

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

**Petition No. 03 of 2018**  
**Date of Order: 30.08.2019**

In the matter of : Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Regulation 69 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for appropriate directions to Punjab State Power Corporation Ltd. for continuing failure to fulfill its obligation to arrange adequate quantity and assured quality of coal to enable the TSPL to operate its plant at its full capacity.

AND

In the matter of: Talwandi Sabo Power Limited, Village Banawala, Mansa- Talwandi Sabo Road, Distt. Mansa, Punjab – 151302.

...Petitioner

Versus

Punjab State Power Corporation Limited, The Mall, Patiala.

...Respondent

Present: Ms. Kusumjit Sidhu, Chairperson  
Sh. S.S. Sarna, Member  
Ms. Anjuli Chandra, Member

**ORDER**

Talwandi Sabo Power Limited (TSPL) has filed this petition regarding continuing failure of Punjab State Power Corporation Limited (PSPCL) to fulfill its obligation to arrange adequate quantity and assured quality of coal in order to enable TSPL to operate its plant at its full capacity. The petition was admitted vide order

dated 06.04.2018 directing PSPCL to file reply, further directing TSPL to file rejoinder, if any.

2. TSPL has submitted in the petition that the State of Punjab/Punjab State Electricity Board (PSEB) has set up a 1980 MW (660 MW x 3) coal-fired power plant for supply of long term power. In this regard, PSPCL, the successor entity of erstwhile PSEB, incorporated TSPL as a Special Purpose Vehicle. TSPL was acquired by Sterlite Energy Ltd. on being declared as the successful bidder to develop the Project. Thereafter, certain disputes arose between the TSPL and PSPCL regarding the arrangement of sufficient quantity and quality of coal for the Project. TSPL continuously followed up with PSPCL with respect to the signing the Fuel Supply Agreement (FSA), but instead of signing the FSA, PSPCL filed Petition No. 11 of 2012 before the Commission. Since the disputes regarding coal supply/ availability/ sufficiency remained unresolved, TSPL approached the Commission for resolution of the dispute of supply of coal for the Project by filing Petition No. 46 of 2012.

2.1 Vide Orders dated 27.09.2012 and 24.12.2012 in Petition No. 11 of 2012 and Petition No. 46 of 2012 respectively, it was held that TSPL is obliged to sign the FSA with the fuel supplier (without prejudice) and arrange the fuel for the Project. Aggrieved by the aforesaid Orders, TSPL filed Appeal No. 56 & 84 of 2013 before the Hon'ble APTEL. TSPL signed the FSA as per the Hon'ble Tribunal's Order dated 18.04.2013, without prejudice to its rights and contentions subject to the final outcome of Appeal No. 56 & 84 of 2013. The Hon'ble Tribunal passed the interim order dated 21.08.2013 in Appeal No. 56 of 2013 and allowed TSPL to

procure alternate coal to meet the expected shortfall of coal from Mahanadi Coalfields Ltd. for a period of 12 months from the expected commencement of operation of the first unit of the Project. The Hon'ble Tribunal disposed of Appeal No. 56 & 84 of 2013 vide judgment dated 07.04.2016 and held that PSPCL is under obligation to sign the FSA with the Fuel Supplier, namely Mahanadi Coalfields Limited and the Procurer cannot be absolved of its obligation to supply fuel to the TSPL for its power generating station. PSPCL filed Civil Appeal No. 4085-86 of 2016 before the Hon'ble Supreme Court challenging the judgment dated 07.04.2016.

2.2 On 06.09.2016, the Commission passed the consequential order in terms of the directions of the Hon'ble Tribunal in the judgment dated 07.04.2016, and held that:-

- (a) PSPCL to approach MCL within 7 days from 06.09.2016 (i.e., by 13.09.2016) and sign the FSA forthwith with MCL in substitution of the earlier FSA dated 04.09.2013 signed by TSPL.
- (b) PSPCL to simultaneously approach Indian Railways authorities within 7 days from 06.09.2016 (i.e., by 13.09.2016) and sign a separate Fuel Transportation Agreement forthwith for transportation of fuel from the mines to TSPL Project Site in addition to the FSA signed with MCL.
- (c) Assignment of FSA by PSPCL to TSPL after signing the same with MCL will be in consonance with the bidding documents, PPA and MoU.
- (d) After assignment of FSA by PSPCL to TSPL, TSPL shall operate the same for purchasing the coal from the mine,

transporting it through Indian Railways to the Project and unload the coal at the Project site and PSPCL shall pay the Monthly Energy Charges for the units of electricity supplied in terms of the PPA.

- (e) TSPL shall pursue with Ministry of Coal, MCL and other relevant departments for fuel (coal) for smooth and timely operation of the Project duly assisted by PSPCL. In case of established shortage in availability of coal for the Project, the Commission shall, on being so approached, pass appropriate Order at appropriate stage after considering the reasons.

Therefore, the signing of the FSA and arrangement of coal for the Project is the obligation of PSPCL and as such, when TSPL was constrained to procure coal due to failure of PSPCL to perform its obligation, the same was a non-gratuitous act for which PSPCL is obliged to compensate TSPL as per the principle set out in Section 70 of the Indian Contract Act, 1872. As per the principles under Section 70, the TSPL is entitled to the entire cost incurred by the TSPL towards arrangement of coal as held by the Hon'ble Supreme Court in a catena of judgments including ***Food Corporation of India v. Vikas Majdoor Kamdar Sahkari Mandli Ltd.:(2007) 13 SCC 544.***

2.3 PSPCL has failed to sign the FSA and arrange sufficient quantity and quality of fuel for the project and is delaying the same on the erroneous pretext that the FSA has to be assigned by PSPCL to the TSPL. For an assignment of contract there has to be a contract first and till date, PSPCL has not executed the FSA

accordingly, the question of assignment of FSA does not arise in the present case.

2.4 The power generated by TSPL is procured by PSPCL and PSPCL is aware that the power has been generated by using alternate coal, the payments for which have been wrongfully withheld by PSPCL. Despite consuming the power generated by TSPL, PSPCL refused to pay the differential cost incurred by TSPL in procuring alternate coal for supply of power to PSPCL. TSPL has prayed for recovery of Rs. 99.76 crore for the month of September, 2016 to November, 2017. In a similar case of Nabha Power Ltd. (Civil Appeal No. 179 of 2017), it was PSPCL's own contention that it was Nabha Power's obligation to arrange coal for the Project. Nabha Power Ltd. is a similar Project under Case II Scenario IV of the Competitive Bidding Guidelines. The Hon'ble Supreme Court in the judgment dated 05.10.2017 passed in Nabha Power's case has held that all costs of coal up to the point of the project site have to be included and the Calorific Value of the coal has to be taken as at the project-site.

2.5 The primary reason for the coal not being sufficient to operate the TSPL's Project at its full capacity is that the quality of coal as being supplied by MCL is not in line with grades of coal as promised by PSPCL during bidding. Moreover, recently it has been degraded from G-13 to G-14 grade which has affected the availability of coal at the TSPL's plant. This fact has also been affirmed by the report prepared by the Central Institute of Mining and Fuel Research (CIMFR), an independent government agency appointed by the Government of India to evaluate the GCV of coal supplied to power plants including the TSPL from January 2017. The Report prepared by CIMFR indicates that the coal being

supplied is of GCV lesser than that being claimed by MCL which substantiates the claim of TSPL regarding shortfall in GCV of coal as delivered to the Project. As such, the TSPL requires 11,11,939 MT (with weighted average as received basis (ARB) GCV of 2957 kCal/kg) of coal every month to run the plant at its full capacity instead of 6,43,000 MT (7.72 Million Tonnes / 12 months) of coal as envisaged to be supplied by MCL under FSA [the quantities will differ in some months as quarterly allocation varies from 22%-28% of Annual Contracted Quantity (ACQ)].

2.6 On 06.10.2017, TSPL served a force majeure notice to PSPCL in terms of Article 12.5 of the PPA. TSPL stated that after trying everything under its control to maintain generation at technically available capacity within given constraints TSPL was forced to declare lesser availability due to shortage of coal which is a failure on the part of PSPCL to fulfill its obligation and is beyond reasonable control of TSPL. This has forced TSPL to declare lesser availability when technically it can generate at higher level. Pursuant to the force majeure notice, TSPL also raised bills for deemed capacity charges on PSPCL which have never been paid. Therefore, in effect, TSPL is procuring coal from alternate sources on behalf of PSPCL for generating power for the consumers of Punjab and is not being paid for the same. From 03.10.2017 onwards, TSPL has been issuing declared capability stating that though the plant is technically available for injecting 1841.4 MW, the plant could only be operated at a level of 1841.4 MW due to non-availability of sufficient coal.

2.7 On 10.12.2017, the Punjab SLDC directed TSPL to box up any one unit of the Project immediately. TSPL was bound by the directions issued by SLDC, and accordingly shut down one of its

units despite being technically fully available. TSPL is entitled to deemed capacity charges proportionate to TSPL's availability which could not be generated due to coal shortfall. TSPL is entitled to be adequately compensated for the coal procured by it for running the Project. The deemed capacity charges ought to be paid by PSPCL since PSPCL has failed to allow procurement of alternate coal by the TSPL (on behalf of PSPCL) to keep the plant fully available. TSPL has prayed for passing the directions to PSPCL to :-

- (a) arrange requisite linkage coal for TSPL by signing FSA with Coal India Limited/subsidiaries of Coal India Limited;
- (b) allow TSPL to procure coal from alternate sources including but not limited to Coal India Limited and its subsidiaries through rail or rail cum road mode and Imported Coal;
- (c) pay deemed capacity charges from 01.10.2017 onwards till the period when TSPL is forced to declare availability (DC) lower than technically available capacity on account of coal shortage from linked sources;
- (d) pay for alternate coal procured/ used by TSPL to meet coal shortfall from linkage sources;
- (e) pay interest on delayed payments awarded by the Commission to TSPL on account of the above prayers as per PPA terms on Late Payment Surcharge;
- (f) award cost of the present proceedings to TSPL.

3. PSPCL in reply to the petition has submitted that the petition is not maintainable as the allegations made in the petition are contrary to the factual and legal position. The entire premise of the

present petition that the obligation to supply coal for the generating station is that of PSPCL is wrong. TSPL is only relying on the definition of a Fuel Supply Agreement in the PPA in a selective manner to contend that the entire obligation for supply of coal as that of PSPCL. On the other hand, the agreement between the parties is that PSPCL shall execute the FSA and assign it to TSPL for the life of the PPA and that all rights and obligations in regard to procurement of coal are that of TSPL. These aspects have already been dealt and decided by the Commission vide order dated 06.09.2016 (as amended on 08/09/2016) passed in Petition No 11 and 46 of 2012. Thus the issue has been settled by the decisions of both the Commission and the Hon'ble Tribunal that the basic premise on which the present petition has been filed by the TSPL runs contrary to the decisions and the rights and obligations of the parties under the Agreements.

3.1 TSPL filed Petition No. 31 of 2014 before the Commission seeking payment of various components of Energy Charges which were wrongfully withheld by PSPCL. The Commission disallowed all prayers in terms of the Order dated 23.11.2015. TSPL challenged the Order dated 23.11.2015 before the Hon'ble Tribunal in Appeal No. 36 of 2016. The Hon'ble Tribunal passed the judgment dated 03.07.2017 in Appeal No. 36 of 2016. TSPL challenged the judgment dated 03.07.2017 before the Hon'ble Supreme Court in Civil Appeal Nos. 10525-26 of 2017 which is pending adjudication. On 02.05.2016, the counsel for PSPCL gave an undertaking in the Hon'ble Supreme Court that PSPCL will pay the Energy Charges which would also include fuel charges as per the PPA. The decision of the Hon'ble Tribunal in the judgment and order dated 07/04/16 in Appeal No. 56 and 84 of 2013 was

challenged by PSPCL before the Hon'ble Supreme Court in Civil Appeal Nos. 4085-86 of 2016 and in the proceedings before the Hon'ble Supreme Court in Civil Appeal Nos. 4085-86 of 2016, PSPCL represented that it would continue to pay the energy charges and the same has been recorded in the interim Orders dated 2.5.2016 and 12.7.2016 passed by the Hon'ble Supreme Court. Since then, the arrangement has been for the TSPL to continue to procure coal under the existing FSA. It is not that PSPCL is procuring coal and making available the same to TSPL. The claim of TSPL to the contrary is anomalous in that PSPCL has agreed to pay the coal charges and transportation charges as per the schedule to the PPA but simultaneously is required to arrange the procurement of coal also. Both cannot go together. It is in this regard there is stipulation for assignment of FSA to TSPL much prior to the commencement of Commercial operation of the power generating unit. MCL, the coal supplier has also signed the FSA with TSPL.

3.2 Further, the Commission, in the remand proceedings pursuant to the judgment and order dated 07/04/2016 passed by the Hon'ble Appellate Tribunal in Appeal No. 56 and 84 of 2013 has rejected the very same contention of TSPL and held that upon assignment it is the obligation of TSPL to procure coal from the coal company and all rights and obligations with regard to procurement is that of TSPL. In the proceedings before the Hon'ble Appellate Tribunal in Appeal No. 36 of 2016, TSPL raised the same issue of obligation of procurement of coal is that of PSPCL. The said contention was rejected by the Hon'ble Appellate Tribunal in its judgment and order dated 03/7/2017. The said decision of the Hon'ble Appellate Tribunal was challenged by

TSPL before the Hon'ble Supreme Court in Civil Appeal No. 10525-10526/2017 on the issue of the obligation to supply coal for the generating plant. However, the said issue was not pressed for decision by TSPL in the hearing before the Hon'ble Supreme Court when the matter was disposed of by the Hon'ble Supreme Court on 07/03/2018. The only issues argued were on the washing charges and other associated charges on the lines of Nabha Power Limited. Therefore, the findings of the Hon'ble Tribunal on the issue of obligation to procure coal that being of the TSPL has been settled and the same issue cannot be raised by the TSPL in the present proceedings. The permission required for procurement of coal from alternate sources is to be applied for and obtained by TSPL from the Commission. The TSPL is operating the generating station and the TSPL is required to act in a prudent manner and generate and supply electricity in an optimal manner.

3.3 In terms of the premise of the TSPL that the prior approval of PSPCL is required for procurement of alternate coal is also completely misplaced. The Commission has specifically held that it is for the Commission to pass appropriate orders in this regard when approached. TSPL and PSPCL can mutually discuss if there is possibility of mutual agreement. In case there is consensus between the parties, there could be an agreement for procurement of alternate coal. However, the same cannot and does not mean that the Commission is not to be approached for necessary approvals by TSPL.

3.4 TSPL is fully aware about the requirements of electricity in the State of Punjab and the requirement of electricity to fulfill the demand in terms of the PPA. It is for the TSPL to apply for and obtain the requisite permissions for procurement of coal in

advance to ensure that there is no shortage of supply of electricity by the TSPL to the PSPCL. PSPCL has acted in a prudent manner and has also written to Coal India Limited and other authorities to facilitate the procurement of coal by TSPL. However, such action of PSPCL to facilitate the coal procurement cannot be construed as a legal obligation to supply coal or any other legal obligation not provided for in the Agreements entered into with TSPL.

3.5 TSPL has not sought for any post facto approval for procurement of alternate coal after showing the deficit in domestic coal available, but is only seeking deemed capacity charges from the PSPCL. The prayers made by TSPL are misconceived. The capacity charges are governed by the terms and conditions of the PPA. The availability is taken in terms of the SLDC certification as also provided for in the PPA. TSPL has also not sought any relief against any such SLDC certification. In the circumstances, in any event the claim made against PSPCL is misconceived.

3.6 The lower availability of the generating station during the year 2017-18 was primarily due to the shut-down of the generating unit for the above period of about 2 months on account of fire. The claim that the lower availability was due to the shortage of coal is baseless. TSPL has actually procured alternate coal during the year. It is for the TSPL to establish the necessity, the prudence in purchase and other factors that affect the tariff before the Commission for claiming any higher charges on account of the same. TSPL is operating the generating station in terms of the PPA. The only obligation of PSPCL was to arrange for the specified coal linkage, which was duly arranged for. Thereafter, it is for TSPL to operate and maintain the generating station in terms of the PPA including for procurement of coal for generation of

electricity. TSPL is required to act in terms of the PPA and as a prudent utility in the procurement of coal seek necessary approvals and directions from the Commission. There is a need to consider whether the claims are correct and prudent, whether TSPL has procured all coal available from the linkage sources, the reasons for any non-procurement and consequences thereof, the process adopted for procurement of alternate coal, the reasonability of the price of such coal and determine the energy charges payable for the quantum of electricity actually generated and supplied by the TSPL to the PSPCL. Therefore, the relief prayed by TSPL is not tenable.

3.7 On the issue of GCV PSPCL has submitted that the coal supplied by Coal India Limited is based on the Equilibrated GCV of coal. The list of prices of Coal India Limited is based on the Equilibrated GCV (E-GCV), which are the notified prices of coal. The invoices are raised and paid for on the basis of E-GCV of coal. The purchase cost of coal to be paid by PSPCL to the Petitioner is based on the prices and invoices of E-GCV. The Commission and the Hon'ble Appellate Tribunal had upheld the practice followed by PSPCL of taking the GCV as delivered at the mine end, the Hon'ble Supreme Court in its judgment in Civil Appeal No. 179 of 2017 dated 05.10.2017 had held that the point of measurement of GCV has to be when it is delivered at the project site. The Supreme Court has not in any manner held that the unit of measurement or methodology of measurement of GCV should be changed from E-GCV to Total Moisture (TM) basis. The parties has used the E-GCV unit or parameter of GCV since the commissioning of the generating station and there is no basis for the petitioner to seek any change to TM basis at this stage.

4. TSPL filed IA No. 05 of 2018 vide letter dated 18.04.2018 submitting that the lower availability of the project is on account of failure of PSPCL to supply assured quality and quantity of coal which is a force majeure event beyond the control of TSPL and further prayed for interim order restraining PSPCL from imposing any penalty on TSPL on account of availability of the power plant being below 75% pending the adjudication of Petition No. 03 of 2018 and pass any such other appropriate orders. The matter was taken up for hearing, on 09.05.2018 wherein PSPCL was directed to file its reply and rejoinder by TSPL, if any. PSPCL was further directed that there shall be no deduction of any amount on account of penalty on TSPL for availability of the power plant below 75% till the next date of hearing. TSPL was further directed to furnish information with respect to whether the issue of shortage of coal from linked sources and the requirement to procure coal from alternate sources was referred to the Standing Committee (Constituted by the Commission on TSPL project vide order dated 11.02.2014 in Petition No. 60 of 2013).

5. TSPL filed IA No. 07 of 2018 submitting that the nonpayment of cost of alternate coal has resulted in severe losses to TSPL and prayed to hold and declare that the Standing Committee on TSPL project constituted in terms of the Commission's order dated 11.02.2014 passed in Petition No. 60 of 2013 is valid for the term of the PPA dated 01.09.2008 and shall be the final authority to determine the additional cost of alternate/imported coal procured by TSPL to meet the established shortage of coal from CIL and its subsidiaries and in the alternate, allow TSPL to procure coal from alternate sources, including but not limited to CIL and its subsidiaries and direct PSPCL to pay for alternate coal procured/

used by TSPL to meet coal shortfall from linkage sources to meet PSCPL's power requirements along with carrying cost.

6. PSPCL filed reply to the IA No. 05 of 2018 submitting that there is no merit in the IA filed by TSPL as the prayers sought for in the IA are not in relation to the main petition. The primary case of TSPL is the shortage of coal from domestic sources, and by way of the present IA, TSPL sought directions against the adjustment of tariff in terms of Clause 1.2.5 read with Clause 1.2.1(iv) of Schedule 7 to the PPA. The said provision applies when the monthly bill is correctly raised and the present case is one where the monthly bill is itself raised wrongly by TSPL. Tariff is self-adjusting from time to time and TSPL cannot refuse to include the amounts in favour of PSPCL while claiming tariff from the PSPCL. There is also no question of unilateral deductions as alleged by TSPL, when the invoice raised is itself erroneous.

7. TSPL filed rejoinder to the petition as well as to IA No. 05 of 2018. TSPL has denied the allegations and averments made by PSPCL and reiterated its earlier submissions. With respect to reply of I.A. No. 5 of 2018 filed by PSPCL, TSPL submitted that the Project has suffered continued shortage after the peak paddy season of 2017 (since October 2017 onwards) in the coal being received as follows:-

Month	Monthly quota of Supply of Linkage Coal (in rakes)	Actual supply (in rakes)	Lapsed Rakes	Weighted Average GCV (approximate in kCal/Kg)	Quantity of Coal received (in MT)	PLF of Project relatable to Linkage Coal received
October 2017	149	138	11	3006	5,16,873	47.3%
November 2017	149	105	44	3111	4,74,811	46.4%
December 2017	149	123	26	3113	4,95,681	46.9%
January 2018	167	112	55	3158	4,29,397	41.2%
February 2018	157	107	50	3088	4,63,421	48.2%

7.1 The non-availability of sufficient rakes is beyond the control of TSPL since the Indian Railways has failed to provide sufficient

rakes despite several communications from MCL to the Indian Railways. This has resulted in lapse of coal for the Project. That as per the State Energy Account (“**SEA**”) for March, 2018, the cumulative actual availability of the Project for FY 2017-2018 has been shown to be 62.40% (as per PSLDC/PSPCL) which is lower than the minimum contracted availability of 75% required under the PPA. As per TSPL, the cumulative actual availability of the TSPL’s Project is approximately 74.397% including the capacity that could not be operated due to shortage from MCL coal and PSPCL’s continued failure in supplying coal as per the bidding terms / non-approval for procurement of alternate coal. PSPCL is trying to deduct penalties from the legitimate invoices raised by TSPL.

8. During the hearing on 06.06.2018 the Commission clarified that the “Standing Committee on TSPL Project” as constituted in the Commission’s Order dated 11.02.2014 in Petition No. 60 of 2013 shall be operative for the entire term of the PPA and that it has been inherently provided in clause 36(x) of the Order dated 11.02.2014 in Petition No. 60 of 2013, that the quantum of shortfall is to be determined by it. As the additional cost of coal to be procured is consequential to the determination of the quantum of shortfall, the ‘Standing Committee on TSPL Project’ shall also be the final authority to decide the shortfall of domestic coal from CIL or its subsidiaries for operation of the plant in terms of PPA. The Standing Committee shall inter-alia meet at least once every quarter and more often, if required. Further, PSPCL shall not deduct any amount on account of penalty on the applicant on account of availability of the power plant below 75% till the final order in this petition.

9. The Commission vide order dated 11.10.2018 directed PSPCL to submit the status of signing of FSA. PSPCL submitted the same vide memo No. 5236 dated 18.12.2018 that while PSPCL has been ready and willing to execute the FSA with MCL, TSPL has not confirmed the simultaneous assignment of the FSA. PSPCL has already sent a communication dated 27/11/2018 to TSPL reiterating that PSPCL is ready and willing to sign the FSA and seeking the confirmation of TSPL to simultaneously execute the assignment agreement with PSPCL as per the directions of the Commission and the Hon'ble Tribunal, and also as specifically agreed to between the parties.

**Commission's Observations, Findings and Decision**

The Commission has carefully gone through the petition, reply thereto by PSPCL, rejoinder by the petitioner to the reply of PSPCL, pleadings, documents, case laws referred by the parties, other submissions and written submissions filed by the parties.

**Signing of FSA by PSPCL**

The issues of signing of Fuel Supply Agreement with the coal supplier and arranging sufficient quantity and quality of linkage coal have been the subject matter of a series of petitions in the Commission, Hon'ble Appellate Tribunal for Electricity (APTEL) and Hon'ble Supreme Court of India. Hon'ble APTEL vide its Judgment dated 07.04.2016 in Appeal nos. 56 of 2013 and 84 of 2013 filed by TSPL held that PSPCL is under obligation to sign the Fuel Supply Agreement with the Fuel Supplier, namely Mahanadi Coalfields Limited (MCL) and PSPCL cannot be absolved of its obligation to supply fuel to TSPL for its power generating station and further to sign the Fuel Supply Agreement with the coal supplier. The Commission was directed to pass the consequential

Order. Consequently, the Commission vide Order dated 06.09.2016 as modified on 08.09.2016, directed PSPCL to approach MCL within 7 days of the date of issue of the Order and sign the Fuel Supply Agreement forthwith with MCL in substitution of the earlier Fuel Supply Agreement dated 04.09.2013 signed by TSPL. The Commission in the said Order further held that assignment of the FSA by PSPCL to TSPL after signing the same with MCL is in consonance with the Bidding Documents, PPA, MoU and the law of the land laid by Hon'ble Supreme Court of India. The Order dated 07.04.2016 of Hon'ble APTEL is under challenge by PSPCL before Hon'ble Supreme Court of India. As such, the matter rests now with the Hon'ble Supreme Court of India.

It is pertinent to bring out that Hon'ble APTEL in another Order dated 03.07.2017 in Appeal no. 36 of 2016 filed by TSPL against the Order dated 23.11.2015 passed by the Commission in petition no. 31 of 2014, referring to its aforementioned Judgment dated 07.04.2016 stated that the obligation to supply fuel by PSPCL to TSPL is to be understood in terms of its responsibility for arrangement of coal in the form of fuel linkage for the Project and further signing of FSA with MCL as per RFP/PPA/MoU. After signing of the FSA with MCL by PSPCL, it is to be assigned to TSPL during the term of the PPA. It further stated that the State Commission in the remand order dated 06.09.2016 modified on 08.09.2016 has rightly held for signing of FSA by PSPCL with MCL and assigning the same to TSPL. The State Commission has further rightly held that the assigned FSA is to be operated by TSPL and PSPCL will pay Energy Charges as per Clause 1.2.3 of Schedule 7 of the PPA based on weighted average 'cost to the

Seller' of purchasing, transporting and unloading the coal most recently supplied to and at the Project. Hon'ble APTEL further expressed its considered opinion that the assignment of FSA is unconditional and TSPL is obligated to carry out all the functions as required under the FSA. It further stated that in case if PSPCL is required to purchase/transport/unload coal, the very basic purpose of the competitive bidding is defeated.

The Standing Linkage Committee (Long-Term) for Power Sector formed by Ministry of Coal in its meeting held on 27.06.2018 has recommended that FSA be signed between PSPCL and the Coal company as per the directives of Hon'ble APTEL. The assignment of FSA is a commercial matter guided by the terms of the FSA between the power plant and the coal company. The Fuel Supply Agreement is presently with TSPL and is being operated by them. Signing of the Fuel Supply Agreement for linkage coal between MCL and PSPCL is under process and then has to be assigned to TSPL.

In view of the above position the Order of the Hon'ble Supreme Court of India referred by TSPL in the case of *Food Corporation of India v. Vikas Majdoor Kamdar Shahkari Mandli Ltd. (2007) 13 SCC 544* is distinguishable from the facts and circumstances of the present case.

### **Short requisitioning & short receipt of Linkage Coal**

The project has a coal linkage from Mahanadi Coalfields Ltd. with an Annual Contracted Quantity (ACQ) of 77.2 lakh ton and contracted quantity for each quarter is 25% (Q1; April to June), 22% (Q2; July to September), 25% (Q3; October to December) and 28% (Q4; January to March). The quarterly and monthly contracted quantity comes to 19.30 lakh ton (6.43333 lakh ton per

month) for the first Quarter, 16.984 lakh ton (5.66133 lakh ton per month) for the second Quarter, 19.30 lakh ton (6.43333 lakh ton per month) for the third Quarter and 21.616 lakh ton (7.20533 lakh ton per month) for the fourth Quarter. All thermal power stations are required to have sufficient coal storage capacity as per specified norms. As per information available with the Commission, TSPL has a coal storage capacity of approx. 10 lakh ton which is sufficient for 30 to 40 days of generation in terms of declared capacity/scheduled generation. The quoted Net Station Heat Rate (NSHR) for the generating station is 2400 kCal/kWh. On a daily basis, 0.33789 lakh ton of linkage coal of weighted average GCV 3139 kCal/kg was required for declaring 100% contracted capacity per day.

As per the data supplied by the petitioner for the period from Sept., 2016 to Sept., 2018, TSPL requisitioned 3.27 lakh ton of coal in Sept., 2016 as against ACQ of 5.66 lakh ton i.e. 2.39 lakh ton coal was ordered short by TSPL. The coal quantity received against this was 3.31 lakh ton. For the twelve months period from Oct., 2016 to Sept., 2017, the coal quantity requisitioned was 62.50 lakh ton as against ACQ of 77.2 lakh ton i.e. 14.70 lakh ton less coal was requisitioned. The coal quantity received against this was 46.65 lakh ton.

For the period from October, 2017 to June, 2018, TSPL requisitioned 54.89 lakh ton linkage coal against the contracted quantity of 60.22 lakh ton i.e. 5.33 lakh ton was requisitioned less. The coal received against this was 42.86 lakh ton (including 1.15 lakh ton washed coal from April onwards). However, for the quarter from July, 2018 to Sept., 2018, TSPL requisitioned 20.36 lakh ton of linkage coal as against contracted quantity of 16.98 lakh ton i.e.

3.38 lakh ton more than contracted quantity for the said quarter was requisitioned by TSPL. The coal received against this was 15.96 lakh ton (including 3.30 lakh ton washed coal). TSPL cannot expect to get more coal than the quarterly contracted quantity during a particular quarter when it has been ordering less than the contracted quantity of coal in the previous 3 quarters. Thus, from Oct., 2017 to Sept., 2018 against the ACQ of 77.2 lakh ton, TSPL requisitioned 75.25 lakh ton but not in accordance with the quarterly contracted quantity with MCL. The short requisitioning of coal across the year amounted to 1.95 lakh ton. During the said period, TSPL received 58.82 (42.86+15.96) lakh ton of linkage coal. Details of linkage coal less requisitioned are as under:

Period		ACQ (lakh ton)	Requisitioned (lakh ton)	Received (lakh ton)	Remarks
Sept., 2016		5.66	3.27 (short by 2.39)	3.31	Reasons for not requisitioned the full quantity not given
Oct., 2016 to Sept., 2017		77.2	62.50 (short by 14.70)	46.65	Short requisitioned upto Sept., 2017 is 17.09 lakh ton
Oct., 2017 to Sept., 2018	Oct., 2017 to June., 2018	60.22	54.89 (short by 5.33)	42.86	Short requisitioned upto June, 2018 is 22.42 lakh ton
	July, 2018 to Sept., 2018	16.98	20.36 (excess requisitioned 3.38)	15.96	Short requisitioned upto Sept., 2018 is 22.42* lakh ton

- *not considering the excess requisitioned quantity of 3.38 lakh ton.*

The above table indicates that for a 2 year period (Oct., 2016 to Sept., 2018), TSPL requisitioned 20.03 (22.42-2.39) lakh ton less than its authorized ACQ. The quantity of coal actually received for these two years was 105.47 lakh ton against an ACQ of 154.40 lakh ton. CIL had remarked on the short requisitioning by TSPL when asking for the coal requirement for 2017-18. However,

TSPL did not ask for their full ACQ except in the last quarter when TSPL exceeded the ACQ for the quarter. In this quarter CIL provided almost 94% of the total quota for that quarter. Thus TSPL cannot put the blame for lower availability of coal on PSPCL. **Moreover, the Commission notes that there is a provision in the Fuel Supply Agreement signed between MCL and TSPL with regard to the compensation for short delivery by the seller (CIL) / lifting by the purchaser (TSPL). Also the FSA provides for re-declaration of the grade of coal, if the grade analyzed shows variation from the declared grade consistently over the period of three months, the purchaser shall request the seller, which shall be duly considered by the seller. TSPL has not indicated the details of compensation received/given by it in its submissions.**

**From the above, it is clear that TSPL has not requisitioned the linkage coal as per the quarterly contracted quantity. Furthermore, the quantity of coal received was much less than that requisitioned. Though, TSPL has produced copies of letters written to MCL and railways for supply of more coal /rakes, but there was no response from them as submitted by TSPL. The Commission notes that CIL in an email (printed page no. 280-281 of the submissions dated 18.04.2019 made by TSPL), while requesting TSPL for furnishing coal requirement for the year 2017-18, brought out that the intake of coal by TSPL in the last fiscal year has been less than the expectations. The Commission is of the considered opinion that TSPL ought to have taken up the matter strongly and vigorously with MCL to ensure the full supply of coal and ought to have taken remedial action in**

**terms of the Fuel Supply Agreement, besides requisitioning the full contracted quantity of coal for every quarter.**

**Availability and usage of linkage coal and coal from alternate sources for declared capacity and scheduled generation**

In another Petition No. 43 of 2017 on the same issue for the paddy season of June, 2017 Sept., 2017, it had been brought out that from Sept., 2016 to Sept., 2017, TSPL had ordered 17.09 ton less coal than the ACQ. In the instant petition relief has been sought for the period Oct., 2017 onwards. From Oct., 2017 to June, 2018, the requisition was about 9% less than the quota even after TSPL had approached the Commission. During the period from Oct., 2017 to Sept., 2018, TSPL received linkage coal both unwashed (54.37 lakh ton) and washed (4.45 lakh ton) with respective weighted average GCVs of 3139 kCal/kg and 3761 kCal/kg alongwith alternate coal (11.95 lakh ton) of weighted average of GCV 4774 kCal/kg. The quantity of washed coal and alternate coal has been converted on GCV equivalent basis at the weighted average GCV of linkage coal i.e. 3139 kCal/kg for calculation purposes. The illustrative calculations of weighted average GCV for linkage (washed & unwashed) and alternate coal are as under:

Month	Monthly Contracted Qty. (MCQ) lakh ton	Coal Qty. Requisition by TSPL lakh ton	Short Qty. Requisitioned by TSPL lakh ton	Weighted average GCV								
				Linkage coal (unwashed)			Linkage coal (washed)			Alternate/imported coal		
				GCV kCal/kg	Qty. recd. lakh ton	GCV x Qty.	GCV kCal/kg	Qty. recd. lakh ton	GCV x Qty.	GCV kCal/kg	Qty. recd. lakh ton	GCV x Qty.
Oct. 2017	6.43333	5.80206	0.63127	3127	5.16873	16162.61871				4822	1.72787	8331.78914
Nov. 2017	6.43333	5.80206	0.63127	2996	4.74811	14225.33756				4836	0.83085	4017.99060
Dec. 2017	6.43333	5.80206	0.63127	3085	4.95681	15291.75885				4825	0.79710	3846.00750
Jan. 2018	7.20533	6.50298	0.70235	3078	4.29397	13216.83966				4841	0.96470	4670.11270
Feb. 2018	7.20533	6.87384	0.33149	3134	4.63421	14523.61414				4714	0.80261	3783.50354
Mar. 2018	7.20533	6.86324	0.34209	3109	5.04222	15676.26198				4807	0.74127	3563.28489
Apr. 2018	6.43333	4.99446	1.43887	3212	4.17144	13398.66528	4196	0.12323	517.07308	4764	0.44148	2103.21072
May. 2018	6.43333	6.12372	0.30961	3251	4.66356	15161.23356	4196	0.43477	1824.29492	4845	0.74154	3592.76130
Jun. 2018	6.43333	6.12372	0.30961	3144	4.02702	12660.95088	3922	0.59617	2338.17874	4683	1.01978	4775.62974
Jul. 2018	5.66133	6.78604	-1.12471	3149	4.01810	12652.99690	3744	0.94290	3530.21760	4707	1.74956	8235.17892



converted to GCV of 3139 kCal/kg) of unwashed linkage coal and 0.03 lakh ton (0.01948 lakh ton coal of GCV 4706 kCal/kg converted to GCV of 3139 kCal/kg) of alternate coal, the total coal available to TSPL from Oct., 2017 to Sept., 2018 including opening balance of 0.71 lakh ton, works out to 78.63 (55.08+5.34+18.21) lakh ton. Based upon each month's availability of coal, coal used during the month and balance coal available after scheduled generation during the said period, it would be seen that the month wise total coal available was sufficient for declared capacity on monthly basis except for the months of Nov., 2017, Jan., 2018, April, 2018 and July, 2018 wherein it was marginally less. As per the PPA, the normative availability of the project is 80 % at the Delivery Point. From the above, it is clear that TSPL had not requisitioned the coal as per ACQ since Sept., 2016 although it had the storage capacity for the same in the project. If TSPL had requisitioned the coal as per ACQ, it would have been able to declare the availability upto 80% and claim capacity charges for the same. TSPL is getting the capacity charges for the capacity declared by it.

**The aforementioned calculations are illustrative in nature being based upon monthly data. The actual situation would be more dynamic since capacity declaration, scheduled generation as well as receipt and usage of coal are on daily basis and thus more controllable.**

**The Commission observes that TSPL has been using coal from alternate sources in excess of what was actually required for the generation that was scheduled due to less utilization of available linkage coal every month. For example, in the month of Oct., 2017, the coal required for scheduled**

generation (923.883 MU) was 7.06 lakh ton (GCV: 3139 kCal/kg). The linkage coal available was 5.88 [5.17 (quantity received) +0.71 (opening balance)] lakh ton (GCV: 3139 kCal/kg) and thus the balance alternate coal required was 1.18 lakh ton of same equivalent GCV. However, TSPL used 2.25 lakh ton (equivalent GCV: 3139 kCal/kg) of alternate coal. In the period from Oct., 2017 to Sept., 2018, TSPL used 3.07 lakh ton excess alternate coal of equivalent GCV 3139 kCal/kg i.e. 2.02 lakh ton of weighted average GCV of 4774 kCal/kg of alternate coal for the said period. TSPL procured/received 18.18 lakh ton (equivalent GCV: 3139 kCal/kg) of coal from alternate sources during the period under analysis. This would have been avoided if the full ACQ had been requisitioned right from Sept., 2016.

It is clear from the above that if TSPL had ordered the full quantity of ACQ month-wise and received it there would have been no occasion for TSPL to procure coal from alternate sources for generation of scheduled energy. But TSPL did not order the full ACQ for 7 quarters and then ordered more than the ACQ in the quarter from July, 2018 to Sept., 2018. TSPL did not utilize its full storage capacity of approx. 10 lakh even once during this period. The closing stock every month from Oct., 2017 to Sept., 2018 varied between 0.44 lakh ton to a maximum 1.36 lakh ton.

### Conclusion

The Commission in its Order dated 11.02.2014 in petition no. 60 of 2013 filed by TSPL approved the procurement process of coal from alternative sources subject to the following terms & conditions and modalities. The same were

required to be adhered to by TSPL while procuring and using alternate/ imported coal for its plant.

**“36. ....**

**(i) TSPL shall requisition the coal regularly from MCL as per clause 4.5 ‘Scheduled Quantity’ of the FSA.**

**(ii) TSPL will give preference to the coal supplied by MCL over coal to be directly arranged by it from alternative sources and will not put any restrictions on supply of coal from MCL and accept the entire quantity of coal offered for supply from MCL.**

**(iii) TSPL will not use the coal supply from the alternative sources unless warranted by the exigencies of short supply of coal by MCL in terms of the FSA, that too on ‘Minimal Usage’ basis.**

**.....**

**x) As a measure for smooth operation of the plant and to avoid unnecessary litigation, the Commission appoints a Committee comprising of Secretary, Power/Govt. of Punjab, CMD/PSPCL and COO/TSPL as ‘Standing Committee on TSPL Project’ to resolve day to day issues. The said Standing Committee shall also be the final authority to determine the additional cost of coal from alternative sources/imported coal procured by TSPL to meet the shortages in coal supplied by CIL or its subsidiaries.”**

Evidently, TSPL has been flouting the above conditions/ modalities. TSPL has not been requisitioning the linkage coal from MCL as per the contracted quantity. Also, the matter of short supply of coal by the coal company does not appear to have been taken up strongly and vigorously with the quarters concerned to ensure that the coal supplied short by MCL is promptly supplied. Furthermore, instead of fully utilizing linkage coal every month, TSPL has been using alternate/imported coal in almost all the months from Oct., 2017 to Sept., 2018 in excess of what would have been required, had it fully used the available linkage coal. Linkage

coal was not preferred for use nor did TSPL desist from using coal from alternate sources which was only to be used if warranted by the exigencies of short supply of coal by MCL in terms of the FSA, that too on 'Minimal Usage' basis. TSPL from Sept., 2016 to Sept., 2018 ordered 22.42 lakh ton of linkage coal less than the ACQ but procured 18.21 lakh ton (equivalent GCV 3139 kCal/kg) of alternate coal. If TSPL ordered full linkage coal and vigorous efforts had been made to follow up the short supply of coal, TSPL would have been in a position to declare normative availability, if it so desired. TSPL did not choose to do so of its own volition for reasons best known to it.

Further, the Commission notes that CIL in an email (printed page no. 280-281 of the submissions dated 18.04.2019 made by TSPL), while requesting TSPL for furnishing coal requirement for the year 2017-18, brought out that the intake of coal by TSPL in the last fiscal has been less than the expectations. It is further stated in the said email that CIL is fully geared up to meet the entire requirement of coal of TSPL through the Fuel Supply Agreement & other available windows and already a number of steps have been taken for import substitution like source rationalization through offering part supply from higher grades for achieving MoEF compliant coal supply mix. Special forward auction has been launched exclusively for power generators with customized facilities like reduced EMD and floor price and flexible tenure of lifting to facilitate import substitution by them. In order to assure quality of supplies, despatch through special forward auction for power has now been covered through 'Third Party

**Sampling and Analysis' mechanism, at par with FSA despatch. Therefore, IPPs are fully provisioned for procurement of additional coal from indigenous CIL sources under extant policy framework. CIL further requested TSPL to indicate the coal intake plan including import substitution. Considering the same, the Commission is of the view that there was no need for TSPL to procure coal from alternate sources as its entire requirement of coal supply mix, that too MoEF compliant, could have been met with by CIL.**

**Under the circumstances, the prayers in the petition are not sustainable and therefore no relief is warranted to be granted to TSPL. Hence, decided accordingly.**

**Additionally, the Commission directs the 'Standing Committee on TSPL Project' appointed by the Commission for dealing with the coal related matters to strictly monitor the requisitions made by TSPL against the monthly/quarterly contracted quantity of coal. TSPL is directed to take up the matter promptly, as and when required, with the concerned authorities in terms of the Fuel Supply Agreement, such that the contracted quantity is consistently supplied by MCL and consumers of the State are not saddled with higher costs. Also, as TSPL has not said anything about the import substitution of coal provisioned by CIL as brought out in the para above, it appears TSPL has not acted upon the same. Therefore, TSPL is directed to evaluate the same and take necessary/appropriate action.**

**TSPL filed two IAs bearing no. 05 of 2018 and 07 of 2018 in the petition. The Commission in its interim Order dated 06.06.2018 with regard to the prayer in IA No. 07 of 2018 held**

as under:

***“Considering the above, the Commission clarifies that ‘Standing Committee on TSPL Project’ as constituted in the Commission’s Order dated 11.02.2014 in Petition No. 60 of 2013 shall be operative for the entire term of the PPA. It has been inherently provided in clause 36(x) of the Order dated 11.02.2014 in Petition No. 60 of 2013 whereby the said Standing Committee was constituted, that the quantum of shortfall is to be determined by it. However, it is further clarified that as the additional cost of coal to be procured is consequential to the determination of the quantum of shortfall, the ‘Standing Committee on TSPL Project’ shall also be the final authority to decide the shortfall of domestic coal from CIL or its subsidiaries for operation of the plant in terms of PPA. The Standing Committee shall inter-alia meet at least once every quarter and more often, if required.”***

The above direction is reiterated.

As regards IA No. 05 of 2018, the Commission in the said interim Order had directed as under:

***“PSPCL shall not deduct any amount on account of penalty on the applicant on account of availability of the power plant below 75% till the final order in this petition.”***

The said direction in IA No. 05 of 2018 would no longer hold good.

**Costs will be borne by the respective parties.**

The petition and the said applications stand disposed of in terms of above.

Sd/-  
**(Anjuli Chandra)**  
**Member**

Sd/-  
**(S.S. Sarna)**  
**Member**

Sd/-  
**(Kusumjit Sidhu)**  
**Chairperson**

Chandigarh  
Dated: 30.08.2019