

CHAPTER X: MINISTRY OF POWER

Damodar Valley Corporation

10.1 Avoidable loss due to under-recovery of capacity charges

Decision of Damodar Valley Corporation towards reduction of the quantum of power of PPA with Kerala State Electricity Board in respect of RTPS-I resulted in loss due to under-recovery of capacity charges, amounting to ₹78.15 crore during the period May 2016 to March 2019.

Damodar Valley Corporation (Corporation) decided (June 2006) to set up Raghunathpur Thermal Power Station Phase-I (RTPS-I) with two units (Unit-I & II) having capacity of 600 MW each. The Commercial Date of Operation (COD) of Unit-I and Unit-II were scheduled in November 2010 and February 2011 respectively. The Corporation entered (2006) into Power Purchase Agreements (PPAs) with Punjab State Electricity Board (PSEB), Haryana Power Generation Corporation Limited (HPGCL) and Kerala State Electricity Board Limited (KSEBL) for supply of 300 MW, 100 MW and 150 MW of power respectively from RTPS-I for a period of 25 years.

However, the commissioning of RTPS-I was delayed and it was anticipated (February 2015) that the COD would be achieved in July 2015 and August 2015 for Unit-I and Unit-II respectively. The Corporation proposed (March 2015) to KSEBL to shift the quantum of power (150MW) of RTPS-I in the above PPA, to its other operational units with the anticipation of further delay in commissioning of RTPS-I and thereby fixation of higher tariff by Central Electricity Regulatory Commission (CERC) for the same, due to increased project cost. KSEBL accepted (July 2015) the above proposal. However, it was mutually agreed (July 2015) to reduce the quantum of power from RTPS-I in respect of the above PPA from 150 MW to 50 MW considering the operational aspect of inter-state transmission system of power. The Corporation also proposed to KSEBL to enter into a supplementary PPA in respect of such reduced 50 MW of power for RTPS-I and a fresh PPA for supply of 100 MW of power from its existing MTPS units. However, no such PPAs were entered into with KSEBL.

It was seen that both the units of RTPS-I were commissioned in March 2016. The scheduling of power from RTPS-I was commenced from May 2016 and the Corporation started raising invoices on KSEBL for capacity charges¹ of RTPS-I, corresponding to the mutually agreed quantum of power of 50 MW from May 2016. Thus, the Corporation was not in a position to recover capacity charges in respect of RTPS-I corresponding to 100 MW of power from KSEBL as no supplementary PPA was signed with KSEB for 100 MW.

Management contended (November 2019):

- It was not justified to co-relate the date of one-time achievement of full load operation with probable COD target with uncertainty of establishment of Rail and Water

¹ Capacity Charges are based on the highest amount of energy estimated to use during month by beneficiary

Corridors. Further, as per terms of PPA, Long Term Access² (LTA) charges payable for transmission of power was to be borne by the Corporation in case of delay in scheduling of power from RTPS-I.

- The availability factor of RTPS for the period from April 2016 to March 2019 varied in the range of 22 *per cent* to 32 *per cent* approximately which clearly indicated that RTPS-I was not in a position to deliver stable generation due to different technical constraint to recover the full fixed charges.
- Whatever generation was achieved, after allocation of KSEBL in the proportion of 50 MW, rest of the quantum was sold to the firm consumers as pool power, from where fixed charge component was also recovered in due proportion.

The above contentions of Management are not acceptable in view of the following:

- Achievement of full load operation was an indicator that the concerned unit was ready for commissioning soon. Issue of non-completion of rail corridor is not relevant, as it was not even ready at the time of COD of the Unit I. Further, Management did not express its concern about delay in COD of RTPS-I in respect of PPAs with PSEB and HPGCL. Further, as per PPA, the Corporation was not liable to pay any LTA charges for delay in scheduling of power from RTPS.
- The Plant Availability Factor (PAF) i.e. Declared Capacity (DC) has already been considered by audit while arriving at the loss due to non-recovery of capacity charges.
- If the quantum of power in respect of PPA with KSEBL was not reduced, the Corporation could have supplied such power from RTPS to KSEBL. On the other hand, the Corporation could have supplied equivalent quantum of power to the firm consumers from its other units which were having untied power. In that event, the Corporation could have recovered capacity charges corresponding to the power supplied from RTPS as well as such other units.

Thus, decision of the Corporation for reduction in the quantum of power in respect of RTPS-I for PPA with KSEBL has resulted in loss due to under-recovery of capacity charges amounting to ₹78.15 crore (*Annexure-XXVI*) during the period from May 2016 to March 2019. Additionally, the Corporation has to absorb recurring loss of ₹3.53 crore per month till new consumer for purchasing of 100 MW of power is firmed up.

The para was issued to the Ministry in December 2019; their response was awaited (June 2020).

² *The right to use the inter-state transmission system for a period exceeding 12 years but not exceeding 25 years*

NTPC-SAIL Power Company Private Limited

10.2 Undue favour extended by NSPCL in award of contracts on nomination basis

Undue favour was extended by the NTPC SAIL Power Company Limited to a private party by awarding routine maintenance work valuing ₹129.76 crore during 2013-14 to 2018-19 on nomination basis at a profit margin of 10 per cent of the contract price disregarding the CVC guidelines/ public procurement regulations.

NTPC SAIL Power Company Limited (NSPCL), a Joint Venture Company of NTPC Limited and Steel Authority of India Limited (SAIL) is a power generating Company, presently having its power stations at Bhilai, Durgapur and Rourkela. NSPCL Board decided (August 2007) to enter into Power Station Maintenance Agreement (PSMA) with M/s Utility Powertech Limited³ (UPL) to undertake various maintenance and miscellaneous works in line with the agreement made by NTPC. PSMA was finalised with UPL in January 2008 for 10 years but the same was terminated on 31 May 2016 on mutual understanding of both the parties. Subsequently the company signed a new PSMA with UPL for a period of five years in May 2016. NSPCL Bhilai, Rourkela and Durgapur got 346 works executed by UPL (including its sub-contractors) during 2013-19 for which it paid ₹129.76 crore to UPL including ₹11.53 crore profit margin. Out of above, 75 works valuing ₹4.58 crore⁴ only were executed by UPL itself and remaining 271 works valuing ₹125.18 crore were executed through the sub-contractors.

Audit noted that Para 5 of the Public Procurement Bill 2012 envisaged inter alia that, ‘the procuring entity shall, in relation to a public procurement, have the responsibility and accountability to (i) ensure efficiency, economy and transparency; (ii) provide fair and equitable treatment to bidders; (iii) promote competition’. Further, as per the CVC order (July 2007), tendering process or public auction is a basic requirement for the award of contract by any Government agency as any other method, especially award of contract on nomination basis, would amount to a breach of Article 14 of the Constitution guaranteeing right to equality, which implies right to equality to all interested parties. The Hon’ble Supreme Court of India in its judgment (Special Leave Petition Civil No. 10174 of 2006) also held that the awarding of Government contract be done only through public auction/ tender, the prime objective being to ensure transparency in the Government Contracts as well as to weed out corrupt/ irregular practices. The Judgment also stipulated a departure from the afore mentioned rule only in exceptional cases such as natural calamities where a Government Contract may be awarded on nomination basis. The above Judgment was also circulated (5 July 2007) by CVC to all the CVOs. CVC reiterated (December 2012) their earlier instruction for strict implementation. NSPCL, being engaged in public procurement on behalf of Government of India, has the responsibility to ensure compliance of the above regulations.

Audit observed that the company awarded the works to UPL on nomination basis without inviting tender which was against the Public Procurement Bill, CVC guidelines and Supreme

³ A joint venture of NTPC and Reliance Infra Limited

⁴ Bhilai - ₹0.73 crore (22 orders), Rourkela - ₹1.33 crore (5 orders) and Durgapur- ₹2.52 crore (48 orders)

Court Judgement (2006) and the same was also against the interest of the company. Further, as per the practice, assignment letter for any job with an estimated cost was issued by NSPCL to UPL over which 10 *per cent* profit was payable to UPL. Audit observed that, final contract price on which 10 *per cent* profit was paid to UPL was the price on which the contract was awarded by the UPL to its sub-contractor instead of the contract price mentioned in the Assignment Letter. Since the sub-contractor will also factor the profit element in the bid submitted, the value of the contract was higher than the estimated value provided by NSPCL. Audit further observed that, significant portion of the work (96 *per cent* of the total works) were executed by the sub-contractors instead of executing it by UPL. Management of NSPCL should have considered awarding the work through tendering instead of nomination basis which could have avoided the payment of 10 *per cent* profit above the contract value to UPL which was merely acting as middleman.

NSPCL replied (November 2019) that (i) the system of assigning work through M/s UPL was adopted in NSPCL was a corollary to the adoption of NTPC System, (ii) The maintenance works of Power plant is not a routine work as it require agencies having adequate experience in the area with skilled manpower,(iii) Inviting tenders directly from vendors does not ensure saving in margin, since vendor can quote at a price which is more than margin given to UPL and (iv) UPL ensures proper tendering process and being the principal employer, the party is fully responsible for the assigned works.

The reply of Management was not acceptable as (i) NSPCL is a separate commercial entity and therefore before adopting any system prevalent in its promoter company (NTPC) it should have ensured its financial interest, (ii) Maintenance works contracted was of routine nature which involved mainly upkeep of floor and wall, removal of garbage, cleaning of road, equipment cleaning etc which are not exceptional work eligible to be awarded on nomination basis, (iii) Inviting bids from the vendors is mandatory being a government company which will also ensure transparency and fair competition, and (iv) Since significant portion of the work (96 *per cent* of the total works) were executed by the sub-contractors instead of directly by UPL, NSPCL should not have nominated UPL at 10 *per cent* profit for routine nature of works but directly executed the works through tendering.

Thus, NSPCL extended undue favour to a private party in award of routine maintenance work for ₹129.76 crore during 2013-19 on nomination basis at a profit margin of 10 *per cent* of the contract price disregarding the CVC guidelines/ public procurement regulations.

The para was issued to the Ministry in January 2020; their response was awaited (June 2020).