

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

Petition No. 13 of 2015

(In compliance to Hon'ble APTEL Order dated
19.01.2018 in Appeal No. 259 of 2015)

Date of Order: 31.07.2018

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

In the matter of: Petition under Section 86 (1) (a) read with
Section 62 of the Electricity Act, 2003
regarding recovery due to payment of
additional levy as per Hon'ble Supreme
Court Order dated 24.09.2014.

AND

In the matter of: Punjab State Power Corporation Limited
(PSPCL), The Mall, Patiala.
.....Petitioner

Versus

1. PANEM Coal Mines Limited (PANEM), 3rd
Floor, 6 Poorvi Marg, Vasant Vihar, New
Delhi-110057.
2. Eastern Minerals & Trading Agencies
Limited (EMTA), 5 B Nandalal Basu Sarani,
Kolkata, West Bengal-700071.
3. Government of Punjab (GoP) through the
Secretary, Department of Energy, Sector-9,
Punjab Civil Secretariat-II, Chandigarh-
160017.

.....Respondents

ORDER

Hon'ble APTEL vide its Order dated 19.01.2018 in Appeal

No. 259 of 2015 filed by PSPCL against the Commission's Order dated 01.09.2015 in Petition No 13 of 2015 ordered as under:

“.....3. We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Mr. Sakesh Kumar, appearing for the Punjab State Electricity Regulatory Commission.

4. The learned counsel appearing for the Appellant submitted that the statement made in the memo dated 19.01.2018, as stated above, may be placed on record and the instant Appeal may be disposed of in terms of the statement made in the Memo dated 19.01.2018 in the interest of justice and equity.

5. Per-contra, the learned counsel appearing for the Punjab State Electricity Regulatory Commission, inter-alia, contended and submitted that, the statement made in the Memo dated 19.01.2018 filed by the learned counsel appearing for the Appellant, as stated above, may be placed on record. Further, he submitted that the Appellant may be directed to impleadment of State of Punjab as necessary party to adjudicate the matter effectively. Therefore, he submitted that appropriate direction may be issued to implead the State of Punjab also one of the proposed Respondent in addition to impleading, PANEM Coal Mines Limited, EMTA Limited. Accordingly, the appeal filed by the Appellant may be disposed of and all the contentions of the parties may be left open.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel

appearing for the Respondent and the statement made in the Memo dated 19.01.2018, as stated above, the instant Appeal, being Appeal No. 259 of 2015, filed by the Appellant, stands disposed of in terms of the Memo dated 19.01.2018 in the interest of equity and justice.

7. The Punjab State Electricity Regulatory Commission is directed to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed Respondent as expeditiously as possible at any rate within a period of six months from the date of appearance for the Appellant personally or through his Counsel.

8. The Appellant, herein, Punjab State Power Corporation Limited is directed to appear before Punjab State Electricity Regulatory Commission through the Counsel on 06.02.2018 at 11.30 A.M. to collect the next date of hearing.....”

Accordingly, PSPCL appeared before the Commission on 06.02.2018 and submitted memo no. 6343 dated 05.02.2018 containing its submissions and impleading PANEM, EMTA and the GoP as Respondents.

2. Submissions made by PSPCL, are summarized as under:

- i) PSPCL is engaged in the business of generation, distribution and retail supply of electricity in the State of Punjab and has been supplying power to the public at large.
- ii) The Pachwara Central Block Coal Mine was allotted to the erstwhile Punjab State Electricity Board for the

exclusive use of the generating stations of Punjab State Electricity Board. The said coal block is included at Serial No. 25 in the list of 40 coal blocks in issue before the Hon'ble Supreme Court in the coal block allocation case wherein the mining lease had been granted and mining had already started.

- iii) The above Pachwara Central Block Coal mine has been in operation with the mining of coal being undertaken since February, 2006. The coal mined from the said mine was exclusively used for the 3 thermal power stations and all such thermal power stations are under commercial operation and generating electricity to maintain the distribution and supply of electricity to the consumer at large. PSPCL, the Petitioner herein is undertaking both generation and distribution of electricity and accordingly, there is no power purchase agreement, as in the case where the generating company and the distribution companies are independent entities.
- iv) For the purpose of coal requirements of the generating stations of erstwhile Punjab State Electricity Board, the Government of India had allotted the Pachwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board.
- v) Pursuant to the above, a Special Purpose Vehicle, namely Panem Coal Mines Limited was created for mining of coal from the said Pachwara Central Block Coal Mine maintaining the exclusive use for the power plants of erstwhile Punjab State Electricity Board. By notification dated 22/02/2002, the Government of India

specified the end use of the supply of coal from the Pachhwarra Central Block by Panem Coal Mines Limited on an exclusive basis to the power plants of the erstwhile Punjab State Electricity Board for generation of thermal power and further, subject to the condition that Punjab State Electricity Board shall hold at least 26% of the voting equity share capital of Panem Coal Mines Limited.

- vi) The Government of India, Ministry of Coal & Mines by communication dated 25.08.2004 addressed to the Government of Jharkhand, communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachhwarra Central Block covering an area of the 1278 hectares to Panem Coal Mines Limited for a period of 30 years, inter-alia, subject to the condition that the coal extracted shall be exclusively supplied to the power plants of Punjab State Electricity Board for use in generation of Power.
- vii) The mining lease was granted by the Government of Jharkhand to Panem Coal Mines Limited by Mining Lease Deed dated 16.11.2004 for an area of 905.41 hectares and by Mining Lease Deed dated 30.03.2005 for an area of 372.96 hectares, aggregating to a total of 1278.37 hectares.
- viii) Pursuant to the above, the mines were developed and the mining and supply of coal began from March, 2006 and continued upto 31.03.2015. The coal mined from the

Pachhwara Central Block Coal Mine is exclusively supplied to the three generating stations of PSPCL.

- ix) The above coal mine was subject to proceedings before the Hon'ble Supreme Court in the coal block allocation case, wherein orders were passed for cancellation of the coal block. In the orders dated 25.08.2014 and 24.09.2014, the Hon'ble Supreme Court was pleased to direct payment of additional compensation in the sum of Rs. 295/- per MT for the coal extracted and used till 24.09.2014 in regard to various coal blocks including Pachhwara Central Coal Mine Block.
- x) In pursuance of the above decision of the Hon'ble Supreme Court, the petitioner deposited Rs. 391,46,36,262/- with the Central Government on 31.12.2014, being 26% of the compensation payable at the rate of Rs. 295/- per MT for the 51038282.42 Metric Tonnes coal extracted from the Pachhwara (Central) Coal Block since inception till 24.09.2014 in consonance with its equity share in PANEM Coal Mines Limited and applied for the allocation of the Pachhwara (Central) Coal Block for the end use of the various power stations. This payment has been made after availing loan of Rs. 195.00 crore each from REC & PFC.
- xi) PSPCL filed petition no. 13 of 2015 before the Commission praying to allow the petitioner to recover the amount of Rs. 391,46,36,262/- already paid and such other amounts as may become payable in terms of the orders passed by Hon'ble Supreme Court and in terms of Coal Mines (Special Provisions) second

Ordinance, 2014 alongwith interest in the tariff for distribution and retail supply of electricity to be determined by the Commission for FY 01.04.2015 to 31.03.2016. The Commission vide order dated 01.09.2015 decided the aforesaid petition holding that:

“....In light of above, the Commission observes that any refundable payment made by PSPCL to MoC, Govt cannot be treated as payment towards cost of material (coal) and the same cannot be treated as expenses in accounting and for tariff determination.

G. The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, Government of Punjab on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to Government of Punjab which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB's equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB's equity which has been transferred to Govt. of Punjab but has not been re-vested in

PSPCL.

In the light of above, it is concluded that the refundable amount of Rs. 391,46,36,262/- (paid by PSPCL to GoI), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff. The Petition is dismissed....”

- xii) Aggrieved by above said order dated 01.09.2015 passed by the Commission in petition no.13 of 2015, PSPCL filed an Appeal No. 259 of 2015 before the Hon'ble APTEL and the Hon'ble APTEL has disposed of the appeal vide order dated 19.01.2018, directing the Punjab State Electricity Regulatory Commission to dispose of the matter in accordance with law after offering reasonable opportunity of hearing to the Appellant and the Respondent including proposed respondent as expeditiously as possible at any rate within a period of six months from the date of appearance for the Appellant personally or through his Counsel.
- xiii) In pursuance to the order dated 19.01.2018 passed by the Hon'ble APTEL and the directions given therein, PSPCL has filed the present submissions for impleading PANEM, EMTA and the GoP as Respondents.
- xiv) Even after the expiry of 28 months of the passing of the Order dated 01.09.2015 by the Commission, PSPCL has

not been paid any amount by the Government of India towards the refund of the amount of Rs. 391,46,36,262/- paid by PSPCL in terms of the directions of the Government of India as a condition for re-allotment of Pachhwara (Central) Coal Mine Block to the Petitioner under the Coal Mines (Special Provisions) Second Ordinance, 2014. PSPCL has made efforts with the Central Government for such refund of the amount deposited by PSPCL after the process of allocation of the Pachhwara (Central) Coal Mine Block was completed.

xv) PSPCL has also made efforts to claim the amount of Rs. 391,46,36,262/- from PANEM and EMTA. PANEM Coal Mines Limited is a shell company and has no business after the cancellation of the Pachhwara (Central) Coal Mine Block in terms of the Orders of the Hon'ble Supreme Court. There is, therefore, no possibility of any recovery of any amount. PSPCL is now pursuing for the liquidation of PANEM Coal Mines Limited as the spectrum of business of PANEM Coal Mines Limited is lost and the said company has no assets, interest, license or otherwise any benefit which can be in any, manner encashed for recovery of the amount due to Petitioner or otherwise.

xvi) As regards EMTA, PSPCL has filed a claim in the arbitration. The said claim has been filed as a counter claim in a petition filed by EMTA seeking arbitration and recovery of the amount from the Petitioner.

xvii) The arbitration is pending before the Arbitral Tribunal of

Hon'ble Justice Permod Kohli (Retd.) - Presiding Arbitrator, Hon'ble Justice V.K. Gupta (Retd.) - Co-Arbitrator and Sh. R.S. Mann IAS (Retd.) - Co-Arbitrator.

xviii) In the facts and circumstances mentioned above, PSPCL has not been able to recover any part of the amount of Rs. 391,46,36,262/- either from PANEM or from EMTA till date.

xix) The GoP has also not paid any money to PSPCL as against the Rs. 391,46,36,262/-. It is respectfully submitted that the fact that 26% of the equity shareholding in PANEM was held by the GoP cannot lead to a legal obligation on the part of the Government to pay the amount of Rs. 391,46,36,262/- to the Petitioner. The coal was being supplied by PANEM to PSPCL for use in the generating stations of PSPCL. The procurement of coal from Pachhwara (Central) Coal Mine Block was by PSPCL and not by the GoP. The re-allocation of the Pachhwara (Central) Coal Mine Block has been in the name of PSPCL and hence PSPCL is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation with the right to use the coal extracted from the mine for generation by its generating stations. The entire benefit of re-allocation of the Pachhwara (Central) Coal Mine Block is that of PSPCL. The payment of Rs. 391,46,36,262/- was made by PSPCL to sustain its operation with the coal from the Pachhwara (Central) Coal Mine Block being available to it on a long term basis.

xx) The re-allocation of the Pachhwara (Central) Coal Mine

Block is in the larger interest of the consumers in the State as the benefit of cheaper coal from the said mine will reduce the cost of supply of electricity to the consumers. Further, the benefit of cheaper coal being procured by PSPCL from the Pachhwarra (Central) Coal Mine Block prior to cancellation pursuant to the Order dated 25.08.2014 and 24.09.2014, was being passed on to the consumers resulting in reduced tariff. Resultantly, the additional financial liability owing to the expenditure incurred to secure the allotment of Pachhwarra (Central) Coal Mine Block, representing 50% of the Petitioner coal requirement, was also required to be passed on the consumers of the State of Punjab, as it was expenditure incurred for the procurement of Coal.

xxi) The allotment of the Pachhwarra (Central) Coal Mine Block being cancelled pursuant to the decision of the Hon'ble Supreme Court, PSPCL would still have been required to procure coal of the same quantity from alternate sources, at a higher cost. Such costs towards energy charges would still have had to be considered as a pass through in the retail tariff and chargeable from consumers of the State of Punjab, which would have unduly increased the economic burden on the consumers.

xxii) Thus, the payment of Rs. 391,46,36,262/- made by PSPCL to the Government of India for securing the re-allocation of the Pachhwarra (Central) Coal Mine Block is a legitimate and prudent expenditure incurred by PSPCL in discharging its functions as a generating and

distribution company and in maintaining the supply of electricity to the consumers at large in the State. It is therefore an act to safeguard the interest of the consumers and legitimate cost to be duly allowed as revenue requirement.

xxiii) The said payment of Rs. 391,46,36,262/- is required to be considered as a part of the revenue requirements of PSPCL as it has funded the above amount through borrowings and internal accrual. The said amount ought to be allowed with carrying cost as revenue expenditure of PSPCL.

xxiv) PSPCL has already suffered the above financial exposure including the interest cost on the borrowings since the year 2015 which has affected PSPCL adversely. PSPCL, therefore, should be permitted to recover the said amount along with the carrying cost through tariff.

xxv) PSPCL undertakes that it will continue to make efforts to secure the above amount from the Government of India and /or from EMTA and if and when any sum is recovered, the same will be adjusted as a revenue in the Annual Revenue Requirements of the Petitioner and thereby the benefit of the recovery will be passed on to the Consumers.

3. The Commission observed that the prayer made by PSPCL in its submissions was not in consonance with the Order of the Hon'ble APTEL dated 19.01.2018 and PSPCL was given liberty to amend its prayer accordingly. The petition was fixed for hearing on

04.04.2018.

4. PSPCL vide memo no. 6638/41 dated 21.03.2018 submitted the revised/amended prayers as under:

- a) Take on record the petition filed and issue notice to the Respondents.
- b) Direct that the amount of Rs. 391,46,36,291/- paid by the petitioner to the Government of India along with interest cost from the date of the payment till date is allowed to be recovered as a part of the Annual Revenue Requirements through tariff in the ensuing financial year subject to adjustment in the event of any recovery of the said amount from the Government of India and/or EMTA and/or PANEM and/or any payment made by GoP, as mentioned in the petition.
- c) Pass any such further order or orders as the Commission may deem just and proper in the circumstances of the case.

5. The petition was taken up for hearing on 04.04.2018. No one was present on behalf of PANEM and EMTA and fresh notices were ordered to be issued to PANEM and EMTA. PSPCL was directed to file status report with regard to proceedings in various fora i.e. Hon'ble High Court of Punjab and Haryana, Arbitration Tribunal etc. along with the agenda note and decision of the Board of Directors of PSPCL regarding re-tendering for selection of MDO and the petition was fixed for hearing on 09.05.2018. Accordingly, PSPCL submitted the status report and the decision of the Board of Directors vide memo no. 6797 dated 11.04.2018.

6. GoP through OSD (Power Reforms) vide memo no. 1/24/2015-EB(PR)/490 dated 13.04.2018 submitted reply to the

petition. In the reply, it was submitted that:

- i) It was Punjab State Electricity Board which was an equity shareholder in PANEM. The GoP was not a shareholder in PANEM.
- ii) The Pachhwara Central Block Coal Mine was allotted to the Punjab State Electricity Board by the Central Government on 26.12.2001, for the exclusive use of Thermal Generating Stations of the Punjab State Electricity Board. Accordingly, vide notification dated 22.02.2002, Central Government specified the end use of supply of coal from the Pachhwara Central Block.
- iii) The Coal mined from the Pachhwara Central Block Coal Mine was exclusively supplied to the three generating stations of the Punjab State Electricity Board (now succeeded by PSPCL, the Petitioner herein).
- iv) On 16.04.2010, consequent to the re-organization of the Punjab State Electricity Board in terms of Section 131 of the Electricity Act, 2003, the generation and distribution function of the erstwhile Punjab State Electricity Board have been vested in PSPCL.
- v) W.e.f. 16.04.2010, the Directors on the Board of PANEM were being nominated by PSPCL and EMTA and such nominees have been attending the Board meetings and it is PSPCL which has been listed as the shareholder of PANEM.
- vi) That in the circumstances mentioned above, it will not be appropriate to proceed on the basis that Pacchwara Coal Block Mine at any time vested with the GoP except

that under the Transfer Scheme, the interest in the Pachhwara Coal Block (which belonged to and was operated by the JV Company – PANEM with the due approval of the Central Government) went through the process of vesting in the GoP and immediately re-vesting in PSPCL as per Section 131 of the Electricity Act, 2003. Accordingly, the Order dated 01.09.2015 referring to opening balance sheet of PSPCL, not reflecting the Pachhwara Coal Block Mine as a part of the assets of PSPCL and therefore, the same belonged to the GoP, is not correct. After the formation of the JV Company, PSEB was the shareholder and on re-organization, PSPCL became the shareholder. Under the Transfer Scheme, such shareholding right is represented by the rights vested in PSPCL along with the undertaking. There was however, no cash contribution for equity holding, either by PSEB or by PSPCL or by GoP.

- vii) Thus, GoP was not liable for any payment or otherwise to the nominated authority. Accordingly, in terms of the Coal Mine (Special provisions) Second Ordinance, 2014, the GoP cannot be said to be a prior allottee.
- viii) In any event the coal supplied by PANEM to the petitioner was for exclusive use in the generation stations of the petitioner. The petitioner is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation/re-allocation with the right to use the coal extracted from the mine for generation by its generation stations.

7. During the hearing on 09.05.2018, none was present on behalf of PANEM and EMTA. GoP through OSD (Power Reforms) reiterated its reply submitted vide its letter dated 13.04.2018. The Commission vide its Order dated 14.05.2018 directed PSPCL to submit information as to the other States where mines were cancelled and allocation/ reallocation of the same applied for and whether the additional compensation @ Rs.295 per MT was deposited along with percentage of the amount deposited and whether the said amount has been allowed as a pass through in the tariff orders. PSPCL was also directed to submit Profit & Loss statement of PANEM since inception of the company. The petition was fixed for hearing on 30.05.2018.

8. PSPCL vide memo no. 5000 dated 29.05.2018, requested for the adjournment of the matter for six weeks to enable it to submit the information in compliance of the interim order dated 14.05.2018. In its Order dated 31.05.2018, the Commission observed that Hon'ble APTEL vide order dated 19.01.2018 had directed the Commission to dispose of the matter as expeditiously as possible and at any rate within a period of six months from the date of appearance of PSPCL. PSPCL made its submissions vide memo. no. 6343 dated 05.02.2018 and was heard by the Commission on 06.02.2018. Accordingly, as the Commission was bound to dispose of the matter by 05.08.2018, PSPCL was directed to submit the requisite information latest by 02.07.2018 with the direction that no further opportunity shall be given.

During the hearing the Commission desired PSPCL to submit a copy of legal opinion rendered by Sh. M.G. Ramachandran, Advocate to PSPCL regarding payment of additional levy of Rs.295/- per MT as a precondition for allotment

of Pachhwara (central) Coal Block. PSPCL submitted a copy of the same which was taken on record. The matter was fixed for hearing on 04.07.2018.

9. PSPCL vide memo no. 5178 dated 03.07.2018 submitted its reply. In the reply, it submitted that the other States with respect to which the Mines were cancelled pursuant to the judgment of the Hon'ble Supreme Court in the case of Manohar Lal Sharma v Principal Secretary and Ors. (2014) 9 SCC 615 are Karnataka (Kiloni, Manoradeep and Baranj I to IV coal mines) and West Bengal (Pachhwara (North) Coal Mine Block). It was further submitted that in case of Karnataka, the issue whether the additional levy is payable by EMTA or Karnataka Power Corporation Ltd. (KPCL), two Judge's of a Division Bench of Hon'ble High Court of Karnataka have given divergent view and the matter is pending before the third Judge. KPCL has deposited the additional levy and raised invoices on the distribution companies considering it as sale of power. However, the amount has not yet been recognized as income because of disputed nature of transaction and pending court cases.

In case of West Bengal, PSPCL has submitted that as per Section 3(1) (n) of the Coal Mines (Special Provisions) Second Ordinance, 2014, "prior allottee" means prior allottee of Schedule I Coal Mines as listed therein, whose allotments were cancelled. However, an 'Explanation' was given below the definition of "prior allottee" which provided that 'In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I Coal mines, then, the third party shall be deemed to be the prior allottee'. As the mining lease for these coal mines were executed in favour of Bengal Emta Coal Mines Limited, West

Bengal Power Development Corporation Limited (WBPDCL) was not considered a prior allottee in terms of the 'Explanation' given below the definition of prior allottee. Allotment letters in respect of Coal Block were issued in favour of WBPDCL. PSPCL has submitted that it has been unable to determine whether any amount was paid by WBPDCL as additional levy. PSPCL has also annexed the Report of the Comptroller and Auditor General of India on e-auction of coal mines.

10. After hearing all the parties on 04.07.2018, the petition was reserved for Orders.

11. Commission's Observations and Findings

The Commission after perusing the petition, replies, submissions, all the documents and pleadings submitted by the parties makes the following observations and findings.

- i) The Commission vide its Order dated 01.09.2015 had dismissed the Petition No. 13 of 2015 filed by PSPCL, for considering the amount of Rs. 391,46,36,262/- already paid and such other amount as may become payable in terms of the orders passed by the Hon'ble Supreme Court and in terms of the Coal Mines (Special Provisions) Second Ordinance, 2014 notified by the Central Govt. in the revenue requirements of petitioner and to allow recovery of the said amount along with interest in the tariff for distribution and retail supply of electricity to be determined by the Commission from 01.04.2015 to 31.03.2016, with following observations:
 - a) *From the perusal of the advice rendered by Sh. M.G.Ramachandran Advocate, it is clear that basis the*

strict construction of the provisions of the Ordinance, the liability to pay the entire amount of ₹295/MT was on PANEM and not on PSPCL as a shareholder of PANEM. Even the Coal Controller has written to PANEM calling upon them to deposit the entire amount of ₹295/MT in pursuance to the Orders of the Hon'ble Supreme Court. PSPCL was also advised to write a letter to PANEM with a copy to EMTA to the effect that PANEM may proceed to deposit the amount of ₹295/MT forthwith with the Coal Controller in compliance with the letter sent by the Coal Controller to PANEM. It was also advised to PSPCL to write a letter to the Coal Controller with a copy to the Ministry of Coal referring to the letter addressed by the Coal Controller to PANEM and request for the refund/ adjustment of the amount deposited by PSPCL with the Coal Controller.

- b) *Also, from the contents of the letters dated 31.12.2014, 11.05.2015 and 08.07.2015, written by PSPCL to Ministry of Coal and Nominated Authority, it is gathered that as per Coal Mine (Special Provision) Second Ordinance 2014, the liability to pay the additional levy of ₹295 per tonne is on the "prior allottee" i.e. PANEM. The amount deposited by PSPCL is subject to the liability of making the deposit by PANEM. The amount deposited by PSPCL is refundable and this fact has been admitted by the PSPCL in the Petition also.*
- c) *The clauses of Agreement on Captive Coal Mining Project of PSEB through the Joint Venture signed on 21st March, 2001, relevant in the matter, states as under:*

Article 3(6):“PSEB shall not be required to make any financial contribution to the company at any time”

Article 6:“Subject to other provisions of this Agreement, EMTA and PARTNERS as the selected bidder shall ensure that the Company raises capital and other finances required for the business of the Company. EMTA and PARTNERS shall not require PSEB to undertake or be a party to any guarantee obligation or otherwise give any security or assurance for such raising of finance or funds.”

- d) *The captive coal mine was originally allocated to Punjab State Electricity Board. On the reorganization of PSEB into PSPCL and PSTCL, there is no provision in the transfer scheme to allocate the coal mine to PSPCL. Which implies that consequent upon unbundling of PSEB w.e.f. 16.04.2010, GoP on dated 24.12.2012 notified Opening Balance Sheet of PSPCL and PSTCL as on 16.04.2010. Under the Transfer Scheme, the assets and liabilities of PSEB were transferred to GoP which were later on transferred to the new entities i.e. PSPCL and PSTCL. The share of PSEB’s equity in PANEM has not been shown in Opening Balance Sheet of PSPCL or PSTCL, from which it can be concluded that Share of PSEB’s equity which has been transferred to GoP but has not been re-vested in PSPCL.*

In the light of above, it was concluded that the refundable amount of Rs. 391,46,36,262 (paid by PSPCL to Gol), interest thereon and such other amount (as prayed in the Petition) cannot be treated as expenditure for revenue requirement of the Petitioner and as such is not chargeable to consumers of the State through tariff.

- ii) Aggrieved by the said decision, PSPCL filed an Appeal being Appeal No. 259 of 2015 before the Hon’ble Appellate Tribunal for Electricity (APTEL). On the directions passed by the Hon’ble APTEL vide Order

dated 19.01.2018 in the above said Petition, PANEM, EMTA and GoP were impleaded as Respondents and issued notices for appearance before the Commission. However, PANEM and EMTA neither submitted their reply to the submissions of PSPCL nor appeared before the Commission despite the issuance of repeated reminders/notices. GoP vide its memo no. 1/24/2015-EB (PR)/490 dated 13.04.2018 has submitted that, after the formation of the JV Company, PSEB was the shareholder and on re-organization, PSPCL became the shareholder and PSPCL is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation/re-allocation with the right to use the coal extracted from the mine for generation by its generation stations. PSPCL in its submission has also submitted that it is the legal owner of the Pachhwara (Central) Coal Mine Block on its allocation. **Accordingly, the Commission decides to omit the reference of GoP made in its Order dated 01.09.2015.**

- iii) Now, to decide upon the prayer of the petition, the Commission needs to first ascertain whether the said payment was at all payable by PSPCL and if payable, whether the utility is justified in seeking the same as a pass through to the consumers of the State through tariff.
- iv) From the submissions of PSPCL, it is clear that the Government of India allotted the Pachhwara (Central Block) coal mine in the State of Jharkhand to the erstwhile Punjab State Electricity Board. Further, the

Government of India, Ministry of Coal & Mines by communication dated 25.08.2004 addressed to the Government of Jharkhand communicated the previous approval of the Central Government under Section 5(1) of the Mines & Minerals (Development & Regulation) Act, 1957 to the grant of lease for mining of coal from the Pachhwara Central Block covering an area of 1278 hectares to Panem Coal Mines Limited for a period of 30 years and accordingly, the mining lease was granted by the Government of Jharkhand to Panem Coal Mines Limited by Mining Lease Deed dated 16.11.2004 and by Mining Lease Deed dated 30.03.2005.

- v) Further, pursuant to Hon'ble Supreme Court Order, Coal Mines (Special Provisions) Second Ordinance was promulgated on 26 December 2014, followed by Coal Mines (Special Provisions) Act, 2015. As per Section 3(1)(n) of the said Act, "prior allottee" means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No. 120 of 2012 and 'Explanation' inserted below this definition, provides that ***'In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I coal mines, then, the third party shall be***

deemed to be the prior allottee'. (Emphasis Added).

- vi) PSPCL in its submissions and during various hearings could not submit or produce any document /evidence which could prove that the additional levy paid by it to the nominated authority of the Central Government, in terms of the Coal Mines (Special Provisions) Act, 2015, was actually payable by PSPCL and not by PANEM. On being asked by the Commission to submit information about payment of additional levy by similarly placed other States/State owned utilities, whose mines were also cancelled along with that of PANEM and whether the said amount has been allowed as a pass through in the tariff orders of the respective States. PSPCL in its reply dated 03.07.2018, submitted that the other States with respect to which the Mines were cancelled pursuant to the judgment of the Hon'ble Supreme Court are Karnataka and West Bengal. It was further submitted that in case of Karnataka, the issue whether the additional levy is payable by EMTA or Karnataka Power Corporation Ltd. (KPCL), the matter is pending before the Hon'ble High Court at Karnataka. KPCL has deposited the additional levy and raised invoices on the distribution companies considering it as sale of power, but the amount has not yet been recognized as income because of disputed nature of transaction and pending court cases.

In case of West Bengal, PSPCL has submitted that West Bengal Power Development Corporation Limited (WBPDC) was not considered a prior allottee in

terms of the 'Explanation' given below the definition of prior allottee and allotment letters in respect of Coal Block were issued in favour of WBPDC. From the report of the Comptroller and Auditor General of India on e-auction of coal mines it emerges that WBPDC had not deposited the additional levy.

Thus, in light of the Hon'ble Supreme Court's Order read with Coal Mine (Special Provision) Second Ordinance 2014 and Coal Mines (Special Provisions) Act, 2015, the Commission is of the view that, the liability of additional levy of ₹295 per tonne is on the "prior allottee" i.e. PANEM Coal Mines Limited and not on PSPCL as its shareholder.

- vii) Further, as per Agreement of Captive Coal Mining Project of PSEB (now PSPCL) through the joint venture signed on 21st March, 2001, PSEB (now PSPCL) is not required to make any financial contribution to the company at any time".

In view of above, it can be inferred that PSPCL was not liable to make the said payment and its decision to deposit the same was purely at its own risk and the question of allowing the same as pass through to the consumers of the State through tariff doesn't arise.

The Commission also noticed that PSPCL has been making efforts with the Central Government for the refund of the additional levy deposited by it and has also claimed the same from PANEM Coal Mine Limited and Eastern Minerals and Trading agencies Limited in an arbitration proceeding pending before the Arbitral Tribunal. The Commission directs PSPCL to expedite the matter

with the concerned Authorities and try to recover the said amount at the earliest instead of seeking to burden the consumers by passing the same in the ARR.

Accordingly, the Commission's Order dated 01.09.2015 is amended to the extent of views expressed above in this Order.

-Sd/-

(Anjuli Chandra)
Member

-Sd/-

(S.S. Sarna)
Member

-Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh
Dated:31.07.2018

