Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69, Fax 22163976
Email: mercindia@merc.gov.in
Website: www. merc.gov.in

Case No. 145 of 2020

Case of Amravati Power Transmission Co. Ltd. seeking Modification/Clarification of the Commission's MYT Order dated 30 March, 2020 in Case No. 295 of 2019 on the issue of refinancing of loan

Coram
I.M. Bohari, Member
Mukesh Khullar, Member

Amravati Power Transmission Co. Ltd. ..... Petitioner

Appearance

For the Petitioner : Adv. Vishrov Mukerjee

ORDER

Date: 19 September, 2020

1. Amravati Power Transmission Co. Ltd. (**APTCL**) has filed a Petition on 11 July, 2020 under Regulation 92 of the MERC (Conduct of Business) Regulations, 2004, seeking modification /clarification of the rulings of the Commission's MYT Order issued on 30 March, 2020 in Case No. 295 of 2019 (**Impugned Order**) on the issue of refinancing of the loan .

2. **APTCL's main prayers are as follows:**

   a) *"Allow the present Application* ***and modify Case 295 True-up 2017-18, 2018-19 and MYT 2020-2025 Order to the extent that APTCL is allowed refinancing costs amounting to Rs. 12.17 Crores, as well as Rs. 11.96 La****khs for drafting of loan agreement if net savings accrue to the beneficiaries on account of refinancing in future;*

   b) ***Alternatively, modify Case 295 True-up 2017-18, 2018-19 and MYT 2020-2025 Order to the extent that APTCL is allowed refinancing costs corresponding to the benefits that accrue to the beneficiaries on account of reduced interest amount****; ----"*

3. At the time of E-hearing dated 15 September , 2020, Advocate of APTCL stated that currently there is no benefit of refinancing to APTCL and in case there is a benefit of refinancing accruing in future, the refinancing cost may be allowed to APTCL.

4. The Commission notes that the Petition has been filed under Regulation 92 of the MERC (Conduct of Business) Regulations, 2004, which specifies as follows:

   "92. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Commission."

5. Before dealing with the issues, the Commission notes that the Petition is not filed within 45 days period allowed under Regulation 85 of MERC (Conduct of Business) Regulations, 2004. Also, on this issue APTCL has not made any submission.

6. The Commission notes that the Hon'ble Supreme Court vide its Judgment dated 23 March, 2020 has extended limitation period for filing of all types of Petitions. Therefore, the Commission rules that this Petition is filed within limitation period.

7. The Commission would now deal with the issue submitted in the Petition:

Issue: Approval for recovery of refinancing costs of Rs. 12.17 Crore and Rs.11.96 Lakhs towards drafting of loan agreement, which is already incurred by APTCL and could be claimed in future, if the net savings accrue to beneficiaries on account of refinancing

APTCL's submission:

7.1. Regulation 29.10 of the MYT Regulations, 2015 provides that licensees shall make all efforts to refinance the existing loans so long as such refinancing results in net savings for the beneficiaries by way of lowered interest. In such a case the refinancing costs are to be borne by the beneficiaries and also net savings are to be shared with the beneficiaries.

7.2. Accordingly, APTCL had filed its Petition in Case No. 86 of 2018, for change of encumbrance created on the moveable and immoveable assets in favour of Power Finance Corporation (**PFC**) and Rural Electricity Corporation (**REC**) with L&T Infrastructure Finance Co. Ltd. (**L&T IFCL**). APTCL had submitted that because of refinancing with effect from 01 April 2018, the rate of interest of loan with L&T IFCL would reduce by 0.15% of tranche I loan of Rs. 185 Crore & by 1.25% of tranche II loan of Rs.16.00 Crore respectively. Reduction in interest rate because of refinancing would create savings that would be passed on to the beneficiaries.

7.3. The Commission in its Order dated 26 June 2018 in Case No. 86 of 2018 observed that prima-facie, the action of APTCL to refinance its existing loans was justified and was in the interest of the beneficiaries. Hence, the Commission accorded in-principle approval by allowing APTCL for changing the encumbrance created on the moveable and immoveable assets in favour of PFC and REC with L&T IFCL for the purpose of Licensed business.

7.4. Further, APTCL claimed refinancing costs in Case No. 197 of 2017 (APTCL Petition for Truing-up of ARR for FY 2015-16 and FY 2016-17, Provisional Truing-up of ARR for FY 2017-18 and revised estimates of ARR for FY 2018-19 and FY 2019-20). However, the Commission did not approve the refinancing cost as there was no clarity on the benefits achieved because of refinancing.

7.5. APTCL in the MYT Petition in Case No. 295 of 2019 (APTCL Petition for Truing-up of ARR for FY 2017-18 and FY 2018-19, Provisional Truing-up of ARR for FY 2019-20 and approval of ARR for the MYT 4th Control Period from FY 2020-21 to FY 2024-25) claimed the recovery of refinancing charges. The Commission in the Impugned Order disallowed the refinancing charges primarily for the reason that the refinancing transaction did not result in any net savings to the beneficiaries as envisaged under Regulation 29.10 of the MYT Regulations, 2015.

7.6. APTCL has submitted that though at present no envisaged benefits have been achieved because of refinancing, it is likely that in future there may be a situation where benefit accrues to beneficiaries on account of lowered interest amount under the refinancing transaction. Hence, APTCL ought to be allowed to claim refinance costs corresponding to any benefit/ savings that may accrue to the beneficiaries in future. APTCL's right to claim refinancing costs corresponding to benefits/ savings made by beneficiaries on account of refinancing, in future, ought not to be foreclosed.

7.7. APTCL has refinanced the existing loan agreements to reduce the interest rates in its loan agreements. Benefits in case of a refinancing transaction, such as the one in the present case, which is spread over a period of 17 years, may be realized at a later date. Also, APTCL ought to be allowed to claim any costs for such refinancing including costs relating to the drafting of loan agreement with L&T Infra (Rs. 11.96 Lakhs) if the same results in net savings in future for the beneficiaries.

7.8. The Electricity Act 2003 (**EA, 2003**) provides for taking measures conducive to development of the electricity industry and protection of interests of consumers and supply of electricity to all areas.

7.9. Accordingly, APTCL ought not to be precluded from claiming the costs related to such refinancing in future. The allowance of any such refinancing costs will be subject to prudency check by the Commission and thus not result in any unlawful gains for APTCL.

Commission's Analysis and Ruling

7.10. The main claim of APTCL is to allow the recovery of the refinancing charges of Rs. 12.17 Crore and Rs 11.96 Lakh towards loan drafting agreement incurred in FY 2017-18 and FY 2018-19, in future, as and when the benefits of refinancing occur.

7.11. The Commission notes that APTCL has mentioned that it has filed this Case in accordance with the provisions of Regulation 92 of the MERC (Conduct of Business) Regulations, 2004, seeking modification /clarification of Impugned Order on the issue of refinancing of the loan. However, plain reading of the prayers in the Petition will make it clear that APTCL, under the disguise of modification / clarification is actually seeking the review of the Impugned Order. Hence, the Case is being treated as if it is a review Petition and is being dealt with according to the relevant provisions.

7.12. Regulation 29.10 of the MYT Regulations, 2015 (applicable for the period from FY 2016-17 to FY 2019-20) on the issue of refinancing of the existing loans specifies as under:

> *"29.10 The Generating Company or the* ***Licensee*** *or the MSLDC, as the case may be,* ***shall make every <u>effort to re-finance the loan as long as it results in net savings on interest and in that event, the costs associated with such re-financing shall be borne by the Beneficiaries</u>*** *and the net savings shall be shared between the Beneficiaries and them in the ratio of 2:1, subject to prudence check by the Commission :*
>
> *Provided that the* ***Generating Company or the Licensee or the MSLDC, as the case may be, shall submit documentary evidence of the costs associated with such re-financing*** *:*
>
> *Provided further that the* ***net savings in interest shall be calculated as an annuity for the term of the loan****, and the annual net savings shall be shared between the entity and Beneficiaries in the specified ratio."* (**emphasis added**)

It is worthwhile to note that the provisions of the above Regulation are very clear and unambiguous as regards the condition under which the costs associated with refinancing shall be borne by the beneficiaries, i.e., the refinancing of loan should result in net savings on interest, which shall be calculated as an annuity for the term of the loan.

7.13. APTCL in July 2017 refinanced its loans from PFC and REC through L&T IFCL citing lower interest rate thereby benefiting the consumers. The Commission vide its Order dated 26 June, 2018 in Case No. 86 of 2018 allowed APTCL for change of encumbrance created on the moveable and immoveable assets in favour of PFC and REC with L&T IFCL for the purpose of its Licensed business. The Commission in the said Order noted that prima-facie, the action of APTCL to refinance its existing loans was justified and was in the interest of the beneficiaries. The Commission's rulings in Case No. 86 of 2018 are as under:

" 11. The Commission notes that APTCL has filed its Mid Term Review (MTR) Petition in Case No. 197 of 2017 seeking approval of Truing up of FY 2015-16 and FY 2016-17, provisional Truing up of FY 2017-18 and revised Annual Revenue Requirement for FY 2018-19 and FY 2019-20 and the Petition is under consideration of the Commission. APTCL submitted that due to administrative issues and higher interest rate, it has refinanced the term loan sanctioned by PFC and REC from L&TIFCL. The benefits of the refinancing of the existing loan have been elaborated ***by APTCL in its MTR Petition. As per details provided in MTR Petition, it is observed that L&TIFCL has refinanced the loan at the prevailing interest rate of 12.75% with a longer tenure of*** *17 years for repayment effective from FY 2017-18 as against 12 years sanctioned by PFC and REC. As per agreed condition with L&TIFCL, w.e.f. April 1, 2018, the applicable rate of interest will reduce* ***by 0.15% in tranche I loan of Rs. 185 Crore and by 1.25% in tranche II loan of Rs. 16 Crore.*** *Further, APTCL has already requested L&TIFCL to reduce the rate of interest based on CRISIL Credit Rating of A- on the spread reset date of June 2018, i.e. 1 year from disbursement.—"* (***emphasis added***)

7.14. Thereafter, APTCL had initially claimed refinancing costs in Case No. 197 of 2017 (APTCL Petition for Truing-up of ARR for FY 2015-16 and FY 2016-17, Provisional Truing-up of ARR for FY 2017-18 and revised estimates of ARR for FY 2018-19 and FY 2019-20). The Commission in the said Order had observed that the re-financing undertaken by APTCL was prima-facie not meeting the requirements specified in Regulation 29.10 of the MYT Regulations, 2015. Hence, it was ruled that APTCL's issue of refinancing would be dealt with at the time of True-up of ARR for FY2017-18 when there would be better clarity on the benefits of re-financing. Hence, the Commission did not permit refinancing cost to APTCL in its Order dated 12 September, 2018 in Case No. 197 of 2017. The Commission at Table No. 71 of the said Order had observed as under:

Saving in interest cost (NPV Basis) @ 12.75% discount factor (A)	1.16 Cr.
Refinancing Cost Rs. Cr (B)	12.05 Cr
Net saving Rs. Cr (A-B)	**(10.89)**

7.15. The relevant rulings of the Commission's Order in Case No. 197 of 2017 are reproduced below:-

"*4.5.17*

.....

As can be seen from the ***above, the re-financing undertaken by APTCL is prima-facie not meeting the requirements specified in the Regulation 29.10 of the MYT Regulations, 2015 wherein it is mentioned that the Commission encourages Licensees to make efforts for re-financing the loan as long as it results in net savings on interest cost and in such case the cost associated with such re-financing shall be borne by the Beneficiaries and the net savings shall be shared between the Beneficiaries and them in the ratio*** *of 2:1. Accordingly, it is evident both from the submissions of APTCL and the indicative cost benefit analysis undertaken by the Commission that the transaction does not result into positive net savings to the Beneficiaries (Estimated savings in Interest Cost – re-financing Cost).* ***That is also the case even if APTCL is successful in getting the interest rate of the Tranche 1 reduced to the level of Tranche 2.***

*4.5.18 Based on the above analysis****, the Commission is constrained to not allow the financing cost as a pass through in the ARR at present****. ----*

In view of the same, the Commission is constrained to not permit the cost of re-financing to APTCL at present through this Order. Further, this issue will be dealt with by the Commission at the time of True-up when there is better clarity on the benefits of re-financing." **(emphasis added)**

From the above Table it is clear that NPV was negative and no benefits were achieved because of refinancing as envisaged in Regulation 29.10 of the MERC MYT Regulations, 2015.

7.16. Thereafter, the Commission in the impugned Order, while truing up the ARR for FY 2017-18 and FY 2018-19 (MYT Order for 4th MYT Control Period) observed that the refinancing cost claimed by APTCL was Rs. 12.17 Crore for FY 2017-18 and the NPV of estimated savings for refinancing was negative (i.e. Rs (-0.23 Cr) @ discount factor of 12.75%). Hence, net saving because of refinancing of loan was Rs. (-12.39 Crore). Hence, the Commission in the impugned Order did not allow the refinancing cost as the same was not meeting the requirement specified under Regulation 29.10 of MYT Regulations 2015. Further, the Commission in the impugned Order observed that as per agreed condition with L&T IFCL, w.e.f. 1 April, 2018, the applicable rate of interest was to reduce by 0.15% in Tranche I (loan of Rs. 185 Crore) & by 1.25% in Tranche II (loan of Rs. 16 Crore). But instead of reduction there was an increase in interest rate in both the Tranches due to reset of the interest rate linked to L&T Infra Prime Lending Rate (PLR) on yearly basis in line with the provisions of the Re-financing Agreement. The Commission's relevant ruling in the Impugned Order are as under:

" Table 21: Cost Benefit Analysis undertaken by the Commission (Rs. Crore)

Sr. No.	Particulars	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	FY 2028-29	FY 2029-30
1	Opening Balance of Net Normative Loan	169.85	155.64	141.33	127.02	112.76	98.49	84.23	69.97	55.71	41.45	27.19	12.93	-
2	Less: Reduction of Normative Loan due to retirement or replacement of assets													
3	Addition of Normative Loan due to capitalisation during the year													
4	Repayment of Normative loan during the year	14.21	14.31	14.31	14.26	14.26	14.26	14.26	14.26	14.26	14.26	14.26	14.26	14.26
5	Closing Balance of Net Normative Loan	155.64	141.33	127.02	112.76	98.49	84.23	69.97	55.71	41.45	27.19	12.93	-	-
6	Average Balance of Net Normative Loan	162.75	148.49	134.17	119.89	105.62	91.36	77.10	62.84	48.58	34.32	20.06	6.47	-
7	Approved Weighted average Rate of Interest on actual Loans (%)	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%	12.75%
8	Interest Expenses as per approved rate	12.10	18.93	17.11	15.29	13.47	11.65	9.83	8.01	6.19	4.38	2.56	0.82	-
9	Actual Weighted average Rate of Interest on actual Loans (%) - due to refinancing	12.70%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%	12.81%
10	Interest Expenses as per Refinanced Rate	12.06	19.02	17.18	15.35	13.53	11.70	9.87	8.05	6.22	4.40	2.57	0.83	-
11	Saving in interest	0.05	-0.08	-0.08	-0.07	-0.06	-0.05	-0.04	-0.04	-0.03	-0.02	-0.01	-0.00	-
12	**NPV-Saving @ 12.75% discount factor**	**₹ -0.23**												
13	**Refinancing Cost**	**12.17**												
14	**Net Saving**	**₹ -12.39**												

2.7.14 As can be seen from the above, the re-financing undertaken by APTCL is prima-facie ***not meeting the requirements specified in the Regulation 29.10 of the MYT Regulations, 2015 wherein it is mentioned that the Commission encourages Licensees to make efforts for re-financing the loan as long as it results in net savings on interest cost.*** *Further, in such case the cost associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries in the ratio of 2:1. Accordingly, it is evident from both, the submissions of APTCL and the cost benefit analysis undertaken by the Commission that the transaction does not result into positive net savings (i.e., Estimated savings in Interest Cost – Re-financing Cost) to the beneficiaries. Also, the NPV of estimated savings is negative for the above re-financing.*

*2.7.15 Further, APTCL in its Petition has stated that as per agreed condition with L&T IFCL, w.e****.f. 1 April, 2018, the applicable rate of interest will reduce by 0.15% in Tranche I (loan of Rs. 185 Crore) & by 1.25% in Tranche II (loan of Rs. 16 Crore). However, the Commission observed that instead of reduction there was an increase in interest rate in both the Tranches****. Upon clarification, APTCL submitted that the interest rate in FY 2018-19 has increased marginally due to reset of the interest rate which is linked to L&T Infra Prime Lending Rate (PLR) on yearly basis in line with the provisions of the Re-financing Agreement. The Commission sought documentary evidence for increase in L&T Infra PLR along with its historical trend. APTCL has submitted that same along with press release by L&T Finance Holdings showing the evidence of increase in PLR.*

2.7.16 As already mentioned in para above that the re-financing cost can only be allowed as long as it results in net savings in interest cost. Therefore, in view of the above and in line with Regulation 29.10 of the MYT Regulations, 2015, the Commission is constrained

***to not consider such** a re-financing cost which does not result in net benefits to the consumers. Therefore, the Commission disallows the re-financing cost of Rs. 12.17 Crore as sought by APTCL.*" **(emphasis added)**

7.17. The Commission's rulings in impugned Order are clear and in accordance with Regulation 29.10 of the MYT Regulations, 2015. Also, APTCL has also accepted that the envisaged benefits of re-financing have not been achieved till date though it has incurred the expenses. Further, there is an increase in interest rate in both the loan Tranches after re-financing of loan instead of decrease in interest rate.

7.18. The Commission notes that the prayers of APTCL are arbitrary, and without any basis and documentary proof supporting that there would be any possibility of net savings accruing in future due to refinance. Hence, the prayers of APTCL need to be rejected on the following grounds:

a) Under the prayer for Modification/Clarification of the Impugned Order, APTCL in disguise is seeking review. The Case is not maintainable as APTCL has neither proved that there is any error apparent on the face of the record nor submitted any new documentary evidence, which was not available during the proceeding in Original Case, which is mandatory for the maintainability of the review Petition.

b) The Commission's Orders dated 12 September, 2018 in Case No. 197 of 2017 as well as the Impugned Order disallowing the re-financing cost are based on merit, and with clearly elucidated reasons. The Commission has disallowed the re-financing cost based on the NPV of the refinancing transaction, which is negative. It is worthwhile to note that the NPV as per the Order dated 12 September, 2018 is Rs. (-10.89 Cr) and the NPV as per the Impugned Order is Rs. (-12.39 Cr). Hence, it is clear that over the period, loss due to refinancing is increasing instead of decreasing, which defeats the motive of re-financing. The Impugned Order is clear and there is no ambiguity.

c) APTCL has not mentioned as to when and how the benefit will be achieved in future, and when the same will be claimed. APTCL has only mentioned that it will claim any cost for such re-financing in future, if the same result in net savings for the beneficiaries. APTCL has not submitted any basis according to which there will be reduction in financing cost in future and also not submitted any Regulatory provisions to claim such cost in future. Also, the MYT Regulations, 2015 as well as MYT Regulations, 2019 do not have any provisions for future recovery of refinancing cost incurred in the past. **The MYT Regulations clearly specify that the refinancing transaction has to be evaluated at that point in time, and the costs associated with refinancing shall be borne by the beneficiaries only if the refinancing results in net savings on interest, calculated as an annuity for the term of the loan. Hence, APTCL's prayer for keeping the issue open in anticipation of future benefit, is devoid of merit, and not in accordance with the MYT Regulations**.

d) The expenditure due to refinancing has been incurred in FY 2017-18 and FY 2018-19 for which the True up has been done in the impugned Order. Therefore, the Trued-up expenditure cannot be again re-opened at some indeterminate prospective date.

e) Further, it is to be noted that the interest rates, i.e., prior to re-financing and post re-financing, both are floating in nature. For the purpose of evaluation of any benefit in the future it is important to truly assess both the interest rates. While the interest rate for the existing loan agreement (post-refinancing) could be easily available, there could be difficulty in ascertaining the interest rate prior to refinancing for corresponding future period assuming the earlier loan would have continued for the future period. Also, in case there is a downward trend in the interest rates, it would be difficult to differentiate whether the reduction in interest rate is due to refinancing or it is on account of other fortuitous circumstances unrelated to the negotiated loan agreement.

7.19. In view of the foregoing, it is clear that there is neither any error on the face of record nor any new material facts have been brought on record by APTCL, which were not known at the time of proceeding of the Impugned Order. Also, the whole purpose of refinancing in accordance with the MYT Regulations was to reduce the interest cost and share the savings in the ratio of 2:1 among the beneficiaries and APTCL. However, in this case there is increase in interest rate from 12.70 % in FY 2017-18 to 12.81 % in FY 2018-19, instead of envisaged decrease. Also, the Commission had given ample opportunity to APTCL to prove the benefits of re-financing, as required under Regulation 29.10 of the MYT Regulations, 2015. Hence, the whole purpose of re-financing undertaken by APTCL has been defeated and APTCL has failed to comply with the provisions of the MYT Regulations, 2015 regarding the re-financing of loans.

7.20. Hence, the prayer of the APTCL to modify the impugned Order and allow the recovery of re-financing expenses in future is baseless, against the provisions of MYT Regulations, 2015, devoid of any merit, and is hence, rejected. Accordingly, no change is made on the issue of re-financing cost as sought by APTCL.

8. Hence, the following Order.

ORDER

The Case No. 145 of 2020 is dismissed.

Sd/-	**Sd/-**
(Mukesh Khullar)	**(I.M. Bohari)**
Member	**Member**

(Abhijit Deshpande)
Secretary