



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No.4 of 2009,
I.A. No.2 of 2009 &
O.P. No.20 of 2009

Dated 28.03.2013

Present

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

O.P. No.4 of 2009 & I.A. No.2 of 2009

Between

M/s Spectrum Power Generation Ltd
Plot No. 231, 8-2-293 / 82 / A / 231,
3rd Floor, Road No. 36, Jubilee Hills,
Hyderabad – 500 033.

...Petitioner

AND

1. Transmission Corporation of AP Ltd (APTRANSCO)
Vidyut Soudha, Hyderabad.
2. Chief Engineer / Commercial & IT, APTRANSCO,
Vidyut Soudha, Hyderabad.
3. FA&CCA (A&E), APTRANSCO
Vidyut Soudha, Hyderabad.

... Respondents

O.P. No.20 of 2009

Between

1. Transmission Corporation of AP Ltd (APTRANSCO)
Vidyut Soudha, Hyderabad.
2. Chief Engineer / Commercial & IT, APTRANSCO,
Vidyut Soudha, Hyderabad.
3. FA&CCA (A&E), APTRANSCO
Vidyut Soudha, Hyderabad.

...Petitioners

AND

M/s Spectrum Power Generation Ltd
Plot No. 231, 8-2-293 / 82 / A / 231,
3rd Floor, Road No. 36, Jubilee Hills,
Hyderabad – 500 033.

... Respondent

These petitions are coming up for hearing on 15.09.2012 in the presence of Sri S.Ravi, Advocate for the petitioner and respondent in O.P. No.20 of 2009 and Sri P.Shiva Rao, Advocate for the respondent in I.A. No.2 of 2009 in O.P. No.4 of 2009 and petitioner in O.P. No.20 of 2009, the Commission passed the following:

COMMON ORDER

O.P. No.4 of 2009

This is a petition filed by the petitioner u/s 86(1)(f) of the Electricity Act, 2003. The case of the petitioner is briefly as follows:

- (i) The petitioner is a Company registered under the Companies Act, 1956 having its Registered office at Plot No. 231, 8-2-293/82/A/231, 3rd Floor, Road No. 36, Jubilee Hills, Hyderabad.
- (ii) The respondent no.1 (Transmission Corporation of Andhra Pradesh Limited (APTRANSCO)) is a company registered under the Companies Act, 1956 and having its registered office at Vidyut Soudha, Khairatabad, Hyderabad.
- (iii) In the process of encouraging private investors, the Government of India assured that it would provide required assistance to those who are willing to invest in the power sector.
- (iv) The petitioner's power plant is one of the 8 fast track projects identified by Govt. of India. The petitioner's is the only project which was set up without any counter guarantee from the Government of India out of the 3 projects which had seen the light of the day.
- (v) The Central Electricity Authority (CEA for short), which is competent to approve the project cost under Sec.30(d)(g) of the Electricity (Supply) Act, 1948 approved when its capital cost is less than others. Pursuant to the same, the CEA having considered all the relevant aspects granted techno economic clearance with a provisional capital cost of Rs.748.43 crores, which includes interest during construction amounting to Rs.45.00 crores.
- (vi) The petitioner company entered into a Power Purchase Agreement (PPA) with APSEB on 20.06.1993. The said PPA was revised from time to time and the final and comprehensive agreement was entered into by both the parties on 02.01.1997. The purchase price of electricity generated by the

petitioner i.e., tariff was determined in accordance with the norms laid down by the Ministry of Power, Government of India in the notification issued under section 43-A (2) of the Act and erected 208 MW capacity Combined Cycle Gas based Power.

- (vii) The respondent no.1 herein is established as a successor of erstwhile APSEB under the Andhra Pradesh Electricity Reforms Act, 1998 (hereinafter referred to as Reforms Act).
- (viii) As per clause 1.1(x), the petitioner company shall submit the actual cost for every billing month which will include monthly fixed charges and variable charges and the said bill is payable by the respondents on or before the due date. The Board is obligated to pay the entire amount and in the event if it is found that the Board is entitled for refund of the amount, then the said amount shall be paid by the petitioner with interest. The petitioner company submitted the actual cost reports to the respondent on 31.03.1999 to enable them to submit the same to the CEA for approval. Though more than 9 years have elapsed, the respondent no.1 did not choose to take any action on the said reports despite repeated reminders from the petitioner company. As per the said reports, the final cost had escalated to Rs.972.60 crs due to exchange fluctuations, increase in Customs Duty and increased interest burden during construction.
- (ix) In terms of the PPA, the respondents are taking the provisional project cost as the basis for payment of the pro rata fixed charges every month. On this account, the petitioner company is entitled for sum of Rs.50.00 crs per annum and a sum of about Rs.450 crs is payable by the respondents.
- (x) The mechanism under the PPA was with a view to prevent the respondents from deducting huge sums of money from the bills payable, to pave way for unhindered operations of the power plant without any hitch. The petitioner shall have to pay the charges to the GAIL for supply of natural gas, meet its operation & maintenance, salaries etc from out of the bill payment received. The fixed charges payable during the tariff year are calculated in advance and one-twelfth of such amount is paid for each billing month.

- (xi) The respondent no.2 by its' letter dated 30.01.2004 informed the petitioner company that the former Managing Director of the company admitted before the Enforcement Directorate that the EPC and O&M contractor had paid agency Commission to him to the tune of Rs.67.91crs and that the petitioner company entered into bogus contracts of civil works to a tune of Rs.29.30 crs. It was also stated that in OS No.68 of 1999, on the file of the Addl.Chief Judge, City Civil Court, Hyderabad, by a judgment dated 23.08.2002 the Court directed the petitioner company to rectify the register of the shareholders by deleting the shares to an extent of Rs.50 lakhs and hence called for explanation from the petitioner company as to why APTRANSCO should not reduce the capital cost by Rs.97.71 crores. Before the petitioner could furnish its reply the APTRANSCO approached the Commission by filing a petition u/s 86 of the EA 2003 requesting the Commission to pass orders reducing the capital cost of the petitioner from Rs.748.43 crs to Rs.650.72 crs on the grounds stated in the show cause notice. In the said application the APTRANSCO sought the orders of the Commission to pay future power purchase bills based on the revised capital cost of Rs.650.72 crs. The petitioner in such circumstances filed WP No.8701 of 2004 before the Hon'ble High Court of A.P. questioning the jurisdiction of APERC in entertaining the applications made by the respondents. The Hon'ble High Court of A.P. by its order dated 30.04.2004 stayed all further proceedings in the said O.P.
- (xii) In W.P. No.21391 of 2002, the respondents have taken the plea that the authority to decide the project cost, is the CEA and having admitted that the irregularities is not accountable to the project cost, the respondents are going back on the same and it is not only deciding the project cost and also attributing the same to the company and is deducting it. Thus the respondents, who have no respect for their sworn affidavit, are now acting in a whimsical manner and force financial distress on the petitioner.
- (xiii) The petitioner was calculating the fixed charges only on the provisional capital cost and was paying only an amount of Rs.13,93,60,595/- towards fixed charges as against the claim of Rs.14,31,14,049/- and the petitioners' company was accepting the same under protest pending

determination of the fixed charges for the current tariff year. But to the surprise of the petitioner company, the respondent no.3 by Lr.No.FA&CCA(A&E)/APTRANSCO/SAQ(PP&5) D.No.937/2004 dated 15.09.2004, paid only a sum of Rs.11,88,53,289/- towards fixed charges and thereby unauthorisedly reduced a sum of Rs.2,05,07,306/- from the power bills. The enquiries made by the petitioner revealed that the said amount was arrived at taking the capital cost of Rs.650.72 crs as against Rs.748.43 crs.

- (xiv) The petitioner company immediately protested the said deduction and called upon the respondents to pay the amount but the respondents maintained stoic silence. Having been advised that the action of the respondents is meant to scuttle the proceedings before the Hon'ble Court, the petitioner company got a legal notice issued to the respondent no.1 herein stating that the action constitutes "contempt" within the meaning of Contempt of Courts Act and called upon the respondent to purge the contempt by paying the unauthorisedly deducted sum. The respondent no.1 got issued a reply notice through the respondent no.2 without responding to any of the issues mentioned in the legal notice and stating 'that the act complained of do not constitute contempt of Court'.
- (xv) When some amount is sought to be recovered on the pretext of paying excess return on equity, the petitioner approached the Honb'le High Court of A .P. in W.P.No.18165 of 2003 and the Hon'ble High Court by its orders dated 28.08.2003 had stayed such recovery from the bills.

GROUND S

- (a) The action of the respondents is not adhering to the terms of the PPA in respect of payment of bills to the petitioner and making unauthorized deductions in the monthly bills without notice to the petitioner is nothing violative of the statutory PPA and liable to be interdicted and the respondent should be directed to adhere to the terms of the PPA.
- (b) The PPA is a statutory instrument and having agreed to be bound by the terms, the respondent cannot unilaterally act upon against the provisions of PPA.

- (c) When the petitioner had submitted the reports claiming the enhanced project cost, which are mainly not attributable to the petitioner company as long back as on 31.03.1999, the respondents had not acted upon for the last nine years and are paying the fixed charges based only on provisional cost and thereby with-held an amount of about Rs.450 crs on that count to the petitioner. But when it came to their claim, the respondents without any authority and without determination of their claim by any authority are straight away deducting the amounts from the running bills.
- (d) It is not known as to on what basis the respondent concluded that the amounts of commission if any paid to the ex-Managing Director by the EPC and O&M contractor could be deducted from the project cost, when the bids were invited from the Companies and bidder selected on such bidding. In so far as the company is concerned, it paid the best price even according to NTPC and CEA.
- (e) Petitioner filed W.P.18662 of 2004 and the writ petition had been admitted by the Hon'ble High court and pending disposal of the writ petition stay as prayed for had been granted. Right from the year 2004 the stay was operational and the respondents had been restrained from deducting the said amounts.
- (f) In view of the judgment of the Hon'ble Supreme Court of India in Gujarat Urja Vikas Nigam Ltd vs Essar Power Ltd. It is reported in (2008) 4 SCC 755, the petitioner withdrew the above Writ Petition No. 18662/2004 on 10.11.2008 along with other Writ Petition Nos. 8701/2004 and 18165/2003.

Hence, it is prayed that the Commission may be pleased to order the action of the respondents in reducing the provisional project cost of the petitioner company as approved by the competent authorities and deducting the amounts from the monthly bills payable to the petitioner in violation of the terms of the PPA dated 23.01.1997 as arbitrary, illegal and

in breach of the provisions of statutory contract and therefore declare such action as null and void.

The Commission be pleased to order the respondents to refund the amount of Rs.2,05,07,306/- deducted in the monthly bill of the petitioner in August 2004 together with interest in terms of PPA.

The Commission be pleased to order the respondents not to deduct any sum from the monthly bills of the petitioner payable to the petitioner towards fixed charges including the approved provisional project cost in terms of PPA dated 23.01.1997 towards capital cost.

To award costs of the petition.

3. The respondents filed their counter and the material averments of the counter filed by the respondents are briefly as follows:

- (i) At the very outset, the petition is not maintainable in view of the OP(SR) No.18/2004 filed for a relief to reduce the capital cost of the petitioner by Rs.97.71 crs, and to revise the capital cost of the petitioner project as Rs.650.72 crs, and the same is pending before the Commission. The APTRANSCO is entitled to deduct the differential fixed cost from their monthly bills.
- (ii) In the normal circumstances OP No.4/2009 is to be stayed, till disposal of OP(SR) No.18/2004.
- (iii) The OP No.4/2009 deserves to be returned, as they did not insisted all the Four DISCOMs.
- (iv) After completion of the project, the petitioner company shall submit actual cost reports, to the respondents to enable them to send the same to CEA. Infact by the year 1999, there occurred changes in law, in as much as the A.P.Reforms Act has been enacted, and the Commission came into existence. It is the Commission which is empowered, but not the CEA to examine the actual capital cost. The terms of the PPA since been, inconsistent with the provisions of law, are not enforceable as claimed by the petitioner. As stated supra, after 1999, the CEA ceased to be an authority for approving actual final project cost.

(v) Though PPA governs the power purchase, the said document is not static and infact is governed by the Electricity Law, and also need to be adjusted due to change of law and supervening events that might take place from time to time.

(vi) a) Siphoning of funds through EPC and O&M contracts.

In a statement made on 26.04.2002, before the Enforcement Directorate on alleged FERA violations, Mr.M.Kishan Rao, MD of SPGL had deposed as follows:

- A firm under the name of M/s. Towanda Services Ltd. (TSL) was established by Mr.M.Kishan Rao.
- TSL was fully owned and controlled by Mr.M.Kishan Rao.
- TSL was established solely for the purpose of “Receiving amounts from Rolls Royce (RR) as business development charges or agency charges, for arranging EPC and O&M contracts between RR (including Parsons Turbine Generators Ltd.) and SPGL”.
- Officials of Enforcement Directorate have seized certain papers, from the residence of Mr.M.Kishan Rao, relating to an affidavit filed by Sri A.V.Mohan Rao, Director of SPGL, wherein he alleged that TSL was paid a sum of 1.5 Million Pounds and 19.3 Million US\$ from RR as agency fee kick back for obtaining EPC and O&M contracts.
- Mr.M.Kishan Rao has confirmed that 5.0 Million US\$ were received into the account of TSL, from Rolls Royce.
- Out of 5.0 Million US\$ received 4.9 Million US\$ were transferred to Sri A.V.Mohan Rao’s nominee’s account.
- Sri A.V.Mohan Rao repatriated this amount as his equity in SPGL.

In OS 239/1999 filed by Mr.M.Kishan Rao against Sri A.V.Mohan Rao, STUSA, New York and others, before the Chief Judge, City Civil Court, Hyderabad the documents elaborated these facts as admitted by Mr.M.Kishan Rao, in his deposition. The above amounts are nothing but kick back / bribes, received by Kishan Rao and Mohan

Rao from Rolls Royce and Parsons Turbine Generators Ltd. though termed by the company as business development charges.

b) Circular rotation of funds – verdict by Joint Commission of Income Tax (JCIT):

While assessing the Income tax return of M/s. Blue Star Constructions (assessee), one of the Civil Contractors for SPGL, for TY 1997-98, JCIT in its order dated 27.03.2000, established a close nexus between the assessee and the promoters of SPGL. JCIT has clearly indicated the following nexus between the assessee and promoters of SPGL for siphoning of funds from the project.

JCIT opined that the assessee is a firm and acted as “name lender” and it has not executed any work for SPGL and the whole arrangement is a mere paper transaction.

c) Diversion of funds through civil contracts:

SPGL had entered into civil contracts for site leveling, earth filling, construction of roads, bridges, culverts etc, constructions of water tanks, drains and diversion of Nullah, with various contractors.

Spectrum Technologies, USA (STUSA), one of the co-promoters of SPGL has alleged that the above civil contracts are fraud transactions conceived to dupe the investors. Accordingly, they have leveled charges against the promoters of SPGL that the stamp papers used for executing the above civil contracts are fake.

Based on the same, the Court of the XI Metropolitan Magistrate at Secunderabad has issued a Non-bailable Warrant (NBW) against the promoters.

- SPGL had entered into agreements with 5 firms for an aggregate value of Rs.28.66 crs for which no transparent procedure was followed before awarding the contracts to the parties. Out of the 5 firms, one firm was owned by the son-in-law of MD of SPGL. The auditor has opined that the above transactions are sham transactions.

- In case of 3 contractors, TDS certificates were not consistent and were identical to the addresses of some of the associate companies of SPGL.
- Documents supporting equity contribution of Rs.2.13 crs by SPGL group companies were not available.
- No documents were also furnished in respect of Rs.1.90 cr brought in by Mr.M.Kishan Rao, MD., through a partnership firm as share application money.

d) Other cases:

City Civil Court, Hyderabad in a batch of suits, has directed SPGL to rectify the Register of Members by deleting the name of M/s Bombino Finance Ltd., and others, in respect of shares to an extent of Rs.50,00,000/- which were found to have been issued against no consideration.

Since the petitioner failed to reply the letter dated 30.01.2004 even after two months, the APTRANSCO duly considering the material available on record, decided to reduce the capital cost to Rs.650.72crs, and filed a petition OP(SR) No.18/2004 requesting to approve the reduced capital cost. Since, there is no order by any authority restraining the respondent from deducting the excess fixed cost claimed by the petitioner, the APTRANSCO, with due notice again, deducted Rs.2.05 crs from the monthly bill of August 2004. The said Act of respondent is absolutely justified and is also in consonance with provisions of the Contract Act 1872.

- (vii) On the information given by A.V.Mohana Rao, the GoAP directed APTRANSCO on 24.07.2003 to refer the allegations leveled by Sri A.V.Mohana Rao for investigation to the Registrar of Companies (ROC), to Enforcement Directorate and also to file a complaint with specific allegations to CBCID. In pursuance thereof, the APTRANSCO made out all efforts to secure the information from various authorities / agencies in respect of allegations put forth by Sri A.V.Mohana Rao about the company.

- (viii) After accumulating the material including the statement of A.V.Mohana Rao and with concrete evidence about the irregularities committed by SPGL, APTRANSCO on 29.11.2003 sent a report to Addl.DGP/CID/ Hyderabad and to Directorate Enforcement/New Delhi on the aforesaid allegations. Finally on 08.06.2004, APTRANSCO filed a complaint with specific allegations together with material evidence available by them. In turn the CID/Police registered the case as crime No.21/2004, u/s 403,405,408,409,468,471 and 420 IPC, and thus took up the investigation and the same is still pending.
- (ix) The information about the irregularities committed by M/s. SPGL was brought to the notice of APTRANSCO much later than which filing the counter affidavit in WP No.21319/2002. Therefore, the earlier statement made in the counter in Hon'ble High Court had different version under a bonafide mistake of fact. But the said admissions are explained in the subsequent statement.
- (x) The submissions that were made in the counter affidavit in WP No.21319/2002 have no bearing on the concrete evidence that was received by the respondent at a later date.
- (xi) The claim of the petitioner made therein about the action of the respondent in revising and deducting the excess claimed fixed cost, are false and baseless.
- (xii) The averments made therein are absolutely concerned to different issue of payment of excess amount of Return on Equity (ROE) since the issue in question is unconnected to the said claim.

As a matter of fact if the action of respondent deducting Rs.2.05 crs is unauthorized, there is no reason what prevented the petitioner from making a claim of refund from the date of said deduction, till date before the Competent Court. By not making claim within a period of limitation of 3 years, the petitioner is precluded from making of such claim at this belated stage.

- (xiii) The orders of the Hon'ble High Court order dated 10.11.2008 does not entitle the petitioner to take recourse of section 14 of Limitation Act. This view has already been settled by Hon'ble Supreme Court through

precedents. Therefore, the claim of the petitioner in this regard is liable to be rejected on this ground alone. The claim of the petitioner does not deserve any merit; and it has no cause of action.

Hence, the Commission may be pleased to dismiss the petition with costs.

I.A. No.2 of 2009

4. The petitioner herein filed I.A.2/2009 u/s 94 (2) of EA 2003 with a request to the Commission to pass interim directions against the respondents not to unilaterally deduct amounts from the monthly bills as mentioned in the accompanying petition filed u/s 86(1)(f) of the EA 2003 and also to refund the said amounts by tendering the same to the petitioner, pending disposal of the above proceedings before the Commission.

5. No counter is filed in this petition, but the same is coming up for hearing along with the main petition filed by the petitioner and also the petition in OP No.20 of 2009 filed by the respondent herein.

OP No.20 of 2009

This petition is filed by the petitioner u/s 86 of the EA 2003 and read with Regulation 8&9 of A.P.Electricity Commission business Regulations.

6. The respondent in the said petition (OP No.4/2009) filed the above said petition (OP 20/2009) to reduce the capital cost of 208 MW gas based power project at Kakinada of M/s. SPGL from Rs.748.83 crs by Rs.97.71 crs and to allow the petitioner to pay the future power purchase bills based on the revised reduced capital cost of Rs.650.72 crs and also to revise all the previous power purchase bills on the reduced capital cost.

7. The material averments in the petition filed by the petitioner herein are almost similar and same grounds mentioned in the counter filed by the respondent (APTRANSCO in OP No.4/2009). The respondent herein is no other than the petitioner (M/s. SPGL in OP No.4/2009). The grounds mentioned in the counter are similar and same to the grounds mentioned in the petition filed by the petitioner in OP No.4/2009. Therefore, the averments in the respective petition / counter are not extracted to avoid repetition of the facts as the issues involved in both the petitions are one and the same.

8. Whereas, the petitioner in this OP filed a rejoinder to the counter filed therein and the material averments of the rejoinder are briefly as follows:

- (i) There is no veracity in the overwhelming denial of the respondent about the irregularities and illegal activities of M/s. SPGL, established by the Joint Commissioner of Income Tax vide Order dated 27.03.2000 and confirmed by the Commissioner of Inspector, General of Registration & Stamps, A.P; and that the company has entered into bogus contracts for various civil works to facilitate transfer of funds amounting to Rs.29.3 crs. It was further reinforced vide the judgment dated 23.08.2002 in OS No.68/1999 in the City Civil Court, Hyderabad, finding the respondent guilty of deleting shares to the extent of Rs.50,00,000/- held by M/s. Bombino Finance Ltd. Which were issued against no consideration, obviously to increase capital costs is an act of fraud *per se* and leads to the irresistible conclusion that there is serious infirmity in the defence of such illegal acts of the respondent.
- (ii) The admissions/confessions of the Former MD before the Enforcement on 26.04.2002 and the judgment of the City Civil court in OS No.68/1998 dt.23.08.2002 speaking about the dishonest intentions of SPGL blatantly proves the mismanagement of funds by the respondent company. These statements being made before the court of law and are matters on record cannot be mere hearsay, but have weighted ratio in considering them for analyzing the credibility of the respondent herein.
- (iii) In the light of above revelations, the petitioner found it prudent to reassess the capital cost and reduce the capital cost by Rs.97.71 crs, and revise all previous purchase bills accordingly and also to pay future power purchase bills on such revised capital cost of Rs.650.72 crs.

9. It is proper at this stage, to refer to the parties as they are arrayed in OP No. 4/2009.

10. The learned advocate for the petitioner argued that the impugned letter issued by the respondent is against to the principles of natural justice and it is an unilateral decision taken by them basing on the hearsay evidence and other unconcluded

material. It is also further argued that the CBCID has conducted investigation on the entire gamut of the case and ultimately referred the matter on the ground of lack of evidence. It is also further argued that reducing the capital cost with unproved material and insufficient material is against to law and principles of natural justice. Hence, the petition is to be allowed and the petition filed by the respondent (petitioner in OP No.20/2009) is liable to be dismissed.

11. Whereas, the learned advocate for the respondent (petitioner in OP No.20/2009) argued that the petitioner has entered into civil contract works with 5 bogus civil contractors amounting to Rs.29.3 crs and the same was approved by the JCIT and also the Registrar of Commissioner & Inspector, General of Registration & Stamps, A.P. It is also further argued that the City Civil Court in OS No.68/1999 has directed M/s. SPGL to rectify all shareholders by deleting shares to an extent of Rs.50,00,000/- held by M/s. Bambino Finance Ltd as they were issued against no consideration and with a dishonest intentions to increase the capital cost. It is also further argued that the claim made by the petitioner is barred by limitation and the same is liable to be dismissed and the petition filed by the respondent in OP No.20/2009 is to be allowed with costs. It is also further argued that the Final Report of CBCID has no bearing, since they have filed a protest petition and the same is pending and therefore, there is no probative value to the said report and the same cannot be relied upon.

12. Now, the points for consideration are

- (1) Whether the impugned letter dated 30.01.2004 is liable to be set aside?
- (2) Whether the respondent (petitioner in OP No.20/2009) is entitled to reduce the capital cost as prayed for?
- (3) Whether the claim made by the petitioner in OP is barred by limitation?

Points 1 & 2:

Both the points are interconnected. Hence, it is proper to answer both the points at one and the same time.

13. The respondent has filed Xerox copies of statement of M.Krishna Rao, MD of M/s. SPGL at the time of enquiry conducted by the Enforcement Directorate. He has also filed Xerox copies of IT orders and also certificate from Commissioner & Inspector

General of Registration & Stamps to show that the stamps were purchased by some other persons mentioned therein the certificate itself but not the alleged contractors. A Xerox copy of the judgment in OS No.68/1999 is also filed in support of their contention. A Xerox copy of the plaint in OS No.239/1999 filed by Sri M.Krishna Rao is filed. A Xerox copy of the complaint filed before the Special Judge for Economic Offences in the Criminal Court C.C.No.3/2000 filed by Smt. P.Shantha Reddy w/o P.Madhava Reddy against Sri M.Krishna Rao & others u/s. 200 Cr.P.C read with 621 of the Companies Act and u/s 409 and 411 of the Indian Penal Code is also filed. A xerox copy of an application for modification of order dated 24.07.2000 u/s 151 CPC in SLP (C) No.10768-10769 of 2000 filed by M/s. Spectrum Technologies, USA against M/s.SPGL & Ors is also filed. The respondent also filed a copy of the letter dated 30.01.2004 issued to the petitioner reducing the capital cost to Rs.650 crs.

14. Whereas, the petitioner filed final report of CID submitted in FIR No.21 of 2004 dated 08.06.2004.

15. On this the learned advocate for the respondent submitted that they have filed a petition under protest to the effect that they are going to file a private complaint against the said M.Krishna Rao, MD and others for the alleged illegal activities committed by them. But the respondent has not filed copy of the said protest petition before this authority. The Final Report of CBCID is a piece of evidence and the said Final Report holds good till the protest petition is taken on file after recording the statement of the complainant u/s 200 Cr.P.C. No material is placed on those lines by the respondent. In the Final Report it is mentioned by the investigation agency i.e, DySP, EOW, CID, Hyderabad as hereunder:

For all the allegations alleged in the FIR of this case against the accused M.Krishna Rao and others were already under went trails in the cases filed by Enforce Department, and private complaint of shareholders and promoters of the company in various courts as discussed above, were ended in acquittal. Again on the same allegations, with the same documentary and oral evidence available, filling charge sheet by CID may not be useful and it is sub-judice also.

In the very Final Report it is clearly mentioned that they have examined all the authorities which they have referred in the documents filed by the respondent and also

arrived at a conclusion that the cases filed against M.Krishna Rao and others under went trails in the cases filed by Enforce Department and private complaints of shareholders and promoters of the company in various courts and they were all ended in acquittal. Again on the same allegations with same documents and oral evidence available, filing charge sheet is not useful and it is also sub-judice.

16. In the light of the above said discussion in the Final Report filed by the petitioner clearly discloses that the investigation has not reached to a finality and the same is also observed by investigation agency in the last para of the order. **“As and when the evidence comes forth in future and on merits of evidence, the case will be reopened.”** This itself shows that the matters have not yet come to a close.

17. In the light of the above said material, the conclusion is that the lis has not come to an end and it has not reached finality. Even before reaching finality, the respondent has approached the Commission reducing the capital cost from Rs.748.71 crs to Rs.650.72 crs and started deducting bills proportionately. The department also issued a letter to that effect on 30.01.2004 even before putting an end to the litigation. The record shows that the litigation is still pending between the parties. More in particular with regard to bogus claim made by the petitioner. The claim made by the respondent and petitioner in OP 20/2009 is premature to deduct the same from the bills of the petitioner by the respondents and the same cannot be entertained. They are at liberty to raise the same as and when the lis between the parties with regard to bogus nature of the documents, has come to a conclusion. Therefore, the claim made by the petitioner is justified and deductions made by the respondents to the tune of Rs.2,05,07,306/- is not sustainable. Hence, points 1 & 2 are answered accordingly in favour of the petitioner in OP No.4/2009 and against to respondents in OP No.4/2009 and petitioners in OP No.20/2009.

Point No.3

18. So far as the limitation aspect is concerned, the petitioner in OP No.4/2009 has approached the Hon'ble High Court soon after receiving the letter dated 30.01.2004 and obtained stay till the case Gujarat Urja Vikas Nigam Ltd vs Essar Power Ltd is settled and filed this petition before this Commission. The same analogy has been taken up in Appeal No.190/2011 in between same parties. The Hon'ble ATE held that

In the light of above discussions we are of the considered opinion that the findings rendered by the State Commission on the limitation point is not legally sustainable and on the other hand it has to be held that the petition filed by the Appellant before the Commission, was filed within a period of limitation in the light of the fact that Appellant is entitled to the benefit as available under section 14 (2) of the Limitation Act.

No appeal is preferred against the said order and no material is placed before this authority to that effect.

19. In the result, we are of the considered opinion that the claim made by the petitioner in OP No.4 of 2009 is not barred by limitation.

OP No.4 of 2009

20. In the result, this petition is allowed subject to the liberty being given to the respondent to take steps after disposal of the litigation as pointed out in the Final Report of CID or actual disposal of the above said litigation between the parties referred above.

No order as to costs.

I.A. No.2 of 2009

21. Since, main O.P. No.4 of 2009 is disposed, this petition becomes in-fructuous as there is no need to pass any interim order.

O.P. No.20 of 2009

22. In the result, this petition is premature and dismissed giving liberty to the petitioner to approach the Commission soon after the disposal of the litigation in between the parties and also with regard to bogus nature of the documents, etc. as alleged by the petitioner.

No order as to costs.

The order is corrected and signed on this 28th day of March, 2013.

**Sd/-
(R.Ashoka Chari)
Member**

**Sd/-
(C.R.Sekhar Reddy)
Member**

**Sd/-
(A.Raghotham Rao)
Chairman**