

Miscellaneous Application 54 of 2020

In
Case No 290 of 2018

**Miscellaneous Application 54 of 2020 filed by Adani Power Maharashtra Limited for
issuing consequential Orders as per APTEL Judgment dated 28 September 2020 in
Appeal No 155 of 2019 & Appeal No 116 of 2019 & IA No. 505 of 2019**

Coram

I.M.Bohari, Member
Mukesh Khullar, Member

| | |
|--|-----------------|
| Adani Power Maharashtra Limited | Petitioner |
| Vs | |
| Maharashtra State Electricity Distribution Company Ltd |Respondent |

Appearance

| | |
|-------------------|-----------------------------|
| For Petitioner | :Shri. Ramanuj Kumar (Adv.) |
| For Respondent No | :Shri. Ashish Singh (Adv.) |

ORDER

Date: 10 December, 2020

Background:-

1. This is consequential proceedings on account of Judgment of the Hon'ble Appellate Tribunal for Electricity (**APTEL**) dated 28 September 2020 in Appeal No 155 of 2019 & Appeal No 116 of 2019 & IA No. 505 of 2019. Background to this APTEL judgment is summarized below:
 - 1.1 Adani Power Maharashtra Ltd (**APML**), has entered into four long-term Power Purchase Agreements (**PPAs**) dated 8 September, 2008, 31 March, 2010, 9 August, 2010, and 16 February, 2013 for supply of 1320 MW, 1200 MW, 125 MW and 440 MW, respectively, with Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) pursuant to competitive bidding processes conducted by MSEDCL under Section 63 of the Electricity Act, 2003.

- 1.2 Pursuant to the Supreme Court Judgment in *Energy Watchdog v. CERC & Ors* dated 11 April 2017, APML had approached the Commission in Case No. 290 of 2018 for approval of relief under Change in Law for shortfall in domestic coal under Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (**SHAKTI**) policy for the period post 31 March, 2017.
 - 1.3 The Commission in its Order in Case No 290 of 2018 dated 7 February 2019 has approved Shortfall in domestic coal allocation under SHAKTI Policy as a Change in Law event and directed that methodology for computation of compensation shall be the same as approved in its Order dated 7 March, 2018 in Case No. 189 of 2013 & 140 of 2014 for coal shortfall on account of amendment to NCDP 2007.
 - 1.4 The Commission while stipulating computation methodology in its Order dated 7 March 2018, has subjected computation to certain parameters such as bided Station Heat Rate (**SHR**), Gross Calorific Value (**GCV**) of coal arrived based on middle value of rage stipulated in FSA/MoU and restricting coal shortfall to the level assured under amendment to NCDP 2007. Same parameters therefore became applicable for computation of compensation as per Order dated 7 February, 2019. Further in the said 7 February, 2019 Order, directed APML to provide advance intimation to MSEDCL about estimated energy charge due to use of alternate supply of coal so that MSEDCL can optimize its power purchase expenses.
 - 1.5 Aggrieved by the above-mentioned Order of the Commission, APML and MSEDCL preferred Appeal before the APTEL in Appeal No. 155 of 2019 and Appeal No. 116 of 2019 & IA No. 505 of 2019 respectively. APML challenged the Commission's Order on the grounds of the operational parameters of SHR & GCV, quantum of shortfall and on the directions of the Commission for prior intimation of estimated energy charge. MSEDCL on the other hand challenged the Commission's Order on the grounds that SHAKTI Policy does not constitute Change in Law and no Carrying Cost is admissible on any Change in Law relief de hors the PPAs.
2. The APTEL vide its Judgment dated 28 September, 2020 in Appeal No. 155 of 2019 and Appeal No. 116 of 2019 & IA No. 505 of 2019 has set aside the Impugned Order to the extent allowed in Appeal and remanded the matter to the Commission to pass the consequential Order within 3 months. Relevant extract of the Judgment is as follows:

“The impugned order dated 07.03.2018 passed by Maharashtra Electricity Regulatory Commission in Case Nos. 189 of 2013 and 140 of 2014 are hereby set aside to the extent challenged in the Appeal and our findings, stated supra.

The State Commission is directed to issue the consequential orders as expeditiously as possible within a period of three months from the pronouncement of this judgment / order.”

3. Post issuance of above APTEL Judgment dated 28 September, 2020, APML vide its application dated 9 October, 2020 has requested the Commission to issue consequential Orders. Said application has been registered as MA No. 54 of 2020.

4. **Further, APML has made following submission on 7 November, 2020:**

4.1 APTEL *vide* a common Judgment dated 28 September, 2020 in both Appeal No. 155 of 2019 and Appeal No. 116 of 2019 & IA No. 505 of 2019 has decided as follows:

- a. *“15.1 Issue No.1:- We hold that the introduction of SHAKTI POLICY amounts to change in law and all the ingredients of change in law are duly met under the respective PPAs. The impugned order is therefore affirmed on this issue.”*
- b. *“15.2 Issue No.2:- We hold that findings in the impugned order relating to the issue of restricting the quantum of shortfall in domestic coal to a maximum of 25% are against the principles of restitution under the change in law submissions of the PPAs.”*
- c. *“15.3 Issue No.3:- In line with our judgment dated 14.09.2020 in Appeal No.182 of 2019, we hold that the change in law compensation shall be calculated based on the SHR specified in the MERC MYT Regulations, 2011 or the actual SHR whichever is lower and actual GCV of coal as received at the plant site.”*
- d. *“15.4 Issue No.4:- We find that the directions issued by the State Commission regarding advance intimation requirement is not consistent with normal Rules of MOD preparation and also does not provide a level playing field for IPPs leading to discrimination.”*
- e. *“15.5 Issue No.5:- We find that allowance of carrying cost is a settled position of law and the State Commission has already allowed the same to the Appellant, APML.”*

4.2 Methodology for computation of domestic coal shortfall provided by the Commission in the Order in Case No 290 of 2018 dated 7 February, 2019 requires to be modified in the light of the above APTEL’s Judgment as follows:

4.2.1 Following is the revised table for computing the impact of Change in Law allowed vide Order dated 7 February 2019

(a) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Value |
|---|--------|-------|-------|
| Scheduled Generation at interconnection point | A | kWh | |

| Particulars | Legend | Units | Value |
|--|---|----------|-------|
| Net SHR as submitted in the Bid or SHR per norms specified for new thermal Generating Stations in MYT Regulations, 2011 or Actual , whichever is superior | B | kcal/kWh | |
| Total Heat Content required | $C = A \times B$ | kcal | |
| Reference Actual GCV of the coal received at Plant under LoA/FSA (as received) grade assured in the applicable LoA/FSA (In case range is specified, middle value of the GCV range of the assured coal grade) | D | kcal/kg | |
| Total coal required at the reference actual GCV | $E = C/D$ | Kg | |
| Minimum assured CIL coal supply under LoA/FSA as per NCDP 2013 | F | % | |
| | $G = E \times F$ | Kg | |
| Actual Coal received from offered by CIL under the LoA/FSA | H | %Kg | |
| Coal available under LoA/FSA | $J = \text{Maximum of } G \text{ and } I$ | Kg | |
| Shortfall in CIL coal supply under LoA/FSA | $G - E - H$ | kg | |
| Heat Value of shortfall in coal supply under LoA/FSA | $H = G \times D$ | Kcal | |
| GCV of alternative coal (as received) | I | kcal/kg | |
| Alternative coal quantum required to meet the shortfall | $J = H / I$ | Kg | |
| Landed price of LoA/FSA coal | K | Rs./kg | |
| Landed price of Alternate Coal as per indices/benchmarks (Given in table below) | L | Rs./kg | |
| Cost of shortfall in FSA quantity at Base Price. | $M = K \times G$ | Rs. | |
| Cost of alternative coal allowable towards shortfall | $N = L \times J$ | Rs. | |
| Total Impact of Change in Law | $O = N - M$ | Rs. | |
| Impact of Change in Law per Unit | $P = O / A$ | Rs./kWh | |

4.2.2 The above table after incorporating the aforementioned changes in terms of the APTEL judgment is reproduced below:

(a) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Value |
|--|------------------|----------|-------|
| Scheduled Generation at interconnection point | A | kWh | |
| Net SHR as per norms specified for new thermal Generating Stations in MYT Regulations, 2011 or Actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required | $C = A \times B$ | kcal | |

| Particulars | Legend | Units | Value |
|---|------------------|---------|-------|
| Actual GCV of the coal received at Plant under LoA/FSA (as received) | D | kcal/kg | |
| Total coal required at actual GCV | $E = C/D$ | Kg | |
| Actual Coal received from CIL under the LoA/FSA | F | Kg | |
| Shortfall in CIL coal supply under LoA/FSA | $G = E - F$ | kg | |
| Heat Value of shortfall in coal supply under LoA/FSA | $H = G \times D$ | Kcal | |
| GCV of alternative coal (as received) | I | kcal/kg | |
| Alternative coal quantum required to meet the shortfall | $J = H / I$ | Kg | |
| Landed price of LoA/FSA coal | K | Rs./kg | |
| Landed price of Alternate Coal as per indices/benchmarks (Given in table below) | L | Rs./kg | |
| Cost of shortfall in FSA quantity at Base Price. | $M = K \times G$ | Rs. | |
| Cost of alternative coal allowable towards shortfall | $N = L \times J$ | Rs. | |
| Total Impact of Change in Law | $O = N - M$ | Rs. | |
| Impact of Change in Law per Unit | $P = O / A$ | Rs./kWh | |

(b) For Capacity tied up under PPAs from 1320 MW capacity having MoU

| Particulars | Legend | Units | Value |
|--|------------------|----------|-------|
| Scheduled Generation at interconnection point | A | kWh | |
| Net SHR as submitted in the Bid or SHR and Auxiliary Consumption per norms specified for new thermal Generating Stations in MYT Regulations, 2011 or Actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required from coal | $C = A \times B$ | kcal | |
| Actual Reference GCV of coal received at Plant under MoU (as received) grade as per MoU (In case range is specified, middle value of the GCV range of the assured coal grade) | D | kcal/kg | |
| Total coal required as per actual at reference GCV | $E = C/D$ | kg | |
| Maximum assured quantum of coal in MoU | F | % | |
| | $G = E \times F$ | kg | |
| Actual coal received from offered by CIL under the MoU | H | % | |
| | $I = G \times H$ | Kg | |
| Actual coal offered under MoU | J | kg | |
| Shortfall in CIL coal supply under MoU | $K = E - I$ | kg | |
| Heat Value of shortfall in CIL coal supply under MoU | $L = K \times D$ | kcal | |
| GCV of alternative coal (as received) | M | kcal/kg | |
| Alternative coal quantum to meet shortfall | $N = L \div M$ | kg | |

| Particulars | Legend | Units | Value |
|--|------------------------|---------|-------|
| Landed price of coal under MoU | L | Rs./kg | |
| Landed price of linkage coal for the same Grade of coal as offered in MoU | M | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | N | Rs./kg | |
| Cost of shortfall in MoU quantity at Base Price (linkage coal price) | $O = H \times M - N$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $P = K \times N - M$ | Rs. | |
| Impact of Change in Law for shortfall in quantity | $Q = P - O$ | Rs. | |
| Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price | $R = G \times (L - M)$ | Rs. | |
| Total Impact of Change in Law | $S = Q + R$ | Rs. | |
| Impact of Change in Law per Unit | $T = S / A$ | Rs./kWh | |

Note: Subsequent to the operationalization of the FSA under the SHAKTI Policy, the table (a) applicable for 1180 MW shall also apply to 1320 MW capacity.

4.2.3 The above table after incorporating the aforementioned changes in terms of the APTEL judgment is reproduced below:

(b) For Capacity tied up under PPAs from 1320 MW capacity having MoU

| Particulars | Legend | Units | Value |
|--|------------------|----------|-------|
| Scheduled Generation at interconnection point | A | kWh | |
| Net SHR as per norms specified for new thermal Generating Stations in MYT Regulations, 2011 or Actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required from coal | $C = A \times B$ | kcal | |
| Actual GCV of coal received at Plant under MoU (as received) | D | kcal/kg | |
| Total coal required as per actual GCV | $E = C / D$ | kg | |
| Actual coal received from CIL under the MoU | F | % | |
| | G | Kg | |
| Shortfall in CIL coal supply under MoU | $H = E - G$ | kg | |
| Heat Value of shortfall in CIL coal supply under MoU | $I = H \times D$ | kcal | |
| GCV of alternative coal (as received) | J | kcal/kg | |
| Alternative coal quantum to meet shortfall | $K = I \div J$ | kg | |
| Landed price of coal under MoU | L | Rs./kg | |
| Landed price of linkage coal for the same Grade of coal as offered in MoU | M | Rs./kg | |

| Particulars | Legend | Units | Value |
|--|------------------------|---------|-------|
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | N | Rs./kg | |
| Cost of shortfall in MoU quantity at Base Price (linkage coal price) | $O = H \times M$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $P = K \times N$ | Rs. | |
| Impact of Change in Law for shortfall in quantity | $Q = P - O$ | Rs. | |
| Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price | $R = G \times (L - M)$ | Rs. | |
| Total Impact of Change in Law | $S = Q + R$ | Rs. | |
| Impact of Change in Law per Unit | $T = S / A$ | Rs./kWh | |

Note: Subsequent to the operationalization of the FSA under the SHAKTI Policy, the table

(a) applicable for 1180 MW shall also apply to 1320 MW capacity.

- 4.3 APML requests the Commission to pass consequential order approving the above-mentioned revised methodology for computation of Change in Law relief for domestic coal shortfall, in compliance with the APTEL's Judgment dated 28 September 2020.
5. MSEDCL in its reply dated 9 November 2020 has stated that it has statutory right to challenge the legality and validity of the APTEL's Judgment dated 28 September, 2020 before the Hon'ble Supreme Court and its participation in present proceeding is without prejudice to such rights.
6. At the time of E-hearing dated 10 November, 2020, MSEDCL requested adjournment on the ground that APML's submission proposing changes in methodology for computing Change in Law compensation was not received by it in advanced and it would require additional time for filing the reply. The Commission accepted this request and adjourned the matter to next date.
7. **MSEDCL in its additional submission dated 21 November, 2020 stated as follows:**
- 7.1 APTEL vide judgment dated 28 September, 2020 has allowed introduction of SHAKTI Policy as change in law along with SHR, GCV and Coal quantum.
- 7.2 APTEL vide judgment dated 14 September, 2020 has allowed Change in Law compensation on the basis that the SHR specified in the MERC MYT Regulations, 2011 or the actual SHR achieved by the APML, whichever is lower. The Commission from time to time has specified SHR for different plant capacities through MYT regulations and there have been improvements in the specified SHR in the MYT Regulations over a period. Therefore, SHR specified by MERC MYT Regulations from time to time needs to be considered for arriving at Change in Law compensation to avoid passing of any inefficiency to the consumers.

- 7.3 A specific period of generation is to be governed by the applicable MYT Regulations for that specific period. Hence, any period post 2015 and thereafter has necessarily to be governed by subsequent amended MYT Regulations. It is a settled principle of law that a judgment passed by a Court of law cannot make a substantive Act, Rules or by-Law redundant.
- 7.4 Central Electricity Regulatory Commission (**CERC**) also in its order dated 15 November, 2018 in Petition No.88/MP/2018 in the matter of GMR Vs MSEDCL has considered different SHRs for different MYT periods even if the plant is commissioned in the year 2014. Therefore, it is requested to consider SHR as per the prevailing MYT Regulations specified by the Commission from time to time instead of MYT Regulations 2011.
- 7.5 Further, APTEL has directed to consider GCV on as received basis for computation of Change in Law impact. As per the data received from APML, it is observed that in few cases, degradation in GCV of coal received is excessively high i.e. in the range of 1000-1100 kcal/kg. Such loss of GCV for other generators which are not far away from APML plant is in the range 325-350 kcal/kg only.
- 7.6 The Commission from time to time has provided the ceiling in the degradation of coal on As Received Basis (**ARB**) for generators under Section 62. Allowing higher degradation in GCV will unduly pass the inefficiency of the generator during handling and transportation of coal, which will cause additional financial burden on the consumers.
- 7.7 It is noticed from the year wise data of ARB of coal received from APML that the degradation in weighted average GCV of coal as per the data submitted for the years FY 2013-14 to 2019-20 ranges between 292 kcal/kg to 614 kcal/kg and such drastic variation is observed in the GCV degradation of coal due to some inefficiency. It is observed from the data that the degradation of 275 kcal/kg may be reasonable as ceiling. Therefore, it is requested to the Commission to allow ceiling for loss of GCV for protecting the interest of consumers.
- 7.8 Therefore, MSEDCL proposes that, the subject to ceiling in degradation of GCV, the ARB GCV may be considered as per following formula in case of base (FSA) coal:

$$\frac{\{(Quantity\ of\ Coal\ Actually\ received\ \times\ ARB\ of\ such\ received\ coal^*)\ +\ (Balance\ Contracted\ quantity\ of\ coal\ \times\ (ADB\ of\ coal\ (Mid\ value\ of\ assured\ grade)\ -\ degradation\ in\ kcal\ to\ arrive\ at\ ARB^{**})\}}{Total\ Quantity}$$

- 7.9 APML post the issuance of the Commission's Order in Case No. 189 of 2013 and 140 of 2014 on 7 March, 2018 has submitted coal data along with the claims. Upon scrutiny of the data MSEDCL has observed that quantum of coal offered by CIL and quantum of coal received by APML has major difference. On perusal of FSA it is noticed that there is provision of deemed delivery of coal wherein the coal offered is not totally lifted by the generator due to default of generators on account of payment, railway bookings etc.

- 7.10 South Eastern Coal Limited (**SECL**) considers the offered coal to be deemed delivered in case of the default of Generators. Hence, while compensating the Change in Law, the coal offered needs to be considered instead of coal received as the shortfall in coal offered and coal received is on account of non-compliance by the generator. Non consideration of the coal offered may unduly burden common consumers as it will provide the compensation against the default of the generator.
- 7.11 CIL passes credit due to degradation of the coal, to the generators commensurate with the grade of the coal received on the basis of ARB test report. This credit also needs to be considered and passed to the MSEDCL.
- 7.12 MSEDCL requested the Commission to clarify and hold that scheduled generation shall be restricted to normative generation only. It requested the following changes in the methodology approved by the Commission in Case No 189 of 2013 and Case No 140 of 2014
- a. Scheduled Generation < Normative Generation: The maximum of actual coal receipt & offered quantum (i.e. quantum offered by CIL) shall be considered as available coal even if Scheduled generation is less than normative.
 - b. Scheduled Generation > Normative Generation: The maximum of actual coal receipt & offered quantum (i.e. quantum offered by CIL) shall be considered as available coal.
 - c. However, if generator generates more than the normative i.e. 85%, no compensation shall be given (As coal tie-up is for 85% Generation. i.e. CIL is having commitment for 85% of normative generation) as the generation over and above normative generation is the strategic or commercial decision of APML.
- 7.13 APML had a tie up through MoU to meet the coal requirement for its unit 4 & 5 at Tiroda TPS. From the details submitted by APML, it is observed that, APML has not received coal under MoU for FY 2013-14 & 2016-17. Further the quantum received during FY 2014-15 & 2015-16 is very less.
- 7.14 However as per the APTEL Judgment, GCV is to be considered on ARB basis. Under these circumstances when no actual coal has been received, the verification of GCV on ARB basis creates certain concerns. Hence MSEDCL submits that:
- a. Working of GCV based on contracted quantum and its relevant GCV shall be done as MoU coal is of different grades.
 - b. As the coal under MoU is not at all received/ Less received in some years, ARB GCV of such coal need to be calculated as below:

Weighted average GCV of all contracted mines:

{(Quantity of Coal Actually received *ARB of such received coal) + (Balance Contracted quantity of coal * (ADB of coal -275 kcal to arrive at ARB)) / Total Quantity.

7.15 The Commission has given the methodology in the order dated 7 March, 2018 in tabular form for capacity tied up under PPAs from 1180 MW having LOA/FSA and the capacity of 1320 MW having MoU. The necessary changes need to be incorporated regarding the SHR, GCV and coal quantum parameters as directed by APTEL. As per MSEDCL, Tables in Order dated 7 March, 2018 needs to be modified as follows:

A) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Remark |
|---|---|----------|---|
| Scheduled Generation at interconnection point Actual Injection commensurate with Normative Generation | A | kWh | Actual Injection commensurate with 80% / 85% Normative Generation |
| Net SHR as submitted in the bid or SHR and Auxiliary consumption per norms specified for new thermal Generating Stations in recent MYT Regulations, 2011 or actual, whichever is superior | B | kcal/kWh | As the intent of Hon. APTEL's judgment is to protect the consumer's interest, SHR as per norms specified in recent MYT regulations from time to time |
| Total Heat Content required | $C = A \times B$ | kcal | |
| Reference GCV of the coal grade assured in the applicable LoA/FSA (In case range is specified, middle value of the GCV range of the assured coal grade) -Actual GCV of coal received (As received) | D | kcal/kg | The degradation in GCV to arrive at ARB GCV may be restricted up to certain ceiling, as there is high degradation observed in the GCV as per data submitted by APML. |
| Total coal required at the reference GCV | $E = C/D$ | kg | |
| Minimum assured CIL coal supply under LoA/FSA as per NCDP 2013 | F $G = E \times F$ | | |
| Actual coal offered / received by/from CIL under the LoA/FSA whichever is higher | F | % | As per the provisions of FSA, the coal offered is considered as deemed delivered, hence, such offered quantum or actual coal received whichever is higher need to be considered |
| | G | kg | |
| Coal available under LoA/FSA | J = Maximum of G and I H = Maximum of Coal received or offered | kg | |

| Particulars | Legend | Units | Remark |
|---|---|---------|--------|
| Shortfall in CIL coal supply under LoA/FSA | $K = E - J$ $I = E - H$ | kg | |
| Heat Value of shortfall in CIL coal supply under LoA/FSA | $L = K \times D$ $J = I \times D$ | kcal | |
| GCV of alternative coal (as received) | M K | kcal/kg | |
| Alternative coal quantum required to meet the shortfall | $N = L \div M$ $L = J \div K$ | kg | |
| Landed price of LoA/FSA coal | Θ M | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | P N | Rs./kg | |
| Cost of shortfall in FSA quantity at Base Price | $Q = K \times \Theta$ $O = I \times M$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $R = N \times P$ $P = L \times N$ | Rs. | |
| Impact of Change in Law | $S = R - Q$ $Q = P - O$ | Rs. | |
| Impact of Change in Law per Unit | $T = S / A$ $R = Q / A$ | Rs./kWh | |

The table after incorporating the changes in terms of APTEL Judgment is reproduced as below

A) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Value |
|--|--|----------|-------|
| Actual Injection commensurate with Normative Generation | A | kWh | |
| Net SHR as per norms specified for thermal Generating Stations in recent MYT Regulations, or actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required | $C = A \times B$ | kcal | |
| Actual GCV of coal received (As received) | D | kcal/kg | |
| Total coal required at the reference GCV | $E = C/D$ | kg | |
| Actual coal offered / received by/from CIL under the LoA/FSA whichever is higher | F | % | |
| | G | kg | |
| Coal available under LoA/FSA | H= Maximum of Coal received or offered | kg | |
| Shortfall in CIL coal supply under LoA/FSA | $I = E - H$ | kg | |
| Heat Value of shortfall in CIL coal supply under LoA/FSA | $J = I \times D$ | kcal | |
| GCV of alternative coal (as received) | K | kcal/kg | |
| Alternative coal quantum required to meet the shortfall | $L = J \div K$ | kg | |
| Landed price of LoA/FSA coal | M | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | N | Rs./kg | |

| Particulars | Legend | Units | Value |
|--|------------------|---------|-------|
| Cost of shortfall in FSA quantity at Base Price | $O = I \times M$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $P = L \times N$ | Rs. | |
| Impact of Change in Law | $Q = P - O$ | Rs. | |
| Impact of Change in Law per Unit | $R = Q / A$ | Rs./kWh | |

B) For Capacity tied up under PPAs from 1320 MW capacity having MoU

| Particulars | Legend | Units | Remarks |
|---|----------------------------|----------|---|
| Scheduled Generation at interconnection point Actual Injection commensurate with Normative Generation | A | kWh | Actual Injection commensurate with 85% Normative Generation |
| Net SHR as submitted in the bid or SHR and Auxiliary consumption per norms specified for new thermal Generating Stations in recent MYT Regulations, 2014 or actual, whichever is superior | B | kcal/kWh | As the intent of Hon. APTEL's judgment is to protect the consumer's interest, SHR as per norms specified in recent MYT regulations from time to time |
| Total Heat Content required from coal | $C = A \times B$ | kcal | |
| Reference GCV of coal grade as per MoU (In case range is specified, middle value of the GCV range of the assured coal grade) Actual GCV of coal received / contracted quantum under MoU/Shakti as per formula suggested | D | kcal/kg | The degradation in GCV to arrive at ARB GCV may be restricted up to certain ceiling, as there is high degradation observed in the GCV as per data submitted by APML. ARB GCV of coal need to be calculated as below – Weighted average of all contracted mines - {(Quantity of Coal Actually received *ARB of such received coal) + (Balance Contracted quantity of coal * (ADB of coal -275 kcal to arrive at ARB))} / Total Quantity. |
| Total coal required at reference ARB GCV | $E = C/D$ | kg | |
| Maximum assured quantum of coal in MoU | F G | | |
| Actual coal received or offered by CIL under the MoU whichever is more | H F | % | |
| | I G | Kg | |
| Actual Coal offered by CIL under MoU | J | | |
| Shortfall in CIL coal supply under MoU | $K = E - J$ $H = E - G$ | kg | |

| | | | |
|--|--|---------|--|
| Heat Value of shortfall in CIL coal supply under MoU | $L = K \times D$ $I = H \times D$ | kcal | |
| GCV of alternative coal (as received) | M J | kcal/kg | |
| Alternative coal quantum to meet shortfall | $N = L \div M$ $K = I \div J$ | kg | |
| Landed price of coal under MoU | O L | Rs./kg | |
| Landed price of linkage coal for the same Grade of coal as offered in MoU | P M | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | Q N | Rs./kg | |
| Cost of shortfall in MoU quantity at Base Price (linkage coal price) | $R = K \times P$ $O = H \times M$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $S = N \times Q$ $P = K \times N$ | Rs. | |
| Impact of Change in Law for shortfall in Quantity | $T = S - R$ $Q = P - O$ | Rs. | |
| Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price | $U = J \times (O - P)$ $R = G \times (L - M)$ | Rs. | |
| Total Impact of Change in Law | $V = T + U$ $S = Q + R$ | | |
| Impact of Change in Law per Unit | $W = V / A$ $T = S / A$ | | |

The above table after incorporating the changes in terms of APTEL Judgment is reproduced below:

For Capacity tied up under PPAs from 1320 MW capacity having MOU

| Particulars | Legend | Units | Value |
|---|------------------|----------|-------|
| Actual Injection commensurate with Normative Generation | A | kWh | |
| Net SHR as per norms specified for thermal Generating Stations in recent MYT Regulations or actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required from coal | $C = A \times B$ | kcal | |
| Actual GCV of coal received / contracted quantum under MoU as per formula suggested | D | kcal/kg | |
| Total coal required at ARB GCV | $E = C / D$ | kg | |
| Actual coal received or offered by CIL under the MoU whichever is more | F | % | |
| | G | Kg | |
| Shortfall in CIL coal supply under MoU | $H = E - G$ | kg | |
| Heat Value of shortfall in CIL coal supply under MoU | $I = H \times D$ | kcal | |
| GCV of alternative coal (as received) | J | kcal/kg | |
| Alternative coal quantum to meet shortfall | $K = I \div J$ | kg | |

| Particulars | Legend | Units | Value |
|--|------------------------|--------|-------|
| Landed price of coal under MoU | L | Rs./kg | |
| Landed price of linkage coal for the same Grade of coal as offered in MoU | M | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | N | Rs./kg | |
| Cost of shortfall in MoU quantity at Base Price (linkage coal price) | $O = H \times M$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $P = K \times N$ | Rs. | |
| Impact of Change in Law for shortfall in Quantity | $Q = P - O$ | Rs. | |
| Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price | $R = G \times (L - M)$ | Rs. | |
| Total Impact of Change in Law $V = T + U$ Rs. | $S = Q + R$ | | |
| Impact of Change in Law per Unit | $T = S/A$ | | |

8. At the time of E- hearing held on 13 November, 2020

8.1 Advocate of APML stated that:

- a. MSEDCL's submission that instead of using fixed SHR as stipulated in MYT Regulations 2011, SHR as specified in MYT Regulations from time to time needs to be used was never contested before the APTEL and therefore need not be considered in consequential proceeding. Also, the Commission itself in its Order dated 7 March 2018 specified that MYT Regulations, 2011 are applicable to APML units which are not challenged by MSEDCL and hence has now attained finality.
- b. Similarly, contention of MSEDCL to put ceiling limit for degradation of coal was never contested before the APTEL and hence now cannot be prayed for in present proceedings. But APML is agreeing with the methodology suggested by MSEDCL for arriving at as received GCV of coal for the circumstances when there is no actual coal receipt under MoU.
- c. The contention of MSEDCL with respect to Scheduled Generation Vs Normative generation is not the part of APTEL Order and need to be rejected.
- d. Further, MSEDCL's contention that shortfall in coal needs to be computed with reference to coal offered by Coal companies was also never contested by MSEDCL and hence cannot be considered during this consequential relief proceeding. Further, CERC is subsequent judgment allowed shortfall in coal based on actual receipt of the coal at the plant and not on coal offered by coal companies.

8.2 Advocate of MSEDCL stated that:

- a. The Commission needs to undertake prudence check while approving the Change in Law claims in terms of SHR and GCV. Though these issues were not agitated before APTEL, inefficiencies of the generators shall not be passed on to the consumers.

- b. It has further stated that participation in present proceeding is without prejudice to its statutory rights to appeal against APTEL Order dated 28 September 2020 before the Hon'ble Supreme Court.

Commission's Analysis and Ruling

9. The Commission notes that APML had earlier approached the Commission in Case No 290 of 2018 seeking compensation for shortfall in coal supply post 31 March, 2017 under SHAKTI Policy. The Commission in its Order dated 7 February, 2019 had ruled that Coal shortfall under SHAKTI Policy was Change in Law event and directed that compensation for the same be computed as per methodology stipulated in its earlier Order dated 7 March 2018 (which was applicable for the period of FY 2013-14 to FY 2016-17 for computing compensation on account of coal shortfall due to amendment to NCPD 2007).
10. APML and MSEDCL filed cross appeals against above Order dated 7 February, 2019. APML vide its Appeal No. 155 of 2019 had challenged the Commission's decision of use of bid SHR, GCV as middle value of coal grade declared in FSA/MoU, restricting coal shortfall to level assured in SHAKTI Policy and advance intimation of estimated rate of energy charge to Discoms. Whereas, MSEDCL vide its Appeal No. 116 of 2019 & IA No. 505 of 2019 had challenged the Commission's Order on the grounds that SHAKTI Policy does not constitute Change in Law and no Carrying Cost is admissible on any Change in Law relief de hors the PPAs.
11. Hon'ble APTEL vide its Judgment dated 28 September 2020, has rejected MSEDCL's appeal, but allowed APML's appeal and remanded the matter to the Commission with direction to issue consequential Order. Relevant part of APTEL's Judgment has been reproduced at para 9.1 above. The APTEL has set aside commission's ruling in Order dated 7 February, 2019 to the following extent:
 - a. **Compensation for actual Coal Shortfall:** In the Order dated 7 February, 2019, compensation for actual shortfall was restricted to assured quantity as per SHAKTI Policy. However, Hon'ble APTEL has allowed compensation for actual shortfall without restricting to assured allocation under SHAKTI Policy.
 - b. **SHR & GCV:** In the Order dated 7 February, 2019, it was directed to use SHR as per bid document or as per MYT Regulations 2011. Also, GCV was to be used as midpoint of grade specified in FSA/MoU. However, Hon'ble APTEL has referred its judgment in Appeal No 182 of 2019 and allowed actual SHR or as stipulated in MYT Regulations, 2011 whichever is lower and also allowed GCV on as received basis.
 - c. **Advance intimation of cost of fuel:** In the Order dated 7 February, 2019, it was directed that APML shall intimate MSEDCL in advance about future cost of energy on account of use of alternate coal so that MSEDCL can plan for other cheaper source. However, Hon'ble APTEL has set aside this direction based on the ground that it is

not consistent with normal rule of MoD preparation and also does not provide level playing field for IPPs.

12. Present proceeding being consequential to the APTEL judgment dated 28 September, 2020, in normal circumstances, scope of proceeding needs to be limited to give effect to APTEL judgment. However, during the proceedings in the present matter, MSEDCL has raised some additional issues relating to computation of compensation. Although, APML has opposed raising of such issues as the same were not agitated before the APTEL, it supported MSEDCL's proposal relating to consideration of reference GCV for MoU coal for the situations when there is no actual receipt of coal for the year. This necessitates the Commission to go into clarifications sought by MSEDCL. Also, it is the fact that compensation allowed through impugned Order dated 7 February, 2019 was pertaining to the FY 2017-18 onwards. Even after lapse of almost 3 years, computation of compensation is not yet finalised. Non-addressing clarifications sought by MSEDCL would only add uncertainty to quantification of compensation amount. Hence, the Commission has decided to address the issues raised by MSEDCL in present matter. While doing so, the Commission will be cognisant of the Hon'ble APTEL judgment dated 28 September 2020.
13. Accordingly, based on submissions made during the hearing and documents available on record, the Commission frames following issues for its consideration:
 - a. Whether SHR as specified in MYT Regulations 2011 is to be used or SHR specified in MYT Regulations notified from time to time be used for relevant period?
 - b. Whether as received GCV is to be used as such or ceiling on degradation in GCV needs to be provided?
 - c. Whether coal shortfall is to be computed with reference to actual receipt of the coal or coal offered by Coal companies which was not fully lifted by petitioner?
 - d. Whether advance intimation of cost of fuel is to be given to Discoms?
 - e. Whether compensation on account of coal supply is to be limited to normative generation?
 - f. What is modified methodology for computing Change in Law compensation?
14. Before, dealing with above issues the Commission notes the fact that operational parameters such as SHR and GCV stipulated in its Order dated 7 March, 2018 was set aside by the APTEL in its judgment dated 14 September, 2020. Thereafter the Commission vide its Order dated 10 December 2020 in MA No 53 of 2020 has issued consequential Order amending these parameters. Considering that while allowing compensation under SHAKTI Policy vide Order dated 7 February 2019, the Commission had relied upon computation methodology stipulated in Order dated 7 March 2018, which

has now been amended vide Order dated 10 December, 2020, same has been referred in this Order wherever is relevant. Accordingly, the Commission addresses above framed issues in subsequent paragraphs.

15. **Issue a: Whether SHR as specified in MYT Regulations 2011 is to be used or SHR specified in MYT Regulations notified from time to time be used for relevant period?**

Issue b: Whether as received GCV is to be used or provide ceiling on degradation in GCV?

- 15.1 The Commission also notes that APTEL in its judgement in Appeal no 155 of 2019 has relied on its judgment dated 14 September, 2020 in Appeal No 182 of 2019 for addressing operational parameters SHR and GCV of the coal. The Commission has dealt with these issues in the consequential Order in MA 53 of 2020 in Case No 189 of 2013 and in Case No 140 of 2014 dated 10 December, 2020. The relevant extract of the same is reproduced as below.

“14 Whether SHR as specified in MYT Regulations 2011 is to be used or SHR specified in MYT Regulations notified from time to time be used for relevant period?”

14.1 The Commission in its Order dated 7 March, 2018 has directed to use SHR submitted in Bid or as specified in MYT Regulation, 2011 whichever is lower. However, the APTEL in its Judgment dated 14 September 2020 has set aside said ruling of the Commission and directed as follows:

*“7.14 From the aforesaid discussion, it emerges that this Tribunal has already held that the SHR submitted in the bid (when it is not a bid parameter as per the bidding guidelines) by a generating company is not to be used as the basis for computing the coal shortfall requirement and thereby for computation of change in law compensation to be awarded to the generating company. Such linking of change in law compensation to the SHR mentioned in the bid documents would not reconstitute the affected party to the same economic position as if the approved change in law event had not occurred. **This issue is therefore decided in favour of the Appellant and the Respondent No. 2 is directed to allow change in law compensation on the basis of the SHR specified in the MERC MYT Regulations, 2011 or the actual SHR achieved by the Appellant, whichever is lower.** This would sufficiently protect the interests of the consumers against any plant inefficiency being passed on to the Discoms or the consumers.”*

Thus, as per above judgment of the APTEL, SHR as specified in the MERC MYT Regulations 2011 or the actual SHR achieved by APML, whichever is lower shall be considered while computing Change in Law compensation.

14.2 However, MSEDCL in its reply in the present matter has stated that instead of using fixed SHR as stipulated in MYT Regulations 2011, SHR stipulated in subsequent MYT Regulations shall be used for relevant period. APML has opposed such contention as same was never raised before the APTEL and on the ground that in its Order dated 7 March, 2018, the Commission itself has ruled that SHR will be governed by MYT Regulations 2011 only.

14.3 In this regard, the Commission notes that on the issue of SHR, its Order dated 7 March, 2018 read as follows:

“

| <i>Parameter</i> | <i>Basis</i> |
|---|---|
| <i>Station Heat Rate</i> | <i>Net SHR as submitted in the Bid, or SHR and Auxiliary Consumption norms specified for new thermal Generating Stations in MYT Regulations, 2011, whichever is superior.</i> |
| <i>Reference GCV of domestic coal supply by CIL</i> | <i>Middle value of the GCV range of the assured coal grade in LoA/FSA/MoU</i> |
| <i>GCV of alternative coal</i> | <i>Actual as received</i> |

Note: The SHR specified in the MYT Regulations, 2011 will be applicable even for FY 2016-17, because, although the subsequent MYT Regulations, 2015 were in force in FY 2016-17, they treat APML's Units as "Existing Generating Station", for which the norms specified under the MYT Regulations, 2011 are applicable. [emphasis added]

Thus, in the note below the Table in Order dated 7 March, 2018, as reproduced above, the Commission has clearly stated that even though MYT Regulations 2015 has been made effective for FY 2016-17, SHR for FY 2016-17 will still be governed by MYT Regulations 2011 only. Admittedly, this ruling of the Commission was never challenged by any party and has hence attained finality.

14.4 However, it is also important to note following observations of the APTEL recorded in judgment dated 14 September 2020:

“9.14 We would also like to add that the Supreme Court in its Judgment dated 25.02.2019 in *Uttar Haryana Bijli Vitran Nigam & Anr. v. Adani Power Ltd. & Ors* [(2019) 5 SCC 325] had also recognized the restitution principle for Change in Law relief. This can be fulfilled when the actuals are taken into account to compensate the Generator. **In this case, the Generator has clearly indicated that the parameters which will be beneficial to the consumers (whether as per the Regulations or the actuals, whichever is lower) will be adopted for the change in law relief.**” [emphasis added]

Thus, as recorded by the APTEL, APML has agreed to use parameters which are beneficial to the consumers (as per Regulations or actuals, whichever is lower).

14.5 *The Commission being mandated under the Electricity Act, 2003 to lay down Regulations which also encourages efficiency improvement, it keeps on improving performance parameters such as SHR, Auxiliary Consumptions etc. in each of its MYT Regulations for new control period. While doing so, the Commission in recent Regulation has also limited loss of GCV which can be allowed through tariff. All these improved performance parameters are made applicable to new Control Period under that Regulations. Once the APML itself has agreed that parameters which are beneficial to consumers (as per Regulations or as per actual, whichever is lower) will be considered, now it cannot argued that improved performance parameters (introduced for improving efficiency & benefiting consumers) under subsequent MYT Regulations cannot be made applicable for relevant period and old parameters as stipulated under MYT Regulations 2011 needs to be used for entire period of PPA.*

14.6 *Hence, the Commission rules that SHR stipulated in MYT Regulations applicable for that relevant period shall be used as reference SHR. However, FY 2016-17 shall be exception for this rule and as directed in Order dated 7 March 2018, SHR as stipulated in MYT Regulations 2011 (and not MYT Regulations 2015) shall be used as reference for FY 2016-17. Actual SHR or reference SHR as stipulated in applicable MYT Regulations, whichever is lower shall be used for computation of Change in Law compensation.*

15 Issue b: Whether as received GCV is to be used or provide ceiling on degradation in GCV?

15.1 *The Commission in its Order dated 7 March, 2018 has directed to use midpoint of GCV grade stipulated in FSA/MoU instead of as received GCV. However, the APTEL has set aside said ruling of the Commission and directed as follows:*

*“8.6 From the judgments cited above, it is clear that this Tribunal as well as the CERC has consistently taken the view that the reference GCV for the purposes of change in law compensation shall be the actual GCV. We also note that the GCV specified in the tariff regulations is also the actual GCV on as received basis. MERC has not provided any reasoning or explanation as to why it considered the application of middle range of assured grade of linkage coal as the appropriate reference for computing the quantum of shortfall coal. It is a fact that there is no guidance in the PPAs or in the Bidding Guidelines as to the reference GCV that should be applied in case of change in law claims in Case 1 bid projects where SHR or GCV is not a bid parameter. **However, the overarching principle for change in law compensation is that the generating company should not be left in a worse economic position.** As stated above, in Wardha Power judgment (supra), this Tribunal has already rejected the reverse computation of coal price from the quoted energy charge in the bid since the coal price so calculated will not be equal to the actual price of coal and therefore,*

compensation for Change in Law computed on such price of coal will not restore the economic position of the Seller to the same level as if such Change in Law has not occurred. **Therefore, the GCV as received shall be the appropriate basis to assess the quantum of shortfall in domestic coal and calculate the Change in law compensation accordingly.**

.....
8.8 We are in agreement with the observations made by the CERC. Relegating the Appellant to the contractual remedy under the FSA when the genesis of the Appellant's claim is Change in Law under the PPA would not be appropriate. **It is, however, made clear that if the Appellant were to receive any disincentive or compensation from the coal company on account of short supply or grade slippage, such compensation will be adjusted/credited against the Change in Law compensation payable by the Respondent, MSEDCL.**

8.9 **For the aforesaid reasons, this issue is decided in favour of the Appellant and it is directed that the compensation for the Change in Law approved by the MERC shall be computed on the basis of actual GCV of coal received.** [emphasis added]

Thus, as per above judgment of the APTEL, Change in Law compensation shall be computed based on actual GCV of coal on as received basis.

15.2 However, MSEDCL contended that it has observed excessively high degradation in coal GCV i.e. in the range of 1000-1100 kCal/Kg in Case of APML. Therefore, MSEDCL requests the Commission to put ceiling (275 kCal) in the degradation of coal on ARB basis in the similar way as per the generators under Section 62 of EA 2003 for protecting the interest of consumers. APML has opposed such contention of MSEDCL on the ground that this issue was never contested before the APTEL and now APTEL has clearly ruled that as received GCV needs to be allowed.

15.3 In this regard, the Commission notes that while allowing as received GCV, Hon'ble APTEL has noted that the overarching principle for change in law compensation is that the generating company should not be left in a worse economic position and further notes that MERC as well as CERC Tariff Regulations allowed as received GCV. Thus, in absence of any guidance in PPA or Bid Guidelines the APTEL has directed to use as received GCV, which is also allowed in Tariff Regulations. The Commission notes that its MYT Regulations 2011 and MYT Regulations 2015, both have allowed GCV on as received basis. Therefore, for the period governed by these Regulations, as received GCV shall be considered for computing Change in Law compensation of APML for shortfall in coal supply.

15.4 However, in MYT Regulations 2019 which has been made applicable from 1 April 2020 onwards, the Commission has limited the difference between as billed

GCV and as received GCV to 300 kCal/kg. Therefore, for period of 1 April 2020 onwards, as received GCV with ceiling limit as allowed in MYT Regulations 2019 needs to be considered for computation of Change in Law compensation. In the opinion of the Commission this dispensation is also consistent with APTEL judgment which clearly recorded APML's readiness to use parameter which is beneficial to consumer. This aspect has already been elaborated at para 14.5 above.

15.5 Further, on the issue of considering reference GCV for coal under MoU in situations when no coal is actually received, MSEDCL has proposed following formula to arrive at as received GCV for MoU Coal:

*Weighted average GCV of all contracted mines:
{(Quantity of Coal Actually received *ARB of such received coal) + (Balance Contracted quantity of coal * (ADB of coal -275 kcal to arrive at ARB)} / Total Quantity.*

APML has agreed to above formula proposed by MSEDCL for above stated circumstances.

15.6 In this regard, the Commission notes that reference GCV of coal under FSA/MoU is important to arrive at quantum of alternate coal consumed for generation of electricity. Said reference GCV is taken from coal received at the plant. In case there is no receipt of coal, which has reported for MoU coal for some of the years, as received GCV cannot be arrived at. Under such circumstances, some proxy needs to be provided. In the formula stipulated in para above, it is proposed to reduce ADB by 275 kCal to arrive at as received GCV. As both parties agreed to the formula stated in para above, the Commission allows the same to be used under the circumstances when no actual coal is received under the MoU.

Further, MSEDCL has also contended that APML shall pass on credit notes or other benefits, if any, received from the Coal India to MSEDCL. The Commission notes that the APTEL at para 8.8. of its Judgment dated 14 September 2020 has clearly stated that if APML receives any compensation or incentive from coal company, same needs to pass on to MSEDCL. APML has also agreed to the same. Accordingly, the Commission rules that APML shall pass on credit notes, incentive or compensation received from coal companies to MSEDCL.

15.2 Above ruling of the Commission in MA No. 53 of 2020 is squarely applicable in the present matter and accordingly, the Commission rules that:

- a. Actual SHR or reference SHR as stipulated in applicable MYT Regulations, whichever is lower shall be used for computation of Change in Law compensation.

- b. For the period governed by MYT Regulations, 2015, as received GCV shall be considered for computing Change in Law compensation on account of coal shortfall. And for period of 1 April, 2020 onwards, as received GCV with ceiling limit as allowed in MYT Regulations 2019 needs to be considered for computation of Change in Law compensation.
- c. Formula agreed by APML and MSEDCL, and approved by the Commission in MA No 53 of 2020 for arriving at as received GCV of coal for circumstances when no actual coal has been received under MoU shall be used in present matter also.
- d. Also, APML shall pass on credit notes, incentive or compensation received from coal companies to MSEDCL.

16. Issue c: Whether coal shortfall is to be computed with reference to actual receipt of the coal or coal offered by Coal companies which was not fully lifted by petitioner?

- 16.1 The Commission in its Order dated 7 February, 2019 has restricted compensation for actual shortfall to revised assured quantity under SHAKTI policy. However, the APTEL has set aside said ruling of the Commission and directed as follows:

11.10 We are, therefore, in agreement with the learned counsel for APML that the MERC has erred in concluding that the compensation for shortfall in supply of domestic coal needs to be limited to a maximum of 25% of ACQ under the SHAKTI Policy. We have already held that the domestic coal supply shortfall has to be measured against the quantity assured under the NCDP 2007 vis-à-vis actual supply by the CIL and its subsidiaries. Relegating APML to the contractual remedy for shortfall in supply of coal is no remedy at all since the penalties for short supply stipulated in the FSAs offer no remedy at all and nor do they take away the obligation to supply the required quantity of coal assured in the NCDP 2007. The Tariff Policy, 2016 provides for a complete pass-through of cost of procurement of alternate coal in the event of a shortfall in supply of linkage coal by CIL and its subsidiaries. Restricting Change in Law relief to a maximum of 25% shortfall in domestic coal supply will not restore APML to the same economic position as stipulated under Articles 13.2 and 10.2 of the 1320 MW and 1200/125/440 MW PPAs respectively.

11.11 Thus, the finding of MERC in the Impugned Order on the issue of restricting the quantum of shortfall of domestic coal to a maximum of 25% of ACQ violates the fundamental principles of restitution under the Change in Law provisions under the PPAs.

Thus, as per above judgment of the APTEL, Change in Law compensation shall be allowed for actual shortfall in coal supply without restricting to assurance under SHAKTI Policy.

- 16.2 However, MSEDCL contended that while compensating under the Change in Law, the offered coal needs to be considered instead of received coal, as the shortfall in offered coal and received coal is on account of non-compliance by the generator. Non consideration of the offered coal may unduly burden common consumers as it will provide the compensation against the default of the generator. APML has opposed such contention as the same was never agitated before the APTEL and also relied upon CERC Order which specifically allowed compensation based on actual receipt of coal instead of coal offered by coal companies.
- 16.3 The Commission in its Order in Case No 290 of 2018 dated 7 February, 2019 has ruled on the issue of quantity of coal shortfall under SHAKTI Policy as follows :-

“23. As observed earlier, notification of SHAKTI Policy constitutes Change in Law event under the PPAs. Hence, the Commission rules that APML needs to be compensated for shortfall of coal on account of reduction in coal supply allocation (not below 75% of ACQ) under SHAKTI Policy as against 100% normative requirement assured under NCDP, 2007. Further, till the time new FSA was signed under SHAKTI Policy, the coal supply had already commenced in the year 2018 without any FSA for corresponding generating capacity. Thus for that period, as ruled under its Order dated 7 March, 2018 in Case No. 189 of 2013, entire differential in quantity and price is allowed as Change in Law compensation to restore APML to the same economic position with respect to 1320 MW capacity of Unit 4 and 5.

24. Methodology and parameters to be used for computing relief under the Change in Law for capacity having FSA and not having FSA has already been mentioned in Order dated 7 March, 2018 in Case No. 189 of 2013. Same methodology and parameters should be adopted for computing relief under Change in Law for the period beyond 31 March, 2017 till availability of coal improves and APML gets assurance of coal supply equivalent to 100% of its normative requirement as assured under NCDP, 2007.

Thus, the Commission has approved the methodology for computing the shortfall in coal as approved in its Order in Case No 189 of 2013 and case No 140 of 2014 dated 7 March 2018.

- 16.4 The Commission further notes that the computation methodology to the extent of it restrict shortfall to assured level in amendment to NCDP 2007 in Order dated 7 March 2018 has been set aside by APTEL in its Order in Appeal No 182 of 2019 and thereafter the Commission has passed the consequential Order dated 10 December 2020 in MA 53 of 2020. The relevant extract of the same is as below.

“

15.7 The Commission notes that this issue of coal offered vis-à-vis coal actually received by APML was agitated before this Commission during the proceeding in Case No. 189 of 2013 which resulted into Order dated 7 March, 2018. In

fact, in that proceeding, while replying to the contentions of MSEDCL, APML stated as follows:

“11.17. APML denies that there has been any occasion when it had failed to lift coal despite it having been made available by SECL. Therefore, the averment is completely hypothetical and irrelevant. Further, APML pays in advance for the coal to be offered by SECL in full. Therefore, any shortfall of coal thereafter is for reasons attributable to SECL/coal Companies only. Under the circumstances, the issue of lower lifting becomes redundant. Therefore, the contention of MSEDCL in this regard is baseless and unwarranted.”

Thereafter, the Commission in its Order dated 7 March, 2020, has ruled as follows:

*“72. From the CCEA decision and the consequent NCDP 2013 and MoP Advisory quoted earlier, it is clear that the shortfall in domestic coal supply by CIL for Units 1 & 2 having FSA has to be determined with reference to the minimum assured supply of 65%, 65%, 67% and 75% for the corresponding year of the 12th Plan Period. The Change in Law for these Units having FSA is to the extent that the assured quantity of coal supply has been curtailed from 100% of the normative requirement under NCDP 2007 to 65%-75% of the requirement under NCDP 2013. Hence, if in any year the actual coal supply by CIL is, say, only 50% and the minimum assured quantum for the relevant year was 75%, the shortfall in CIL supply for the purpose of Change in Law relief would be 25 % (100% earlier assured minus 75% now assured), and not 50% (100% earlier assured minus 50% actually supplied). The shortfall in actual coal supply against the revised assured quantum is a contractual matter between APML and CIL in the background of the NCDP 2013, and not on account of Change in Law. **The Commission also finds merit in MSEDCL’s contention that the quantum of coal offered by CIL should be considered for determining the shortfall rather than the actual off-take out of it by APML.** Hence, the shortfall in domestic coal supply by CIL should be assessed with reference to the maximum of (1) actual quantum of coal offered for offtake by CIL, and (2) the minimum assured quantum as per the NCDP 2013 for the respective year.”[emphasis added]*

Hence, the Commission had upheld MSEDCL’s contention that quantum of coal offered by the Coal companies shall be considered while computing coal shortfall. But APML has challenged said para 72 of the Order dated 7 March 2018 in Appeal and Hon’ble APTEL has ruled that actual shortfall in domestic coal supply needs to be compensated.

15.8 This issue of compensation based on actual shortfall in coal receipt has been further elaborated by the Hon’ble APTEL in Judgment dated 13

November 2020 in Appeal No. 264 of 2018 (Rattan India Power Ltd. Vs MERC & Others). Relevant part of APTEL Judgment is elaborated below:

“65. As was explained elaborately at the hearing, the generator (appellant), for the purpose of billing and accounting of coal consumption for a given month works out the **difference between monthly assured quantum of FSA coal and actual FSA coal received** and thereafter makes up the difference by utilizing alternate coal, carrying forward the excess coal (FSA or alternate) to the next month so as to claim compensation on the basis of actual generation, the respondent procurer (MSEDCL) being billed only for the actual shortfall, the Bills raised reflecting details of shortfall of FSA coal in the month as indeed the quantity of Alternate coal used to make up the shortfall

.....
69. Some of the relevant clauses of FSA have been quoted earlier. There is no logic in argument that linkage coal is to be set-off against alternate coal. **Where shortfall has occurred and the generator has already procured and used alternate coal, setting off or adjusting the same will be contrary to the FSA since in terms of Clause 4.1 (definition of Annual Contracted Quantity), 4.4 (definition of Quarterly Quantity) and 4.5 (definition of Scheduled Quantity) of the FSA, the quantum of coal to be supplied every month and quarter is predetermined and there is no provision for setting-off alternate coal with linkage coal.”**

Thus, APTEL has recognised alternate coal based on actual shortfall (receipt of domestic coal) for generation of electricity. In view of such clear ruling of the APTEL, the Commission cannot allow MSEDCL’s request of computing coal shortfall with respect to coal offered by the coal companies.

15.9 Accordingly, the Commission rules that APML shall be entitle for Change in Law compensation towards actual shortfall in domestic coal supply as assured under NCDP 2007.”

16.5 The above judgment is squarely applicable in the present matter and accordingly, the Commission rules that APML shall be entitled for Change in Law compensation towards actual shortfall in domestic coal supply as assured under SHAKTI Policy.

17. **Issue d: Whether advance intimation of cost of fuel is to be given to Discoms ?**

17.1 The Commission in its Order in Case No 290 of 2018 dated 7 February, 2019 had directed that APML shall intimate MSEDCL in advance about future cost of energy so that MSEDCL can plan for other cheaper source. However, APTEL in its judgment dated 28 September 2020 has set aside this direction based on the ground that it is not

consistent with normal rule of MoD preparation and also does not provide level playing field for IPPs. Relevant extract of the same is as follows:

13.7 We have considered the submissions made by APML vis-à-vis the findings in the impugned order. It is relevant to note that no submission to the contrary has been advanced by the Respondent, MSEDCL on this issue. In the Impugned Order, MERC appears to have expanded the intent of Change in Law notice as a means of intimation to the buyer of power that on account of intended use of alternate coal, the cost of power is likely to increase and then the distribution licensee may decide to not schedule such costly power. Firstly, no such intent can be deciphered from the provisions of the PPA which require a change in law notice to be given to the procurers. MERC has not deliberated upon how this regime will impact the implementation of change in law provision in other scenarios. For example, if there is a change in rates of taxes or duties, which entitles the generator to seek change in law relief, can it still be said that the procurer should be intimated about the impact of such changes in taxes or duties to enable them to decide whether to schedule power or not. In our view, this does not appear to be the intent of change in law notice to the procurers under the PPAs. This is for the simple reason that whether there will be impact on MSEDCL would be known only after MERC decides the change in law claim. Until such time notice given by sellers merely to intimate the occurrence of change in law event, in our view, will not influence decisions related to scheduling of power on merit order principles. In any event, in so far as preparation of MOD stack is concerned, the normal practice is to prepare MOD on the basis of the energy charge bill of (n-1)th or (n-2)th month is taken into account in the order of precedence. Therefore, the impact of a regular or consistent usage of alternate coal will in anyway be reflected in the MOD stack, albeit with the lag of one or two months.

13.8 We thus find that the advance intimation requirement as directed by the MERC is not consistent with the normal rules of MOD preparation and does not provide a level playing field for IPPs leading to discrimination.

17.2 In view of above judgment of the APTEL, the Commission rules that it is not necessary for APML to give prior intimation to MSEDCL for estimated energy charge from alternate supply of coal. At the same time the Commission also notes that above judgment of the Hon'ble Tribunal was based on the then prevailing guidelines for MoD preparation. Recently on 2 September, 2020, the Commission has notified MERC (State Grid Code) Regulations, 2020 which stipulate revised principles and process to be followed for MoD preparation.

17.3 As a part of said process of MoD preparation in State Grid Code 2020, the generators are required to file Petition before the Commission seeking compensation within a month from Change in Law affected the generator, failing which the Commission can

disallowed principal amount of claim or carrying cost or both. Relevant part of Regulations is reproduced below:

“33.10 In case of claim for un-approved change of law, the Seller/Generating Company shall file Petition before the Commission with its claim for un-approved change of law for purpose of incorporation in the merit order stack within reasonable time period not exceeding period of one month from the date of its first occurrence with intimation to the concerned Buyer/Distribution Licensee, failing which the Commission may take appropriate view, while approving the claim of Seller/Generating Company towards principal component of claim of change of law or its claim of carrying cost thereof or both.

33.11 Buyer/Distribution Licensee shall submit its say on such Petitions in timely manner but not later than 15 days from filing of the Petition to facilitate expeditious disposal of the same through due regulatory process.

Provided that upon approval (if approved) by the Commission, the Seller/Generating Company shall consider the same as part of component (b)[viz. impact of claim towards approved change of law], for the purpose of preparation of MoD stack subject to condition that the Seller/Buyer shall strive to incorporate the revision in the MoD stack preferably within seven days from the date of approval by the Commission or from next Monthly Period of MoD operation, whichever is earlier.

Provided further that, claims towards further variation in rate of already approved change in law on account of statutory taxes, duties, levies, cess shall be deemed to be approved by the Commission unless otherwise disputed by either of the party (viz. Seller/Buyer). Such deemed approved component shall be considered as part of component (b) [viz. impact of claim towards approved change of law] for the purpose of Merit Order stack preparation and payment to the Seller/Generator.

Provided also that, the Buyer/Distribution Licensee shall be vigilant and shall inform the SLDC in writing so as to ensure that such deemed approved claim is included for the purpose of Merit Order stack preparation and payment to Seller/Generator” [emphasis added]

Further, parties can agree on change of rate of already approved taxation related Change in Law and include the same in MoD.

- 17.4 Above provision of State Grid Code mandates the generators to inform impact of Change in Law at the earliest. Once it is informed and approved by the Commission, the same can be included in MoD Stack which is prepared based on N-1 principle. Due to such timeline fixed for filing/replying to petition seeking Change in Law

compensation, issue of seeking such compensation after lapse of several months and thereafter recovering compensation with retrospective effect would be avoided in future.

17.5 Accordingly, the Commission rules that although as directed by the APTEL, APML is not required to give advance intimation of estimated energy charge due to alternate coal supply, APML needs to comply with provisions of State Grid Code Regulations 2020 notified on 2 September, 2020 relating to seeking approval of Change in Law impact at the earliest (not later than one month) and include such impact in MoD stack.

18. **Issue e: - Whether compensation on account of coal supply is to be limited to normative generation?**

18.1 MSEDCL requested the Commission to clarify and hold that scheduled generation shall be restricted to normative generation only. It stated that any generation of normative level need not be compensated as it is commercial decision of the generator. APML has opposed this contention of MSEDCL and stated that Change in Law needs to be allowed based on actual generation.

18.2 The Commission notes that it has already dealt with this issue in Case No 132 of 2020 dated 28 November, 2020. Relevant extract of the same is as below:

“21.3.....

c. In this regard, the Commission notes that methodology for computing Change in Law compensation stipulated under Order dated 7 March 2018 started with ‘Scheduled Generation at Interconnection Point’. Nowhere in the Order, the Commission has linked scheduled generation as normative generation. In fact, while laying down checks & balances in computing coal shortfall, the Commission has linked compensation with actual generation as follows:

“75.

*(a) If the actual domestic coal quantum offered by CIL was sufficient for meeting the **requirement for actual generation by the Units** at normative parameters, no shortfall in CIL supply shall be deemed to have occurred.” [emphasis added]*

Therefore, it is incorrect on the part of MSEDCL to claim that schedule generation in computation formula is generation linked to normative availability. Said generation is actual generation scheduled by Generator at interconnection point as approved by SLDC.

d. However, on the issue of providing compensation for generation above normative PLF, the Commission notes that compensation for coal shortfall is allowed with reference to assurance in NCDP 2007. Said assurance is with reference to ACQ and such ACQ is computed based on normative availability/PLF. Therefore, NCDP 2007 which was reference document for allowing Change in Law compensation has assured coal supply only upto normative availability / PLF. Therefore, the Commission clarifies that any

generation above normative PLF on annual basis would not be eligible for any compensation on account of coal shortfall.”

Thus, the Commission has already ruled that any generation above the normative PLF on annual basis would not be eligible for any compensation on account of coal shortfall.

19. Issue f:- What is modified methodology for computing Change in Law compensation?

19.1 The Commission notes that in its Order in Case No 290 of 2018 dated 7 February 2019, it has relied on the methodology approved vide its Order dated 7 March 2018 in Case No 189 of 2013 and in Case No 140 of 2014 for computing Change in Law.

19.2 The Commission notes that it has already modified the methodology stipulated in ordered dated 7 March 2018 vide its Order in in MA 53 in Case No 189 of 2013 and in Case No 140 of 2014 dated 10 December, 2020. Same will be squarely applicable in present matter. Relevant extract of the same is as below:

18.3 Accordingly, Table providing computation of compensation for PPAs having LOA /FSA needs to be modified as follows:

A) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Value |
|--|---|-----------------|--------------|
| <i>Scheduled Generation at interconnection point</i> | <i>A</i> | <i>kWh</i> | |
| <i>Net SHR as submitted in the bid or SHR and Auxiliary consumption norms specified for new thermal Generating Stations in MYT Regulations, 2011(till FY 2016-17) and thereafter as per relevant MYT Regulations or actual, whichever is superior</i> | <i>B</i> | <i>kcal/kWh</i> | |
| <i>Total Heat Content required</i> | <i>C = A x B</i> | <i>kcal</i> | |
| <i>Reference GCV of the coal grade assured in the applicable LoA/FSA (In case range is specified, middle value of the GCV range of the assured coal grade)-Actual GCV of coal received at the plant (ARB till FY 2019-20. Thereafter difference between ADB & ARB shall not be more than 300 kCal)</i> | <i>D</i> | <i>kcal/kg</i> | |
| <i>Total coal required at the reference-actual GCV</i> | <i>E = C/D</i> | <i>kg</i> | |
| <i>Minimum assured CIL coal supply under LoA/FSA as per NCDP 2013</i> | <i>F</i> <i>G = E x F</i> | | |
| <i>Actual coal offered by received from CIL under the LoA/FSA</i> | <i>F</i> | <i>kg</i> | |
| <i>Coal available under LoA/FSA</i> | <i>J =</i> <i>Maximum of G and I</i> | <i>kg</i> | |
| <i>Shortfall in CIL coal supply under LoA/FSA</i> | <i>K = E - J</i> <i>G = E - F</i> | <i>kg</i> | |
| <i>Heat Value of shortfall in CIL coal supply under LoA/FSA</i> | <i>L = K x D</i> <i>H = G x D</i> | <i>kcal</i> | |

| Particulars | Legend | Units | Value |
|---|---|--------------|--------------|
| GCV of alternative coal (as received) | MI | kcal/kg | |
| Alternative coal quantum required to meet the shortfall | $N = L \div M$ $J = H \div I$ | kg | |
| Landed price of LoA/FSA coal | ΘK | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | P L | Rs./kg | |
| Cost of shortfall in FSA quantity at Base Price | $Q = K \times \Theta$ $M = K \times G$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $R = N \times P$ $N = L \times J$ | Rs. | |
| Impact of Change in Law | $S = R - Q$ $O = N - M$ | Rs. | |
| Impact of Change in Law per Unit | $T = S / A$ $P = O / A$ | Rs./kWh | |

The above table after incorporating the changes as shown above is given below. Same shall be used for computing change in law compensation for PPA having LOA/FSA:

A) For Capacity tied up under PPAs from 1180 MW capacity having LOA/FSA

| Particulars | Legend | Units | Value |
|---|------------------|--------------|--------------|
| Scheduled Generation at interconnection point | A | kWh | |
| SHR and Auxiliary consumption norms specified for new thermal Generating Stations in MYT Regulations, 2011(till FY 2016-17) and thereafter as per relevant MYT Regulations or actual, whichever is superior | B | kCal/kWh | |
| Total Heat Content required | $C = A \times B$ | kCal | |
| Actual GCV of coal received at the plant (ARB till FY 2019-20. Thereafter difference between ADB & ARB shall not be more than 300 kCal) | D | kCal/kg | |
| Total coal required at the actual GCV | $E = C / D$ | kg | |
| Actual coal received from CIL under the LoA/FSA | F | kg | |
| Shortfall in CIL coal supply under LoA/FSA | $G = E - F$ | kg | |
| Heat Value of shortfall in CIL coal supply under LoA/FSA | $H = G \times D$ | kCal | |
| GCV of alternative coal (as received) | I | kCal/kg | |
| Alternative coal quantum required to meet the shortfall | $J = H \div I$ | kg | |
| Landed price of LoA/FSA coal | K | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | L | Rs./kg | |
| Cost of shortfall in FSA quantity at Base Price | $M = K \times G$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $N = L \times J$ | Rs. | |
| Impact of Change in Law | $O = N - M$ | Rs. | |
| Impact of Change in Law per Unit | $P = O / A$ | Rs./kWh | |

18.4 Similarly, Table providing computation of compensation for PPAs having MoU needs to be modified as follows:

B) For Capacity tied up under PPAs from 1320 MW capacity having MoU

| Particulars | Legend | Units | Value |
|--|---|----------|-------|
| Scheduled Generation at interconnection point | A | kWh | |
| Net SHR as submitted in the bid or SHR and Auxiliary consumption norms specified for new thermal Generating Stations in MYT Regulations, 2011(till FY 2016-17) and thereafter as per relevant MYT Regulations or actual, whichever is superior | B | kcal/kWh | |
| Total Heat Content required from coal | $C = A \times B$ | kcal | |
| Reference GCV of coal grade as per MoU (In case range is specified, middle value of the GCV range of the assured coal grade) Actual GCV of coal received at the plant (ARB till FY 2019-20. Thereafter difference between ADB & ARB shall not be more than 300 kCal) | D | kcal/kg | |
| Total coal required at reference actual GCV | $E = C/D$ | kg | |
| Maximum assured quantum of coal in MoU | F G | | |
| Actual coal offered by CIL under the MoU | H I | % Kg | |
| Actual Coal offered by received from CIL under MoU | $J = I \times F$ | | |
| Shortfall in CIL coal supply under MoU | $K = E - J$ $G = E - F$ | kg | |
| Heat Value of shortfall in CIL coal supply under MoU | $L = K \times D$ $H = G \times D$ | kcal | |
| GCV of alternative coal (as received) | M | kcal/kg | |
| Alternative coal quantum to meet shortfall | $N = L \div M$ $J = H \div I$ | kg | |
| Landed price of coal under MoU | ΘK | Rs./kg | |
| Landed price of linkage coal for the same Grade of coal as offered in MoU | P L | Rs./kg | |
| Landed price of alternative coal as per indices/benchmarks (given in Table below) | Q M | Rs./kg | |
| Cost of shortfall in MoU quantity at Base Price (linkage coal price) | $R = K \times P$ $N = G \times L$ | Rs | |
| Cost of alternative coal allowable towards shortfall | $S = N \times Q$ $O = J \times M$ | Rs. | |
| Impact of Change in Law for shortfall in Quantity | $T = S - R$ $P = O - N$ | Rs. | |
| Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price | $U = J \times (\Theta - P)$ $Q = F \times (K - L)$ | Rs. | |
| Total Impact of Change in Law | $V = T + U$ $R = P + Q$ | | |

| Particulars | Legend | Units | Value |
|---|------------------------|--------------|--------------|
| <i>Impact of Change in Law per Unit</i> | $W = V/A$ $S = R/A$ | | |

The above table after incorporating the changes as shown above is given below. Same shall be used for computing change in law compensation for PPA having MoU:

B) For Capacity tied up under PPAs from 1320 MW capacity having MoU

| Particulars | Legend | Units | Value |
|--|------------------------|--------------|--------------|
| <i>Scheduled Generation at interconnection point</i> | A | kWh | |
| <i>SHR and Auxiliary consumption norms specified for new thermal Generating Stations in MYT Regulations, 2011(till FY 2016-17) and thereafter as per relevant MYT Regulations or actual, whichever is superior</i> | B | kcal/kWh | |
| <i>Total Heat Content required from coal</i> | $C = A \times B$ | kcal | |
| <i>Actual GCV of coal received at the plant (ARB till FY 2019-20. Thereafter difference between ADB & ARB shall not be more than 300 kCal)</i> | D | kcal/kg | |
| <i>Total coal required at actual GCV</i> | $E = C/D$ | kg | |
| <i>Actual Coal received from CIL under MoU</i> | F | | |
| <i>Shortfall in CIL coal supply under MoU</i> | $G = E - F$ | kg | |
| <i>Heat Value of shortfall in CIL coal supply under MoU</i> | $H = G \times D$ | kcal | |
| <i>GCV of alternative coal (as received)</i> | I | kcal/kg | |
| <i>Alternative coal quantum to meet shortfall</i> | $J = H \div I$ | kg | |
| <i>Landed price of coal under MoU</i> | K | Rs./kg | |
| <i>Landed price of linkage coal for the same Grade of coal as offered in MoU</i> | L | Rs./kg | |
| <i>Landed price of alternative coal as per indices/benchmarks (given in Table below)</i> | M | Rs./kg | |
| <i>Cost of shortfall in MoU quantity at Base Price (linkage coal price)</i> | $N = G \times L$ | Rs | |
| <i>Cost of alternative coal allowable towards shortfall</i> | $O = J \times M$ | Rs. | |
| <i>Impact of Change in Law for shortfall in Quantity</i> | $P = O - N$ | Rs. | |
| <i>Impact of Change in Law for quantity supplied under MoU with respect to linkage coal price</i> | $Q = F \times (K - L)$ | Rs. | |
| <i>Total Impact of Change in Law</i> | $R = P + Q$ | | |
| <i>Impact of Change in Law per Unit</i> | $S = R/A$ | | |

18.5 Approved Indices / Benchmarks for imported coal and Domestic coal shall be as stipulated under Order dated 7 March 2018.”

- 19.3 Thus, above amended methodology shall be used for computation of compensation for coal shortfall under SHAKTI Policy. It is further clarified that subsequent to the operationalization of the FSA under the SHAKTI Policy, table for MoU coal would no more be applicable and compensation shall be computed as applicable for FSA coal.

- 19.4 As ruled in forgoing paragraphs, to comply with Hon'ble APTEL Judgment dated 28 September, 2020, the Commission has modified methodology of computing compensation for Coal shortfall stipulated in Order dated 7 March 2018. While doing so, the Commission directs the parties to use reference parameter from Tariff Regulations applicable for relevant period or actual, whichever is lower for computing compensation. Tariff Regulations are updated for each Control Period with performance parameters that intend to promote incremental efficiency improvement in generator performance and share the benefit there from with the consumers as well. Such Tariff Regulations are normally applicable for generators having PPA under Section 62 of the EA 2003. However, in the present matter, as computation of compensation requires reference parameters which are not stipulated in the Bid or Competitive Bidding Guidelines, parameters stipulated in Tariff Regulations have been used as reference. APML in Appeal No. 182 of 2019 has already consented to use reference parameters as per Regulations or actual, whichever is lower. Otherwise also, as per PPA provisions, APML is mandated to adopt prudent utility practices which in the opinion of Commission can only be verified in the parameters stipulated for the generators employing similar technology. Thus, use of parameters (SHR, Aux. Consumption and GCV) as stipulated in the relevant MYT Regulations and allowing compensation based on such reference parameter or actual whichever is superior will balance the interest of all parties i.e. APML will get prudent compensation and consumer will not be required to pay for inefficiencies, if any, of APML.
- 19.5 Change in Law compensation allowed in Order dated 7 February, 2019 needs to be recomputed based on above ruling of the Commission. Therefore, the Commission directs MSEDCL to complete such re-computation on priority shall complete the same within 2 months. APML shall support the MSEDCL in this process and provide necessary data on priority.
- 19.6 Hence, the following Order:

ORDER

- 1. Commission's Order dated 7 February, 2019 in Case No. 290 of 2018 stands modified to the extent as ruled in the foregoing paragraphs relating to analysis and ruling on the issues framed for the consequential Order as per APTEL Judgment dated 28 September 2020 in Appeal No 155 of 2019 & Appeal No 116 of 2019 & IA No. 505 of 2019.**
- 2. Change in Law compensation allowed in Order dated 7 February 2019 needs to be recomputed based on change in methodology approved in this Order. Maharashtra State Electricity Distribution Co. Ltd. to complete such re-computation on priority within 2 months. Adani Power Maharashtra Ltd shall support this process of re-computation and provide necessary data on priority.**

3. Although as directed by the APTEL, Adani Power Maharashtra Ltd. is not required to give advance intimation of estimated energy charge due to alternate coal supply, it shall comply with provisions of State Grid Code Regulations 2020 notified on 2 September, 2020 relating to seeking approval of Change in Law impact at the earliest (not later than one month) and include such impact in MoD stack.
4. MA No. 54 of 2020 is disposed of, accordingly.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

