot be said to be unfair as the same principle could also apply to the Appellants"*

3.11. During the back down / pick up, the same happens gradually and in the process there is a certain amount of excess pumping of energy that happens. The respondents on all previous occasions have paid for such excess energy pumped and in instant case have disallowed the claim by the petitioner of such excess pumping. The petitioner further states that between November 2015 and March 2016, the respondents have consumed the energy so pumped against which the petitioner have raised invoices for Rs.3,89,55,341/- (Payment for excess pumping for the amount of Rs.2,49,09,479/- for Ariyalur, Rs.93,62,912/- for Alathiyur and Rs.46,82,950/- for RRNagar). The respondents are liable for payment of the same.

3.12. The actions of the first respondent are arbitrary and are as such bad in law. The first respondent had failed to perform its contractual commitments, leading to great hardship to the petitioner. Under the contract, the first respondent was bound to

execute a letter of credit for 100% of the contractual sum due to it. Further, the first respondent has deducted liquidated damages from the sum owed by it to the petitioner, even though the loss occurred solely due to the actions of the first respondent in ordering frequent back down and pick up. The shortfall in supply of electricity was due solely to a large number of back down and pick up orders, for which the petitioner cannot be penalized.

3.13. The first respondent ought to have been aware that the petitioner's plant is a coal based "base load generating plant", and that frequent back down and pick up operations are highly injurious to such a plant. In fact, the petitioners have come to know that such instructions were not issued to any other coal based plants. Thus, the actions of the first respondent in this regard are highly arbitrary and must be set aside on this ground alone. The actions of the second respondent in arbitrarily calling for back down and pick up operations with respect to the petitioner's plant amount to a misuse of the power under Section 32 of the Electricity Act, 2003, and are inherently arbitrary.

3.14. The arbitrary actions of the first respondent amount to an abrogation of its statutory functions with respect to the operation of power plants in the State and as such are arbitrary and bad in law.

#### **4. Contention of the First and Third Respondents:-**

4.1. The first Respondent, TANGEDCO has floated the Tender vide Tender No. 7 of 2015, dated 21-09-2015 to purchase power to the tune of 1200 MW for the period from 01.10.2015 to 31.05.2016 under Short Term Open Access. The petitioner had

participated in the bid by satisfying the various terms and conditions stipulated there on and as a successful bidder.

4.2. A Letter of Acceptance (LOA) was issued to the petitioner for their threegenerating Plant on 05.11.15 to supply of power from 00.00 hrs on 06.11.2015 to 24.00 hrs on 31.05.2016 at a rate of Rs.5.05/- per Kwhr under certain terms and conditions as follows:-

- (i) The Ramco cements Ltd, Ariyalur, Ariyalur District - 30 MW
- (ii) The Ramco cements Ltd, Alathiyur, Ariyalur District - 15 MW
- (iii)The Ramco cements Ltd, RR Nagar, Virudhunagar District - 5 MW

4.3. The following Clauses were stipulated in the LOA issued to the Petitioner is reproduced as follows:

#### 6. Scheduling:

*The seller shall submit day ahead declaration of their capability for the next day to SLDC. Whenever downward revision is required, TNSLDC, will give instruction for downward revision for injection. The seller shall scrupulously adhere to TNSLDC's instruction.*

*Intrastate ABT Regulations have not been notified in Tamil Nadu. This Regulation is a separate Regulation for specific purpose. Non-implementation of Intrastate ABT Regulation will not be a ground for freedom to disobey SLDC's instruction about injection of power and it will not be a ground for objection to checking the 15 minutes block wise energy injected during the billing cycle.*

#### 7. Billing:.

*iv) After accounting the energy to third party and captive use, the quantum of energy supplied by the generator to TANGEDCO network under this contract/agreement for every 15 minutes block will be verified with respect to LOA conditions and SLDC's despatch instructions. The summing up of 96 blocks per day for the entire calendar month is the monthly billing period. Monthly billing cycle does not mean taking the initial and final reading of the month and making payment without checking 15 minute block wise injection with respect to LOA condition and SLDC's instructions. The energy pumped in*

*over and above the SLDC's despatch instruction will be treated as unrequisitioned power and no payment will be made.*

## **12. UNREQUISITIONED/UNAUTHORISED INJECTION**

- i) *Generators shall scrupulously adhere to the despatch instruction given by TNSLDC.*
- ii) *Any injection over and above the despatch instruction given by SLDC for the relevant period (relevant 15 minutes blocks) or injection of power without any valid LOA/contract will be treated as unauthorised injection.*
- iii) *No payment will be made for the supply of power over and above the despatch instruction given by TNSLDC.*
- iv) *No payment will be made for the power injected in excess of their contracted quantum.*
- v) *No payment will be made for the unauthorised injection after expiry of contract period."*

Hence, the petitioner to abide all the above terms and conditions stipulated in the LOA.

4.4. The 2<sup>nd</sup> Respondent has issued Short Term Open Access (STOA) approval subject to provisions of TNERC Grid Connectivity and Intra State Open Access Regulations, 2014 and any other relevant Regulation/Order/Code as amended and applicable from time to time.

4.5. The generators are responsible for maintaining generation as per their schedule and is very much essential for the grid stability. Excess injection may lead to line loading and adverse impact on the frequency of operation which is a threatening to the safety and security of the grid and also leads to commercial implications.

4.6. In D.R.P. No. 12 of 2011 filled by M/s OPG Power Generation Pvt. Ltd., this Commission's order, dated 07.10.2011 has ordered as follows:-

*"No compensation is payable to the petitioner for the energy injected into the grid in the absence of approval of open access. Further no compensation is*

*payable to the petitioner for the energy injected into the grid in the absence of any agreement for sale of power and scheduling of energy for injection into the grid based on such agreement"*

4.7. In D.R.P. No. 24 of 2012 filed by M/s OPG Energy Pvt Ltd and M/s OPG Power Generation Pvt Ltd, this Commission in its order dated 01.07.2015 as follows:

*"Taking into account all the above rules, regulations and the terms of separate contract /agreement entered into between the Petitioners and the Respondent 24 TANGEDCO (respective Superintending Engineer /EDC/xxxxxx) if the approval for compensation for injection of an additional power in to the grid by the 1<sup>st</sup>Petitioner is allowed then it would set as a bad precedent and there won't be any grid discipline and approval for STOA might not be sought from the SLDC by the generators whenever an additional generation is available with them and when they do not find any purchaser for their generated energy; they may inject power in the Grid and seek compensation from TANGEDCO stating that they have injected the power only in the State Grid and TANGEDCO should pay as it might have utilized the injected energy to meet its consumers demand, which might seriously affect the Southern Grid in which the State of Tamil Nadu is situated.*

*In view of the above, D.R.P. is dismissed."*

4.8. The Appellate Tribunal for Electricity (ATE), New Delhi in the appeal filed by M/s.OPG Power Generation Pvt Ltd vide Appeal No. 68 of 2016 against above judgment, and the Appellate Tribunal for Electricity has issued judgment on 30.06.2016 as follows:

*"Thus, we do not find any infirmity in the impugned order of the State Commission and accordingly; the issues are decided against the Appellant and the Respondents are not liable to make any payment for the 22,50,000 units of firm power injected into the respondent's grid between 22.04.2010 to 28.04.2010. Accordingly, the appeal is worthy of dismissal.*

*The Appeal being Appeal No. 68 of 2014, is dismissed and the order of the State Commission is hereby upheld."*

4.9. The Appellate Tribunal for Electricity, New Delhi in the Appeal No. 120 of 2016 & IA No. 272 of 2016 filed by M/s.Kamachi Sponge & Power Corporation Ltd has

issued judgment on 08.05.2017 towards the unauthorized pumping of energy is not entitled for compensation and the appeal has been dismissed as follows:-

*Para I(iv): "The Respondent No.1 had also quoted two more judgements of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgement dated 15.4.2015 in appeal no. 267 of 2014 this Tribunal has held that the Appellant (M/s Cauvery Power Generation Pvt Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgement till TANGEDCO conveyed its consent to purchase infirm power. In the judgement dated 30.5.2016 in appeal no. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s OPG Power Generation Pvt Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power I by the SLDC Injection of such energy by a generator is not entitled for any payments."*

4.10. The common clarification hasbeen issued to the generators including the petitioner with regard to levy of compensation during ramp up/ramp down period vide Lr.No.CE/PPP/SE/PP/E1/Tender No.06 of 2014/D.303/2015, dt.24.04.2015 as stated below:

*"The machine generation has to be ramped up or ramped down which will take time based on the type of machine to maintain the instruction quantum. Operationally reasonable time is permissible in terms of ramping up/ramping down rates per Tamil Nadu Electricity Grid Code 2005. As per TNERC Grid Code Chapter 7, Clause (3) (vii), the rate of increase or decrease in the output*

(generation level) for all generating units would be 1.0 (one) percent per minute.

The operation of above provision of TNERC Grid Code is explained as follows:

- During ramp up/ ramp down periods, if the SLDC instruction is for back down/pick up of "x %,then "X" minutes will have to be allowed for accomplishing ramp up/ramp down. Hence, generators have to commence the ramp up/ ramp down "x" minutes prior to time specified for reaching the instructed capacity. For example, SLDC gives back down instruction of 10% from 22.00 hrs. Then the generator should commence the ramp down from 21.50 hrs and reach the instructed capacity at 22.00 hrs.
- During the period of ramp up/ ramp down, the actual generation will be deemed to be the instructed capacity and actual energy will have to be accounted as it is."

4.11. Based on the terms and conditions of LOA and the above communication, energy accounting was made to the petitioners and excess energy over and above the required quantum by the SLDC has been lapsed.

4.12. Many generators in Tamil Nadu are supplying power to TANGEDCO under short term tender and at times State Load Dispatch Center instructed the generations to curtail/regulate the power injection for grid management. It is understood that there is confusion the generators on applicability of levy of compensation for Unrequisitioned / Unauthorised Injection working instructions already issued to the petitioner vide Lr.No.SE/PP/E1/Tender No.6 of 2014/D.256/2018, dt.13.02.2015 and common clarification issued to the petitioner vide Lr.No.CE/PPP/SE/PP/E1/Tender No.06 of 2014/0.303/2015, dt.24.04.2015. The same was implemented to this respondent and

the petitioner have been intimated vide Lr.No.SE/PEDC/PBLR/AO/REV/RCS/AS/F.CPP-PP/D.283/15, dt.16.11.2015 as which is reproduced below.

*"Referring to the above, it is informed that the back down instructions are issued by SLDC, in order to maintain the grid discipline as per IEGC2014 regulations.*

*It is regretted to note that the back down instructions issued by SLDC / Madurai were not adhered by you and the statement is enclosed herewith.*

*Hence, you are requested to adhere to back down the generation whenever such instructions are issued by SLDC in the interest of grid security.*

*The excess power injected into grid over and above the quantum as per back down instructions issued then and there will not be accounted and if any excess admitted in the previous months will be recovered from your future invoices."*

4.13. As stated above, no payment for excess injection is one of the conditions adopted and over injection by the Generator over and above the scheduled energy will be treated as lapsed. When such a condition is inbuilt in the LOA, the question of the Petitioner seeking the relief is unacceptable. Hence the petition is neither maintainable in law nor on facts.

4.14. Only the excess energy pumped into the grid over and above the SLDC instruction towards maintaining grid discipline and grid security had been lapsed as per the terms and conditions stipulated in the LOA.

4.15. It is denied that the Respondents herein had issued backing down and pick up instructions and the instructions were given in a short notice and instructions were received 10-13 times on an average per day from the Respondents. With sufficient time as given to other generators supplied power under the same Tender Notification.

4.16. The petitioner has agreed that the units so exported in excess beyond the stipulated percentage of quantum only lapsed and the Petitioner is entitled to get compensation as per the Compensation Clause 11(ii) of LOA.

*"In case deviation from procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, procurer shall pay compensation at 20% of tariff per kwh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract."*

4.17. The Respondents were not violated any payment terms of the LOA since the excess energy over and above the scheduled quantum according to SLDC instructions only lapsed.

4.18. The backingdown instructions were issued to the generators according to the grid conditions by the SLDC will be compensated as per the LOA Clause 11(ii) .

4.19. The petitioner has injected the additional power over and above quantum requested by the SLDC from the HT SC No. 43 is 18,54,042 units and from HT SC No.69 is 49,22,570 units and hence the petitioner is not entitled for any payment and the question of claiming of surcharge does not arise.

4.20. The petitioner has agreed that "there is a certain amount of excess pumping of energy that happens". Hence, the energy pumped by the petitioner over and above the permissible quantum against the SLDC instructions could not be accounted and compensated.

4.21. The petitioner's claim of excess injection would have been consumed by the consumers of TANGEDCO is not acceptable as TANGEDCO is governed by the inter-state DSM regulations of Hon'ble CERC. In accordance with the regulations, the surplus energy injected by the intra-state generators forces TANGEDCO to underutilize the scheduled inter-state power (under drawal). Beyond the limitations, this unutilized power is being consumed by the other state beneficiaries at free of cost. In addition to this financial loss, TANGEDCO is also forced to pay penalty for this under drawal. Hence the excess injection of power by the petitioner is only straining the grid and causing financial loss to TANGEDCO.

4.22. The Respondents have not failed to perform any contractual commitments and not made any arbitrary actions.

4.23. The averments of the petitioner that "the first respondent has deducted liquidated damages from the sum owed by it to the petitioner" is completely wrong and denied since any amount has not been deducted under liquidated damages for the power supplied under Tender No. 7 of 2015.

4.24. The back down instructions were issued including the other grid connected generators by the second Respondent, SLDC who is authorized agency to maintain grid safety and security in the real time grid management as per the Section 32 & 33 of the Indian Electricity Act, 2003 and various Codes, Regulations and Orders in force.

4.25. The request of the petitioner to pay the amounts for the unaccounted lapsed energy could not be considered as per the following terms and conditions of the LOA.

## **"12. UNREQUISITIONED/UNAUTHORISED INJECTION**

- (i) Generators shall scrupulously adhere to the despatch instruction given by TNSLDC.
- (ii) Any injection over and above the despatch instruction given by SLDC for the relevant period (relevant 15 minutes blocks) or injection of power without any valid LOA/contract will be treated as unauthorised injection.
- (iii) No payment will be made for the supply of power over and above the despatch instruction given by TNSLDC
- (iv) No payment will be made for the power injected in excess of their contracted quantum.
- (v) No payment will be made for the unauthorised injection after expiry of contract period."

4.26. The petitioner has consciously participated into the tender agreeing to various conditions including the conditions stipulated in respect of excess energy injection. Hence, in accordance with provisions of LOA, the request of the petitioner to pay for the energy lapsed towards the excessively pumped into the grid could not be considered under the above facts and circumstances.

## **5. Additional submissions of the Petitioner dated 12-12-2018:-**

The petitioner has furnished the following details towards its prayer.

Shortfall Payment due to excess pumping with interest 12% as on 14-11-2018

**TENER-07**

<b>Ariyalur</b>						
Month	Payment for excess pumping in Rs.	Invoice Date	Till Date	No. of Days	Interest	Total Amount
November 2015	19,31,923	02-12-2015	14-11-2018	1049	6,66,275	25,98,198

December 2015	14,56,996	02-01-2016	14-11-2018	1018	4,87,635	19,44,631
January 2016	41,25,542	01-02-2016	14-11-2018	988	13,40,066	54,65,608
February 2016	4,78,179	01-03-2016	14-11-2018	959	1,50,764	6,28,943
March 2016	67,40,826	01-04-2016	14-11-2018	928	20,56,598	87,97,424
April 2016	58,28,412	02-05-2016	14-11-2018	897	17,18,823	75,47,235
May 2016	43,47,601	03-06-2016	14-11-2018	865	12,36,386	55,83,987
	<b>2,49,09,479</b>				<b>76,56,547</b>	<b>3,25,66,026</b>

<b>Alathiyur</b>						
Month	Payment for excess pumping in Rs.	Invoice Date	Till Date	No. of Days	Interest	Total Amount
November 2015	8,40,057	05-12-2015	14-11-2018	1044	2,88,335	11,28,392
December 2015	6,95,966	04-01-2016	14-11-2018	1014	2,32,014	9,27,980
January 2016	23,27,964	02-02-2016	14-11-2018	987	7,55,408	30,83,372
February 2016	2,81,522	04-03-2016	14-11-2018	954	88,298	3,69,820
March 2016	28,85,065	05-04-2016	14-11-2018	923	8,75,479	37,60,544
April 2016	12,81,559	04-05-2016	14-11-2018	893	3,76,252	16,57,811
May 2016	10,50,779	06-06-2016	14-11-2018	861	2,97,442	13,48,221
	<b>93,62,912</b>				<b>29,13,228</b>	<b>1,22,76,140</b>

<b>RR Nagar</b>						
Month	Payment for excess pumping in Rs.	Invoice Date	Till Date	No. of Days	Interest	Total Amount
November 2015	12,09,055	01-12-2015	14-11-2018	1050	4,17,372	16,26,427

December 2015	10,51,915	29-12-2015	14-11-2018	1015	3,51,023	14,02,938
January 2016	24,21,980	30-01-2016	14-11-2018	986	7,85,120	32,07,100
February 2016	Yet to receive from TANGEDCO					
March 2016						
April 2016						
May 2016						
	<b>46,82,950</b>				<b>15,53,515</b>	<b>62,36,465</b>

## 6. Written submission of 1<sup>st</sup> and 3<sup>rd</sup> Respondents

6.1. The first Respondent has floated has floated the Tender vide Tender No. 7 of 2015, dated 21.09.2015 to purchase power to the tune of 1200 MW for the period from 01.10.2015 to 31.05.2016 under Short Term Open Access. The petitioner had participated in the bid by satisfying the various terms and conditions stipulated there on and as a successful bidder.

6.2. A Letter of Acceptance (LOA) was issued to the petitioner for their three generating Plant on 05.11.15 to supply of power from 00.00 hrs on 06.11.2015 to 24.00 hrs on 31.05.2016 at a rate of Rs.5.05/- per Kwhr under certain terms and conditions as follows:

- (i) The Ramco cements Ltd, Ariyalur, Ariyalur District - 30 MW
- (ii) The Ramco cements Ltd, Alathiyur, Ariyalur District - 15 MW
- (iii) The Ramco cements Ltd, RR Nagar, Virudhunagar District-5 MW

6.3. The following Clauses were stipulated in the LOA issued to the Petitioner is reproduced as follows:

#### *6. Scheduling:*

*The seller shall submit day ahead declaration of their capability for the next day to SLDC. Whenever downward revision is required, TNSLDC, will give instruction for downward revision for injection. The seller shall scrupulously adhere to TNSLDC's instruction.*

*Intrastate ABT Regulations have not been notified in Tamil Nadu. This Regulation is a separate Regulation for specific purpose. Non-implementation of Intrastate ABT Regulation will not be a ground for freedom to disobey SLDC's instruction about injection of power and it will not be a ground for objection to checking the 15 minutes block wise energy injected during the billing cycle.*

#### *7. Billing:*

*iv) After accounting the energy to third party and captive use, the quantum of energy supplied by the generator to TANGEDCO network under this contract/agreement for every 15 minutes block will be verified with respect to LOA conditions and SLDC's despatch instructions. The summing up of 96 blocks per day for the entire calendar month is the monthly billing period. Monthly billing cycle does not mean taking the initial and final reading of the month and making payment without checking 15 minute block wise injection with respect to LOA condition and SLDC's instructions. The energy pumped in over and above the SLDC's despatch instruction will be treated as un requisitioned power and no payment will be made.*

### **12. UNREQUISITIONED/UNAUTHORISED INJECTION**

- i) *Generators shall scrupulously adhere to the despatch instruction given by TNSLDC.*
- ii) *Any injection over and above the despatch instruction given by SLDC for the relevant period (relevant 15 minutes blocks) or injection of power without any valid LOA/contract will be treated as unauthorised injection.*
- iii) *No payment will be made for the supply of power over and above the despatch instruction given by TNSLDC.*

- iv) *No payment will be made for the power injected in excess of their contracted quantum.*
- v) *No payment will be made for the unauthorised injection after expiry of contract period.*

Hence, the petitioner to abide all the above terms and conditions stipulated in the LOA.

6.4. Back down and pick up instructions were issued to the open access generators including the petitioner based on the Merit Order Despatch principles according to the real time grid conditions for grid discipline and grid security. The curtailment instructions were given orally to the various generators for getting immediate relief towards grid discipline/safety by SLDC and subsequently, an email communications were sent to the petitioner along with detailed time schedules.

6.5. Each day consists of 96 blocks of 15 minutes duration and computation of actual injection of each generating source have been considered separately for this case. Less off take / short fall in supply are to be calculated in terms of energy and summed up for all the days in a month, the following terminology are used.

Contracted capacity (CC) means LOA quantum (capacity)]

Instructed capacity (IC) means quantum of power as instructed by SLDC.

Supplied Quantum (SQ) means power injected by the generator.

Generator Deviation (GD) means deviation by generator from instructed capacity.

6.6. The generator maintains the instructed capacity in every block. Whenever the generator supplies more than the instructed capacity, the excess quantum over and above the instructed capacity in any block is to be treated as unauthorised injection and disallowed and the allowable energy for payment is to be restricted to the instructed capacity only.

As per TNERC Grid code chapter 7,(3) (Viii), the rate of increase or decrease in the output (generation level) for all generating units would be 1.0 (One) percent per minute.

The operation of above provision of TNERC Grid code is explained as follows.

During ramp up / ramp down periods, if the SLDC instruction is for back down / pick up of “x%”, then “x” minutes will have to be allowed for accomplishing ramp up / ramp down. Hence, generators have to commence the ramp up / ramp down “x” minutes prior to time specified for reaching the instructed capacity. For example, SLDC gives back down instruction of 10% from 22.00 hrs. Then the generator should commence the ramp down from 21.50hrs and reach the instructed capacity at 22.00hrs.

During the period of ramp up / ramp down, the actual generation will be deemed to be the instructed capacity and actual energy will have to be accounted as it is. A copy of the each day consists of 96 blocks of 15 minutes duration and computation of actual injection is furnished to the Commission.

Unauthorised injection and disallowed and the allowable energy for payment as follows:

HT Sc No.69 The Ramco Cements Ltd	
Month	12/2015
Invoice date	02.01.2016
Invoice units	2746000
Invoice Amount	13867300
Invoice Received date	07.01.2016
Excess Power units-back down period	671073
Amount	3388919
Passed unit	2074927

Passed for payment	10478381
Payment Cheque / date	493046 / 28.11.2017

THE RAMCO CEMENTS LIMITED – ARIYALUR WORKS – HTSC.69	
POWER EXPORT COMPENSATION WORKING AS PER LOA ( FOR TENDER :7 only) 30MW Hour	
Month	Dec – 2015
Contracted Capacity	22320000
Power Supplied Quantum (Q)	2746000
15% of Contracted capacity (15% of P) (R)	3348000
Generator Deviation(S)	449830.32
TANGEDCO Deviation(T)	18556500
Generator Deviation for compensation (if S>R)@ Rs.1.10 upto 7/11/2015 & @Rs.1.01 from 08/11/2015	-2898170
TANGEDCO Deviation for compensation (if T>R) Rs.1.10 upto 7/11/2015 & @Rs.1.01 from 08/11/2015	15208500
Penalty to be paid by Generator (in Rs.)	0
Compensation to be paid by TANGEDCO (in Rs.)	15360585

6.7. Common clarification has been issued to the generators including the petitioner with regard to levy of compensation during ramp up/ramp down period vide Lr.No.CE/PPP/SE/PP/E1/Tender No.06 of 2014/D.303/2015, dt.24.04.2015 as stated below:

*"The machine generation has to be ramped up or ramped down which will take time based on the type of machine to maintain the instruction quantum. Operationally reasonable time is permissible in terms of ramping up/ramping down rates per Tamil Nadu Electricity Grid Code 2005. As per TNERC Grid Code Chapter 7, Clause (3) (vii), the rate of increase or decrease in the output (generation level) for all generating units would be 1.0 (one) percent per minute.*

*The operation of above provision of TNERC Grid Code is explained as follows:*

- *During ramp up/ ramp down periods, if the SLDC instruction is for back down/pick up of "x %", then "x" minutes will have to be allowed for accomplishing ramp up/ramp down. Hence, generators have to commence the ramp up/ ramp down "x" minutes prior to time specified for reaching the instructed capacity. For example, SLDC gives back down instruction of 10% from 22.00 hrs. Then the generator should commence the ramp down from 21.50 hrs and reach the instructed capacity at 22.00 hrs.*
- *During the period of ramp up/ ramp down, the actual generation will be deemed to be the instructed capacity and actual energy will have to be accounted as it is.*

Based on the terms and conditions of LOA and the above communication, energy accounting was made to the petitioners and excess energy over and above the required quantum by the SLDC has been lapsed.

6.8. As agreed by the petitioner in their petition “there is a certain amount of excess pumping of energy that happens”. Hence, the energy pumped by the petitioner over and above the permissible quantum against the SLDC instructions could not accounted and compensated as per the LOA Clause 12.Under the circumstances stated above, the action taken by the respondent on the excess energy pumped by the petitioner, be considered as bonafide, reasonable, genuine and the petition be dismissed and thus render Justice.

## **7. Submission of the Petitioner in I.A.1 of 2021 in DRP No.2 of 2018**

7.1. The I.A. has been filed seeking to reopen the petition in D.R.P.No.2 of 2018 for hearing further arguments.

7.2. The Applicant states that arguments were heard from both sides and Orders were reserved on 07.09.2021.

7.3. Thereafter, in the written submissions filed in the said cases by the Respondent TANGEDCO, the entire basis for the claims by TANGEDCO together with some records were filed. The case of the Applicant at the time of hearing was that no basis for the calculations were ever furnished in addition to other submissions.

7.4. The Respondent filed certain calculations and data running into more than 100 pages.

7.5. Therefore, the Applicant sought opportunity to file an additional affidavit with the data available with the Applicant as the information provided by Respondent TANGEDCO does not tally. Hence the Applicant made these submissions on the new information furnished by Respondent TANGEDCO in order to demonstrate the same

to be misleading.

7.6. Applicant submits that there has been a delay to bring this fact to the attention of this Commission was because the time periods pertained to several years prior and related to more than 100 pages each in both the cases.

7.7. The officials of the Applicant had to get all the information from the older records to prepare a response and only then it became apparent that further submissions are to be made.

7.8. Therefore, in view of the fact that new data sets have been furnished by Respondent TANGEDCO after oral arguments were completed, it is imperative that the Applicant makes oral submissions on the same. Therefore prayed the Commission to reopen the case for hearing the arguments on the new data and submissions made in the written submissions.

7.9. The Commission accepting the prayer of the petitioner, reopened the case and heard both sides on 01-02-2022.

## **8. Common Written Submissions on Behalf of the Petitioner:**

8.1. The back down and ramp up instructions issued by the Respondents are completely arbitrary and with no technical basis and do not fall within the permitted deviation.

8.2. During the pendency of the PPA / Letter of Acceptance, the Petitioner was issued back down and pick up instructions in a haphazard manner. The instructions were given in such short notice and further, such instructions were received 10-13

times on an average per day. For instance, on 02.02.2017 merely 2 days into the PPA, the Petitioner was asked to back down its generation by as much as 50% (i.e., 17MW) 3 times on the same day. The Petitioner has set out the many times at which it was forced to back down and ramp up power supply in a detailed tabulated statement annexed to the principal petition. It is pertinent to note that the Respondent TANGEDCO has not contested the contents of the table in its counter.

8.3. The Petitioner repeatedly brought to the attention of the Respondent the impracticality of issuing constant back down/ramp up instructions and the strain it caused to the Petitioner. Aggrieved by the chaotic and indiscriminate manner in which the Respondent, issued back down/pick up instructions, the Petitioner was constrained to write to the Chief Engineer, TANGEDCO on 20.03.2017 seeking to withdraw their energy supply. To the shock of the Petitioner, the respondent in their reply dated 20.03.2017 responded that the Petitioner is bound to supply power and that any shortfall will be covered by the liquidated damages clause.

8.4. The onus on the Petitioner to abide by the 2<sup>nd</sup> Respondent State Load Dispatch Center's ('SLDC') scheduling directives has been crystallized in clause 5 of the PPA and the Petitioner has been duly complying with the above directive, scrupulously.

8.5. While so, the Tamil Nadu Electricity Grid - Code 2005 stipulates the following condition to State Load Dispatch Centers while finalizing daily generations:

*"5. Scheduling:*

*(xi) While finalizing the above daily generation schedules for the generating stations, the SLDC shall ensure the same are operationally reasonable, particularly in terms of ramping up/ramping down rates and the ratio between*

*minimum and maximum generation levels."*

8.6. The Liquidated Damages Clause 11 (extracted hereinabove) that was heavily relied on by the Respondent TANGEDCO sets out the manner in which the deviation is to be calculated. A bare reading of the said clause demonstrates that the PPA itself provides for deviation at the TANGEDCO end as well. The incessant back down/pick up instructions issued to the Petitioner do not fall within the permitted deviation of 15%. The Petitioner was routinely asked to back down its power to as low as 17MW (50%). Therefore, the Petitioner is legally entitled to seek payment of liquidated damages calculated at 20% of tariff.

Further, such constant back down / pick up instructions have caused severe hardship to the Petitioner and unsafe operation of the Petitioner's thermal plants.

8.7. The erratic scheduling of the thermal plants results in unsafe operation due to the following reasons:

- i. Thermal generating stations are designed and engineered for operation as base load power plants. Cyclic load fluctuation would have an adverse impact on O&M, machine health, life, efficiency & economy.
- ii. Operational & Maintenance issues:
  - a. Increased equipment damages like faster boiler tube metal degradation resulting in tube leakages etc.
  - b. Increased maintenance requirements
  - c. Higher Repair & Maintenance costs
- d. Variation in operational parameters

- e. Continuous partial load operation without oil support increases the likelihood of unit tripping (Unscheduled outages) on flame failure which may also endanger grid security.
- f. Unit running only on TDBFP becomes highly unstable at lower loading.
- g. The generation of a unit operating at technical minimum/below technical minimum could get further reduced automatically due to operation of autocontrollers.
- h. Since safe and stable boiler operation is of paramount importance at all times, the operators may at times choose to operate at a slightly higher level to cater for the uncertainty.

i. Higher Emission levels

- j. Additional safety concerns

8.8. The back down instructions issued were wholly operationally unreasonable and it was only due to such technical impossibility that the petitioner's plant injected power. Further, there is not an iota of any evidence or proof that there was any negative effect on the grid caused by such injection. If there had been any grid disturbance, necessary contemporaneous instructions would have been issued by the SLDC and the Respondent TANGEDCO. The very fact that the electricity generated was received and thereafter utilized by TANGEDCO by supplying it to consumers at many higher rates shows the untenability of their stand. The TANGEDCO cannot unreasonably benefit out of its actions and unjustly enrich itself. When its own power plants and those of the Central Stations are only gradually ramped up or down and issued technically feasible instructions, the petitioner cannot be made to operate in a manner that to everyone's knowledge is technically not feasible. Such aspects

relating to operations are implied terms in a power supply arrangement, especially in the circumstances the State found itself in during the relevant period. It is the Petitioner's case that if such instructions had not been issued, the Petitioner would have no reason to inject surplus units.

8.9. The Judgments in DRP 12 of 2011 and the consequent Appeal No. 68 of 2016, DRP 24 of 2012 and Appeal No. 120 of 2016 relied on by the Respondent TANGEDCO is wholly misplaced and ought to be disregarded.

8.10. The case in D.R.P. No. 12 of 2011 and the consequent appeal, Appeal No. 68 of 2016, have no applicability to the present petition in as much as the Petitioner therein, OPG Power Generation P Ltd, sought payment for injecting infirm power into the grid. In the said dispute, OPG Power Generation P Ltd did not have a valid and subsisting agreement for sale of power with TANGEDCO and were injecting infirm power, i.e., power generated prior to commercial operation of the generating station. Further, the principle of law enunciated in the said judgment was that no claim for payment can be made in the absence of approval of open access and in the absence of an agreement for sale of power. However, in the instant case, the Petitioner has a valid and subsisting PPA dated 18.07.2017 and the power injected into the grid by the Petitioner is firm cower and is not unscheduled power. Therefore, any reliance on' D.R.P. No. 12 of 2011 is wholly misplaced and erroneous.

8.11. With respect to the Respondent's reliance on D.R.P.No.24 of 2012, the Petitioner's therein were seeking for adjustment of units generated by 1<sup>st</sup>Petitioner against the shortfall of injection caused by the 2<sup>nd</sup>Petitioner. In D.R.P. No. 24 of 2012, the finding of this Commission on unscheduled injection of power is in the following

context:

*"if approval of injection of additional power into the grid by the 1st Petitioner was allowed then it would set as a bad precedent and there won't be any grid discipline and approval for STOA might not be sought from the SLDC by the generators whenever an additional generation is available with them and when they do not find any purchaser for their generated energy, they may infect Dower in the Grid and seek compensation from, TANGEDCO stating they have infected power only in the State arid and TANGEDCO should Day..."*

8.12. However, in the instant case, the Petitioner's energy injection was severely affected by frequent back down instructions issued by the SLDC. Frequent ramp down instructions from TANGEDCO which were operationally unreasonable, forced the Petitioner to inject more power into the grid, which shows a lapse in judgement of the SLDC which prejudicially affected the Petitioner. Therefore, any reliance on D.R.P. No. 12 of 2011 is wholly misplaced and erroneous.

8.13. The Respondents' reliance on Appeal No. 120 of 2016 Kamachi Sponge and Power Corporation Ltd v TANGEDCO and Ors. is wholly misplaced in as much in that case, there was no valid and subsisting agreement between the Petitioner therein and TANGEDCO for the supply of power. However, in the instant case, there is a valid agreement between the parties in PPA dated 18.01.2017 for the supply of firm power.

8.14. The Petitioner is entitled to interest on delayed payments as per the PPA/Letter of Acceptance executed between the petitioner and the Respondent.

8.15. The total amount outstanding and payable by the Respondent to the Petitioner,

towards overdue interest rate is a sum of Rs,46,03,88,955/- (Rupees Forty-Six Crores Three Lakhs Eighty-Eight Thousand Nine Hundred and Fifty-Five Only) as on 30.06.2014. The Petitioner states that the liability to make payment is absolute and reiterated by various judgments of this Commission, the Hon'ble APTEL and the Hon'ble Supreme Court. The Appellate Tribunal for Electricity has upheld the rationale behind incorporating interest/ surcharge clauses in power purchase agreements in the case of Chairman, TNEB & Another V. Indian Wind Power Association and Others in Appeal No.11 of 2012 dated 17.04.2012. The relevant paragraphs are extracted hereunder:

*"13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.*

*17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied the loans can be serviced long with the promised return of investment."*

8.16. In the case of TANGEDCO v PPN Power Generation Co Ltd Civil Appeal No. 4126 of 2013, the Hon'ble Supreme Court of India has set at enunciated the rationale behind incorporating interest clauses in agreements in the following manner:-

*"We are also not able to accept the submission of Mr. Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5%*

*for having made part payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by the respondents. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices. With regard to the issue raised about the interest on late payment, APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in Central Bank of India vs. Ravindra & Ors. In this judgment it has been held as follows:*

*The essence of interest in the opinion of Lord Wright, in Riches v. Westminster Bank Ltd. All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab 2002 (1) SCC 367 speaking through Tek Chand, J. in CIT V. Dr Sham Lal Narula thus articulated the concept of interest the words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. .. In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."*

56. Similar observations have been made by this Court in Indian Council of Enviro-LegalAction vs. Union of India &Ors. wherein it has been held as follows:

"178. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above—or to simply levelise convenient approach is calculating interest. But here interest has to be calculated on compound basis—and not simple—for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.

180. Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice. However, the power of the Court to order compound interest by way of restitution is not fettered in any way. We request the Law Commission to consider and recommend necessary amendments in relevant laws.

57. The late payment clause only captures the principle that a person denied the benefit of money, that ought to have been paid on due dates should get compensated on the same basis as his bank would charge him for funds lent together with a deterrent of 0.5% in order to prevent delays. It is submitted by Mr.Salve and Mr. Bhushan that bankers of the respondents have applied quarterly compounding or monthly compounding for cash credits during different periods on the basis of RBI norms. Article 10.6 of the PPA has followed the norms of the bank. This cannot be said to be unfair as the same principle would also apply to the Appellants"

For the aforesaid reasons, the petitioner prayed the Commission to allow the instant petition as prayed for.

## **9. Findings of the Commission:-**

9.1. From the submissions of both the parties, we find that a Tender was floated by the TANGEDCO videTender Number 07 of 2015 dated 21.09.2015 for supply of electricity; the tender process in which M/s. The Ramco Cements Limited, the petitioner was short-listed for the supply of 50 MW from its 3 plants viz., 30 MW from Ariyalur plant, 15 MW from Alathiyur plant and 5 MW from RR Nagar plant, for the period from 06-11-2015 to 31-05-2016. The Letter of Acceptance issued to M/s.Ramco Cements Limited, vide Lr.No. CE/PPP/SE/PP/E1/Tender 07-2015/D.328, Dt.05-11-2015 by the CE/PPP/TANGEDCO under the terms and conditions stipulated thereon. The petitioner agreed to inject the power from its 3 power plants.

9.2. The petitioner has stated that following shortfall payment is due from the Respondent towards excess pumping of power with interest @ 12% (as on 14.11.2018).

Month	Ariyalur				
	Payment for Excess pumping in Rs.	Invoice date	No. of days	Interest	Total amount
Nov 15	19,31,923	2.12.15	1049	666.275	25,98,198
Dec 15	14,56,996	2.1.16	1018	4,87,635	19,44,631
Jan 16	41,25,542	1.2.16	988	13,40,066	54,65,608
Feb 16	4,78,179	1.3.16	959	1,50,764	6,28,943
Mar 16	67,40,826	1.4.16	928	20,56,598	87,97,424
Apr 16	58,28,412	2.5.16	897	17,18,823	75,47,235
May 16	43,47,601	3.6.16	865	12,36,386	55,83,987
	<b>2,49,09,479</b>			<b>76,56,547</b>	<b>3,25,66,026</b>

Month	Alathiyur				
	Payment for Excess pumping in Rs.	Invoice date	No. of days	Interest	Total amount
Nov 15	840057	5.12.15	1044	288335	1128392
Dec 15	695966	4.1.16	1014	232014	927980
Jan 16	2327964	2.2.16	987	755408	3083372
Feb 16	281522	4.3.16	954	88298	369820
Mar 16	2885065	5.4.16	923	875479	3760544
Apr 16	1281559	4.5.16	893	376252	1657811
May 16	1050779	6.1.16	861	297442	1348221
	<b>93,62,912</b>			<b>29,13,228</b>	<b>1,22,76,140</b>

Month	RR Nagar				
	Payment for Excess pumping in Rs.	Invoice date	No. of days	Interest	Total amount
Nov 15	12,09,055	1.12.15	1050	4,17,372	16,26,427
Dec 15	10,51,915	29.12.15	1015	3,51,023	14,02,938
Jan 16	24,21,980	30.1.16	986	7,85,120	32,07,100
Feb 16					
Mar 16					
Apr 16					
May 16					
	<b>46,82,950</b>			<b>15,53,515</b>	<b>62,36,465</b>

9.3. The petitioner's contention is that the excess injection of power caused only due to the erratic and frequent back down / pick up instructions issued in a short notice by the 2<sup>nd</sup> Respondent (SLDC). On account of frequent ramp up / ramp down instructions, the Petitioner's plant faced huge fluctuations in its operation and which has resulted in deviations in exporting of power. The 1<sup>st</sup> Respondent treated the excess exported units as un-requisitioned units and not paid for it.

The petitioner's plant was repeatedly forced to stop and then restart generation leading to damage to equipments. And also stated that the erratic scheduling of the

thermal plants results (i) adverse impact on O&M, Machine health, life & efficiency, (ii) increased equipment damages, (iii) increased maintenance requirements (iv) Higher Repair & Maintenance costs, (v) Continuous partial load operation without oil support increases the likelihood of unit tripping on flame failure endangering grid security, (vi) highly unstable at lower loading (vii) the generation of a unit operating at technical minimum / below technical minimum could get further reduced automatically due to operation of auto controllers, (vii) higher emission levels, etc.,

9.4. In this connection, the respondent has stated that back down and pick up instructions were issued to the open access generators including the petitioner based on the Merit Order Despatch principles according to the real-time grid conditions for grid discipline and grid security. The scheduling of energy was issued & verified in accordance with the clauses stipulated under PPA as below -

*"5. Scheduling:*

*The scheduling and dispatch of the power shall be co-ordinated with the respective SLDCs as per the relevant provisions of IEGC and within the framework of ABT and the decisions of SLDC*

*The Intra-State sources shall submit day ahead declaration of their capability for the next day to SLDC. Whenever downward revision is required, TNSLDC, will give instruction for downward revision for injection. All generators shall scrupulously adhere to TNSLDC's instruction.*

And accordingly, the quantum of scheduled energy was accounted and the injection of energy over and above the energy scheduled by the SLDC is considered as unauthorized injection, such un-requisitioned power was disallowed from the invoice in accordance with the clause 12 of the LOA.

9.5. The petitioner argued that as the number of back down and pick up instructions issued by the Respondent is intolerable and damaging its plant's operation; hence in this connection the petitioner addressed a letter to the Chief Engineer / PPP / TANGEDCO on 4<sup>th</sup> January 2016 stating that the number of "*back down and pick up is not uniform and for a short duration on daily basis, and also TNSLDC was giving power export dispatch instruction as and when requirement basis in a short notice of time. Due to this the start / stop of boiler& turbines are very frequent resulting in major damages to the equipments resulting in lower percentages to achieve the quantum especially during evening peak hours. ....Hence in spite of our best efforts it is very difficult to maintain 15 minutes block wise generation and 85% power export during time of slots. ... So we request your good selves to take the above into consideration and provide us information of Pick up / back down on the start of the day and clear instructions regarding ramp up / ramp down time quantum of calculation. In addition we request you to issue order for exception from penalty for not maintaining minimum percentage of export during the month of December 2015'*

In this connection, the Respondent (SE/Perambalur EDC) intimated the petitioner as below –

*"Referring to the above, it is informed that the back down instructions are issued by SLDC, in order to maintain the grid discipline as per IEGC 2014 regulations.*

*It is regretted to note that the back down instructions issued by SLDC / Madurai were not adhered by you and the statement is enclosed herewith.*

*Hence, you are requested to adhere to back down the generation whenever such instructions are issued by SLDC in the interest of grid security.*

*The excess power injected into grid over and above the quantum as per back down instructions issued then and there will not be accounted and if any excess admitted in the previous months will be recovered from your future invoices."*

9.6. The petitioner expressed its concern on frequent operation of back down / pick up instructions at technical minimum or below technical minimum leads to higher operational cost and harm to its plant for which it is not compensated by the Respondent. In this regard, the Respondent has stated that the units so exported in excess beyond the stipulated the stipulated percentage of quantum only lapsed and the Petitioner is entitled to get compensation as per the Compensation Clause 11(ii) of LOA.

*"In case deviation from procurer side is more than 15% of contracted energy for which open access has been allocated on monthly basis, procurer shall pay compensation at 20% of tariff per kwh for the quantum of shortfall in excess of permitted deviation of 15% while continuing to pay open access charges as per the contract."*

The Respondents were not violated any payment terms of the LOA since the excess energy over and above the scheduled quantum according to SLDC instructions only lapsed. It has worked out the compensation of Rs.1,53,60,585 for the month of 12/2015. Hence, the issue of compensation payable by the procurer is settled between the parties.

The back down instructions were issued to the generators according to the grid conditions by the SLDC will be compensated as per the LOA Clause 11(ii). In our view, the Respondent has no objection in this regard.

9.7. As per Clause 11 of the LOA, the Seller shall supply to the full contracted quantum to TANGEDCO during the contract period. However, in case failure to avail/supply the power on either side, to the extent of more than 15% of the contracted

energy shall have to be compensated by the concerned party. It is found from the submissions of the parties that the Respondent has scheduled zero quantum in many occasions. Hence, according to the above clause, the Respondent is liable to compensate as per Clause 11(ii) to the Petitioner. In our view, the Respondent has no objection in this regard.

9.8. Considering the aforesaid submissions of the Petitioner and the Respondent, we have the following observations –

9.8.1. As agreed by the parties, the petitioner is bound to supply the quantum of 50 MW power during the period from 6.11.2015 to 31.5.2016 as scheduled by the respective SLDC including any downward revision required by the TNSLDC.

9.8.2. The petitioner has to adhere the Scheduling instructions given by the TN State Load Despatch Centre and under the LOA conditions and if any excess injection over and above the Despatch Instruction will be treated as unauthorized injection. The relevant clause 12 is reproduced below –

*"12. Unrequisitioned / Unauthorised Injection*

*(i) Generators shall scrupulously adhere to the despatch instruction given by TNSLDC*

*(ii) Any injection over and above the despatch instruction given by SLDC for the relevant period (relevant 15 minutes blocks) or injection of power without any valid LOA/contract will be treated as unauthorized injection.*

*(iii) No payment will be made for the supply of power over and above the despatch instruction given by TNSLDC.*

*(iv) No payment will be made for the power injected in excess of their contracted quantum*

*(v) No payment will be made for the unauthorized injection after expiry of contract period."*

9.8.3. It is evident from the LOA clause (7) that the payment for the energy exported to the Respondent shall be paid by the concerned Superintending Engineer / Perambalur based on the data downloaded from the Generator point. The Energy accounting will be carried out with reference to the scheduled quantum during 15 minutes block by the SLDC's instructions. And the excess energy pumped over the Despatch instructions will be treated as unrequisitioned power. The Clause 7 of Billing and Payment terms is as below –

*"7. Billing:-*

- (i) The energy bills will be scrutinised, passed and paid by the Superintending Engineer/Perambalur Electricity Distribution Circle concerned.*
- (ii) A copy of down loaded data for the relevant billing parameters shall be enclosed with the bill.*
- (iii) The downloaded data shall be compared and checked with respect to LOA conditions and SLDC's Instructions.*
- (iv) After accounting the energy to third party and captive use, the quantum of energy supplied by the generator to TANGEDCO network under this contract / agreement during 15 minutes block will be verified with respect to LOA condition and SLDC's dispatch instructions. The summing up of 96 blocks per day for the entire calendar month is the monthly billing period. Monthly billing cycle does not mean taking the initial and final reading of the month and making payment without checking 15 minutes block wise injection with respect to LOA conditions and SLDC's instructions. The energy pumped in over and above the SLDC's dispatch instruction will be treated as unrequisitioned power and no payment will be made."*

It can be seen from the above clauses that both the parties agreed for verification of 15 minutes block wise energy accounting and also agreed to lapse any excess injection over the SLDC's instructions.

9.8.4. Though the petitioner has stated that there has been erratic back down / pick up (ramp up / ramp down) instructions from the SLDC which has caused severe damage to the equipments of the petitioner's plant, it is to be seen that whether such an action of ramp up / ramp down issued by the SLDC is within the norms specified under Clause 7 (3) (vii) of the Tamil Nadu Electricity Grid Code 2005 which is as below -

*"7. Requirements in Grid Operations*

xxxx                xxxx                xxxx

*(vii) All generating units, operating at / up to 100% of their Maximum Continuous Rating (MCR) shall normally be capable of (and shall not in any way be prevented from) instantaneously picking up 5% of extra load and sustain the increase for a minimum of 5 minutes when frequency falls due to a system contingency. The generating units operating at above 100% of their MCR shall be capable of (and shall not be prevented from) going at least up to 105% of their MCR when frequency falls suddenly. After an increase in generation as above, a generating unit may ramp back to the original level at a rate of about one percent (1%) per minute, in case continued operation at the increased level is not sustainable. Any generating unit of over fifty (50) MW size, not complying with the above requirement, shall be kept in operation (synchronized with the State Grid) only after obtaining the permission of SLDC. However, the entity can make up the corresponding shortfall in spinning reserve by maintaining an extra spinning reserve on the other generating units of the entity.*

*(viii) The recommended rate for changing the governor setting, i.e. supplementary control for increasing or decreasing the output (generation level) for all generating units, irrespective of their type and size, would be one (1.0) per cent per minute or as per manufacturer's limits."*

The Respondent has to calculate the excess pumping of energy only based on the comparison of energy in every 15 minutes block. At the same time, any of the SLDC's instructions of ramp down / ramp up cannot be in deviation to the above stipulation i.e., any ramp back instruction shall have to be at the rate of 1% per Minute as stipulated under Grid Code.

9.8.5. In order to verify that whether the SLDC's Back down & Pick up instructions are well within the norms specified under 7 (3) (vii), (viii), the details of the Back down & Pick up data provided by the petitioner& Respondent for the month of January &March 2016 were taken into account. The normative rate of 1% per Minute stipulation was applied for every instruction as below -

DRP 2 of 2018 (M/s.Ramco cements limited)

Back down & Pick up hrs detail for the month of March 2016												
Date	Status	From	To	Total hrs.	In minutes	From (MW)	To (MW)	Minutes	%	Actual Load change instructed	Possible Load change as per Grid code	Norms check
<b>From Petitioner data</b>												
2.1.2016	Pick up	12.00	13.00	0.3	30	0	15	30	30	15	36.3	Within Norms
		12.15	13.00	0.45	45	15	50	45	45	35	54.45	Within Norms
		21.15	10.00	0.45	45	50	0	45	45	50	54.45	Within Norms
3.1.2016		5.00	6.00	1	60	0	15	60	60	15	72.6	Within Norms
		6.00	6.40	0.4	40	15	50	40	40	35	48.4	Within Norms
		14.30	15.10	0.4	40	50	15	40	40	35	48.4	Within Norms
		17.15	8.00	0.45	45	15	0	45	45	15	54.45	Within Norms
<b>From Respondent data</b>												
3/2/2016		17.00	18.00	1	60	0	9	60	60	9	72.6	Within Norms
3/5/2016		19.15	20.15	1	60	9	0	60	60	9	72.6	Within Norms
3/7/2016		12.00	13.00	1	60	0	9	60	60	9	72.6	Within Norms
3/9/2016		6.00	7.00	1	60	9	21	60	60	12	72.6	Within Norms
3/9/2016		13.30	14.30	1	60	21	9	60	60	12	72.6	Within Norms
3/10/2016		17.00	18.00	1	60	9	30	60	60	21	72.6	Within Norms
3/10/2016		20.50	21.50	1	60	30	9	60	60	21	72.6	Within Norms
11.03.2016		4.00	5.00	1	60	9	30	60	60	21	72.6	Within Norms
11.03.2016		11.30	12.30	1	60	30	9	60	60	21	72.6	Within Norms
12.03.2016		7.30	8.30	1	60	9	21	60	60	12	72.6	Within Norms
12.03.2016		17.45	18.45	1	60	21	30	60	60	9	72.6	Within Norms
12.03.2016		20.15	21.15	1	60	30	9	60	60	21	72.6	Within Norms

13.03.2016		0.15	1.15	1	60	9	0	60	60	9	72.6	Within Norms
14.03.2016		6.00	7.00	1	60	0	21	60	60	21	72.6	Within Norms
14.03.2016		5.00	6.00	1	60	0	30	60	60	30	72.6	Within Norms
15.03.2016		0.05	1.05	1	60	30	15	60	60	15	72.6	Within Norms
15.03.2016		5.10	6.10	1	60	15	30	60	60	15	72.6	Within Norms
15.03.2016		20.00	21.00	1	60	30	9	60	60	21	72.6	Within Norms
16.03.2016		7.00	8.00	1	60	9	30	60	60	21	72.6	Within Norms
16.03.2016		23.00	0.00	1	60	30	9	60	60	21	72.6	Within Norms
17.03.2016		5.30	6.30	1	60	9	30	60	60	21	72.6	Within Norms
18.03.2016		0.00	1.00	1	60	30	9	60	60	21	72.6	Within Norms
18.03.2016		5.20	6.20	1	60	9	30	60	60	21	72.6	Within Norms
18.03.2016		13.10	14.10	1	60	30	15	60	60	15	72.6	Within Norms
18.03.2016		17.45	18.45	1	60	15	30	60	60	15	72.6	Within Norms
18.03.2016		23.30	19.03.2016 0.3	1	60	30	9	60	60	21	72.6	Within Norms
19.03.2016		5.00	6.00	1	60	9	30	60	60	21	72.6	Within Norms
19.03.2016		8.30	9.30	1	60	30	9	60	60	21	72.6	Within Norms
19.03.2016		16.00	17.00	1	60	9	30	60	60	21	72.6	Within Norms
19.03.2016		23.45	20.03.2016 00.45	1	60	30	9	60	60	21	72.6	Within Norms
21.03.2016		6.00	7.00	1	60	9	21	60	60	12	72.6	Within Norms
21.03.2016		10.15	10.45	0.3	30	21	30	30	30	9	36.3	Within Norms
22.03.2016		0.00	1.00	1	60	30	9	60	60	21	72.6	Within Norms
22.03.2016		6.00	7.00	1	60	9	30	60	60	21	72.6	Within Norms
22.03.2016		14.00	15.00	1	60	30	9	60	60	21	72.6	Within Norms
22.03.2016		6.30	7.30	1	60	9	30	60	60	21	72.6	Within Norms
23.03.2016		12.15	13.15	1	60	30	21	60	60	9	72.6	Within Norms
23.03.2016		14.00	15.00	1	60	21	9	60	60	12	72.6	Within Norms

24.03.2016		5.30	6.30	1	60	9	30	60	60	21	72.6	Within Norms
24.03.2016		11.00	12.00	1	60	30	15	60	60	15	72.6	Within Norms
24.03.2016		15.45	16.45	1	60	15	30	60	60	15	72.6	Within Norms
25.03.2016		0.30	1.30	1	60	30	21	60	60	9	72.6	Within Norms
25.03.2016		1.15	2.15	1	60	21	9	60	60	12	72.6	Within Norms
25.03.2016		5.50	6.50	1	60	9	30	60	60	21	72.6	Within Norms
25.03.2016		12.40	13.40	1	60	30	15	60	60	15	72.6	Within Norms
25.03.2016		17.30	18.30	1	60	15	30	60	60	15	72.6	Within Norms
			26.03.2016									
25.03.2016		23.45	0.45	1	60	30	9	60	60	21	72.6	Within Norms
26.03.2016		6.15	7.15	1	60	9	30	60	60	21	72.6	Within Norms
26.03.2016		10.15	11.15	1	60	30	9	60	60	21	72.6	Within Norms
26.03.2016		17.00	18.00	1	60	9	30	60	60	21	72.6	Within Norms
			27.03.2016									
26.03.2016		23.30	0.30	1	60	30	9	60	60	21	72.6	Within Norms
27.03.2016		5.15	6.15	1	60	9	30	60	60	21	72.6	Within Norms
27.03.2016		8.45	9.45	1	60	30	9	60	60	21	72.6	Within Norms
27.03.2016		17.15	18.15	1	60	9	30	60	60	21	72.6	Within Norms
27.03.2016		20.00	21.00	1	60	30	9	60	60	21	72.6	Within Norms
28.03.2016		5.15	6.15	1	60	9	30	60	60	21	72.6	Within Norms
29.03.2016		0.00	1.00	1	60	30	9	60	60	21	72.6	Within Norms
29.03.2016		5.30	6.30	1	60	9	30	60	60	21	72.6	Within Norms
29.03.2016		13.00	14.00	1	60	30	21	60	60	9	72.6	Within Norms
30.03.2016		0.00	1.00	1	60	21	9	60	60	12	72.6	Within Norms
30.03.2016		16.30	17.30	1	60	9	30	60	60	21	72.6	Within Norms
			31.03.2016									
30.03.2016		23.15	0.15	1	60	30	9	60	60	21	72.6	Within Norms

From the above sample verification, it is found that the ramp up / ramp down instructions issued by the State Load Despatch Centre are within the normatives prescribed under Clause 7 (3) of Tamil Nadu Electricity Grid Code 2005. Hence, we cannot accept that such SLDC's back down / pick up instructions are erratic. As the petitioner & Respondent has furnished the SLDC's instruction details for the month of January & March 2016 only, the norms check may be carried out for the rest of the period for which the data was not provided by the parties. If it is found that any of the instruction is more than the norms, the entire generation during the said instruction shall have to be treated as authorised and to be paid accordingly.

9.8.5. Having consciously participated in the tender and after agreeing to binding terms and conditions including the conditions stipulated in the Letter of Acceptance in respect of excess energy injection and liquidated damages, now the petitioner cannot cite any other conditions which was neither provided under the LOA or in any Regulations/Code.

9.8.6. The Commission while dealing with a case similar to this one i.e., M/s. Saheli Exports Pvt Ltd., Vs TNEB in DRP 5 of 2011 dated 04.01.2019 held as follows :

*14.5.... The powers of the SLDC in so far as the State of Tamil Nadu concerned in the matter of issue of directions for the safety of the grid cannot be called in question. It is the SLDC which is responsible for safety of the grid and it is the apex body to ensure integrated operation in the power system in a State. It has also been mandated under section 32 of the Electricity Act, 2003 to monitor the operations. Section 33 of the Electricity Act, 2003, the State Load Despatch Centre in the state may give such directions and exercise such supervision and control that may be required for the integrated grid operations and for achieving the maximum economy and efficient in the*

*operation of power system in that State. Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre....*

xxxx                  xxxx                  xxxx

*14.6.1. ... we are to observe that the Hon'ble Appellate Tribunal refused to invoke section 70 of the Contract which deals with the quasi-contract and held that the energy injected illegally need not be paid for in Indo Rama Synthetic's case. In the present case the petitioner should not have acted in an illegal manner by violating the provisions of the Electricity Act, 2003 and the regulations made thereunder. It has been clearly specified in the Grid Code that scheduling is mandatory before injection of energy into the grid of the respondent. When that is so, it is not correct on the part of the petitioner to contend that it was constrained to export electricity into the grid of the respondent Board. Such acts cannot be countenanced bearing in mind the safety of the Grid. No act which is not in line with the provision of Electricity Act, 2003 and the regulations made thereunder can be justified on the grounds of protection of commercial interests of the petitioner or on the principle of quasi-contract.*

xxxx                  xxxx                  xxxx

*What happened to the NEW grid to serve as an eye-opener for all the power managers. The complete blackout made things worse to the people. Needless to say that Grid discipline is indispensable for the stability of the Grid and if the same is thrown to winds and indisciplined acts are allowed to continue, it could cause irreparable damage to the grid of the respondent on whom the responsibility of the safety of the grid rests. As stated above, the Commission cannot be oblivious or a silent spectator to the continuous acts of indiscipline and allow the same to perpetuate.*

Thus it is the settled law of proposition to adhere the scheduling of energy by the State Load Despatch Centre as per the provisions of Grid code and the provisions of the Electricity Act 2003.

9.8.7. Taking into account of all the above, we do not agree with the contention of the petitioner that entire energy injected shall have to be accounted for payment even though such energy is injected excess over the quantum scheduled by the SLDC. In respect of any instruction for ramp up / ramp down during any day / contract period, the parties are bound to act in compliance of Chapter 7 (3) (vii) of the TN Grid Code 2005. The petitioner is bound to adhere the scheduling for back down / pick up instructions of the TNSLDC issued within the norms of Grid Code. With the verification of data provided for January & March 2016, we find no violation of Grid Code from the part of the SLDC, hence nothing survives on the prayer of the petitioner. However, we direct the Respondent to verify the Grid code norms in respect of its Scheduling instructions for the rest of the period; further, the compensation clause will attract if the deviation is found on either side, as prescribed under Clause 11 of the PPA.

9.8.8. In result, we find no merit on the claim of the petitioner since the SLDC's instructions are found to be within the ramp up / ramp down norms specified under the Tamil Nadu Electricity Grid Code 2005. For these reasons, the relief sought for by the petitioner cannot be granted and hence the petition is dismissed.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

**/True Copy /**

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**