

30. We examine the additional capital expenditure claimed for the period 2015-19 in the following paragraphs.

Reverse Osmosis (RO) Plant

31. The Commission vide order dated 26.12.2017 in Petition No.152/GT/2015 had allowed the projected additional capital expenditure of Rs.8400 lakh for Reverse Osmosis Plant in 2015-16, subject to the Petitioner furnishing certain additional information, namely the (i) audited actual expenditure incurred for the asset; (ii) LD amount, if any, recovered from the contractor; (iii) reasons for the delay including IDC, if any; (iv) Cost-Benefit analysis; and (v) Technical capacity assessment at the time of truing-up of tariff of the generating station in terms of Regulation 8 of the 2014 Tariff Regulations. In compliance with this direction, the Petitioner has claimed the actual additional capital expenditure of Rs.8147.73 lakh [Rs 7798.20 +349.53 lakh (IDC)] in 2015-16, (-) Rs.28.04 lakh in 2016-17 and Rs.57.38 lakh in 2017-18 towards RO System, duly supported by Auditor's certificate. The Petitioner has also submitted that there was no occasion for recovery of Liquidated Damages (LD) from the contractor and since the RO plant was not delayed, there was no impact on increase in IDC. As regards Cost-benefit analysis, the Petitioner has submitted the following:

(a) The specific energy requirement of RO technology is 70% less than other desalination methods. The water recovery ratio of RO desalination system is relatively higher than other methods. The reverse osmosis desalination process is able to eliminate both organic and inorganic pollutants from water. RO technology has the advantages of convenient operation, equipment compactness, working environment safety and outlet water quality can satisfy different requirements. In power plant, the economic benefit is not the main factor that affects the recycled water promotion which is mandated by Environmental laws;

(b) Due to particularity and water quality of the boiler water supply, the cost and optimization of desalination cannot be directly applied in the RO treatment process in power plant. RO technology is known as the most



reliable, cost effective technology, with high rate of energy efficiency in producing fresh potable water in comparison to other desalination technologies. The Petitioner carried out extensive study involving Tata Power Engineering Department and Tata Consulting Engineers (TCE) to study the water balance system and acted on their advice on corrective action to be taken to ensure such Zero Liquid Discharge (ZLD) condition as imposed upon by Jharkhand State Pollution Control Board (JSPCB). Among various technologies considered during the detailed study, RO based Water Treatment System was found most suitable due to high reliability and effectiveness;

(c) With regard to technical capacity assessment, initial Performance Guarantee (PG) tests were carried out for the RO plant in November, 2016 after construction of the RO plant. However, due to various reasons, these tests were not successful. Subsequently, a month long ZLD PG test was conducted at the generating station from 31.5.2018 to 30.6.2018. The test was conducted in accordance with the approved PG test procedure and as per the modalities finalized between the Petitioner and ASA (M/s Aquatech) in the meeting held at site on 30.5.2018. ZLD operated at full load during this period of 30 days. Most of the parameters were within the guaranteed limit. Such additional cost has been borne by the Petitioner to meet the statutory compliance of JSPCB through installation of RO Plant to ensure 'zero water discharge' from the generating station; and

(d) The JSPCB provides the requisite 'Consent to Operate' (CTO) to Petitioner for operation of the project in view of fulfilment of certain requirements as per the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. JSPCB in the CTO letter dated 11.5.2012, had directed the Petitioner to ensure zero leakage discharge from the generating station. As per norms prescribed by JSPCB, the process water cannot be discharged to Maithon Dam Reservoir, due to its adverse impact on the aquatic life and ecology.

32. It is observed from the above that the Petitioner, in order to ensure compliance with the directions of JSPCB (Jharkhand State Pollution Control Board) and in order to reduce the make-up water consumption, had taken up the installation of RO system and had obtained Board's approval for the expenditure in 2013, but capitalized the expenditure in 2015-16. In view of the clarification and considering the fact that the additional capital expenditure incurred is within the approved limit of Rs.8400 lakh allowed vide order dated 26.12.2017 in Petition No. 152/GT/2015, the



claim of the Petitioner for Rs.8147.73 lakh [Rs.7798.20 +349.53 lakh (IDC)] in 2015-16 and Rs.57.38 lakh in 2017-18 is allowed under Regulation 14(3)(ii) of the 2014 Tariff Regulations. Also, the negative adjustment of (-) Rs 28.04 lakh for RO system in 2016-17, which is in respect of the expenditure claimed for this asset in 2015-16, is also considered and allowed for the purpose of tariff.

Ash Handling System

33. The Commission, in its order dated 26.12.2017 in Petition No.152/GT/2015 had allowed the projected additional capital expenditure of Rs.716.00 lakh in 2015-16 for 'Ash Handling System' under Regulation 14(3)(iv) of the 2014 Tariff Regulations, subject to the Petitioner submitting relevant details regarding the work executed, at the time of truing-up of tariff in terms of Regulation 8 of the 2014 Tariff Regulations. The Petitioner, in this petition, has claimed actual additional capital expenditure of Rs.26.23 lakh in 2015-16 for this asset and has submitted that most of the works have been completed by the cut-off date. It has, however, submitted that initial spares amounting to Rs.26.23 lakh, for which procurement was initiated before the cut-off date, was delivered and capitalised in 2015-16. Therefore, the Petitioner has submitted that the Commission may permit capitalization of Rs.26.23 lakh in terms of Regulation 14(3)(iv) of the 2014 Tariff Regulations. Since the work of 'Ash Handling System' is continuous in nature and is carried out in phases, during the lifetime of the project and is within the original scope of work of the project, we allow the actual additional capital expenditure of Rs.26.23 lakh in 2015-16 under Regulations 14(3)(iv) of the 2014 Tariff Regulations.

Railway Infrastructure Package

34. The Petitioner, in Petition No.152/GT/2015, had claimed projected additional capital expenditure of Rs.31100.00 lakh in 2016-17 and Rs.9400.00 lakh in 2017-18



for 'Railway System Package' and the same was disallowed by order dated 26.12.2017, with liberty to approach the Commission for additional capitalization based on the actual expenditure incurred for the said asset/ work, for consideration of the Commission in accordance with the regulations in vogue. The Petitioner, in this petition, has claimed actual additional capital expenditure of Rs.2861.56 lakh [2412.62+448.94 (IDC)] in 2015-16 towards 'Railway System' which form part of the original scope of work of the project, but after the cut-off date. In justification of the said claim, the Petitioner has submitted the following:

a) Though the overall Railway Infrastructure Package is yet to be completed and operationalized by the Petitioner, owing to severe land acquisition related disputes as explained in this petition and detailed submissions in Petition No. 152/GT/2015, the Petitioner has completed the construction of number of roads, over-bridges and under-passes for smooth movement of public transport by road, which were falling in the way of Railway corridor. Pending completion of Railway corridor for the purpose of coal transportation to the plant, these Civil works viz., roads, over-bridges, under-passes were opened for public use and, therefore, the amount of Rs. 24.13 crore along with the corresponding IDC of Rs.4.49 crore has been capitalised in the books of accounts of the Petitioner. Accordingly, the same has been submitted for capitalisation for the purpose of tariff;

b) In case, capitalisation of these civil assets is not allowed till the completion of Railway Infrastructure Package as Railway Infrastructure has not been put to use, capitalisation (along with corresponding additional IDC) of the same may be allowed along with remaining Railway Package and to allow such capitalisation along with corresponding additional IDC or in the alternative, the Petitioner may be allowed to amend its proposal to this effect. The decision of the Commission in its order dated 4.12.2014 in Petition No. 17/GT/2013 and order dated 9.10.2018 in Petition No. 38/MP/2018 is applicable in this case.

35. It is pertinent to mention that the Petitioner, in Petition No.152/GT/2015 had sought extension of cut-off date of the generating station till 31.3.2019 stating that some of the works of 'Railway System' may not even be completed before 31.3.2019, with liberty to approach the Commission after completion of the said works. From the submissions of the Petitioner, in this petition, it is evident that the



'Railway Infrastructure Package System' work has not yet been completed and the asset has not been put to use. Only some civil work like roads, over-bridges and under-passes for smooth movement of public transport have been constructed and the expenditure incurred on these works, is sought to be capitalised by the Petitioner, under this head. In other words, the additional capitalisation claimed by the Petitioner, is not in respect of the completion of the Railway System, but only for few civil works which have been completed. Without the completion of the Railway System, the construction of these civil assets for public transport has no nexus with the generation of power from the plant. In our view, the additional capitalisation of these civil assets cannot be permitted, unless the Railway System is completed and put to use for generation and supply of power. The Petitioner's reference to order dated 9.10.2018 in Petition No. 38/MP/2018 in justification of the prayer for relaxation has no relevance in the present case and is, therefore, not considered. In view of this, the prayer of the Petitioner for additional capitalisation of Rs.2861.56 lakh in 2015-16 is not allowed. The Petitioner may approach the Commission after completion of the work related to Railway System is over.

Township and Colony

36. The Petitioner, in Petition No. 152/GT/2015 had claimed projected additional capital expenditure of Rs. 2000.00 lakh in 2015-16, Rs.3000.00 lakh in 2016-17 and Rs.1442.00 lakh in 2017-18 for 'Township & Colony' and the same was disallowed by order dated 26.12.2017, with liberty to approach the Commission for additional capitalization based on the actual expenditure incurred for the said asset/ work and for consideration as per regulations in vogue. The Petitioner, in this petition, has claimed actual additional capital expenditure of Rs. 43.38 lakh in 2015-16 for 'Township & Colony' which form part of the original scope of work, but after the cut-off date. The Petitioner has submitted that while the expenditure of Rs.57.00 lakh



capitalised in 2014-15 was within the approved total capitalisation of Rs.34680 lakh, an expenditure of Rs.43.38 lakh was capitalised in 2015-16 for this work, which form part of the original scope, but was deferred. The additional capitalisation claimed for 'Township & Colony' work in 2015-16 is on account of the same being deferred from 2014-15. The works pertaining to the township and colony, which are within the original scope of work, are spilled over works which had started prior to the cut-off date and, hence, the Petitioner was granted liberty vide order dated 26.12.2017 in Petition No 154/GT/2015 to approach the Commission after completion of the works. In the above background, we allow the additional capitalisation of Rs.43.38 lakh in 2015-16 as claimed by the Petitioner.

Cost of Land & Site and General Civil Works

37. The Petitioner, in Petition No.152/GT/2015, had not claimed any projected additional capital expenditure towards 'Cost of Land & Site' during the period 2015-19. However, the Petitioner, in the said petition, had also claimed projected additional capital expenditure of Rs.6255 lakh in 2015-16 for 'General Civil Works' with a prayer for extension of the cut-off date till 31.3.2019 and the same was disallowed vide order dated 26.12.2017. However, liberty was granted to the Petitioner to approach the Commission for additional capitalization of 'General Civil Works', based on the actual expenditure incurred and to be considered in accordance with the regulations in vogue. The Petitioner has submitted justifications for claim towards Cost of Land & Site and General Civil Works as stated below.

A. Cost of Land & Site

38. The Petitioner, in this petition, has claimed the actual additional capital expenditure of Rs.69.98 lakh in 2015-16, Rs. 0.40 lakh in 2016-17 and Rs.2112.86 lakh in 2018-19 towards 'Cost of Land & Site' which form part of the original scope of



work, under Regulation 14(1)(ii) read with Regulation 54 (Power to Relax) of the 2014 Tariff Regulations. As regards 'land acquisition' issues and consequent time and cost overrun, the Petitioner has mainly submitted the following:

(a) Acquisition of land for setting up of land-intensive projects like that for a thermal power plant is a humongous and time-consuming task. The task involved becomes even more complicated when the Project Proponent/ Developer has to deal with vast and multiple land parcels, in an area that has the environment of socio-cultural disturbances with a history of fragile industrial relations in and around that area;

(a) MPL has made earnest efforts in coordinating with various stakeholders involved, such as its equity partner – DVC (which is a statutory entity of the Central Government), the land owners, the State Government, various Government departments and other multitude of associated entities, for timely completion of the thermal power project, which today benefits Distribution Licensees in New Delhi, West Bengal, Jharkhand and Kerala;

(b) Despite serious planning and prudence, various extraneous factors that are out of bound of the project developer's control have delayed the project completion timelines. The said delay is due to 'Force Majeure' conditions and, therefore, such reasons cannot in any manner be attributable to MPL.

(c) While the zero date of the Project was 25.10.2007, possession of land and, hence, construction activity could not be started until R&R Policy was approved by Government of Jharkhand and a settlement reached with Project Affected People ("PAP") only on 31.03.2008. There is incremental cost associated with time delay/ time overrun which has ultimately led to increase in Project Cost;

(d) This following summary of events highlights some of the key facts w.r.t. land acquisition for the Project of the relevant period in the past and several associated issues in a chronological manner:

(i) The land earmarked for the project comprises land of various natures viz. Rayati (Private), Gair Majruah (GM) or State Government owned and Forest land;

(ii) The land earmarked for the project was acquired (Rayati) by DVC or leased (GM and Forest land) to DVC between the period from 2002 to 2009, but in phases, and was not transferred to MPL, either on paper or physically till 31.3.2008. Some part of project land is yet to be transferred in favour of MPL, although its possession has been given to MPL;

(iii) In the absence of R&R policy in the State, MPL had to take initiatives in the R&R activities associated with the Project;



(iv) The possession of major portion of land to MPL was available after significant delay i.e. after 31.3.2008, when R&R Policy was framed by Government of Jharkhand ('GoJ');

(v) Once major portion of the land was under possession of MPL, Project related activities were initiated and expedited to catch up with the scheduled timelines.

(vi) However, MPL faced massive resistance from the landowners not only during construction phase of the Project but also thereafter, leading to cases being filed, some of which are still pending. Therefore, MPL was compelled to litigate at multiple occasions to settle land acquisition related disputes. Some of the Writ Petitions were resolved by the Hon'ble High Court of Jharkhand and some of them are still pending before the Land Acquisition Court.

(vii) Securitization of the project land to lenders could not be done as MPL could not obtain title/ sub-lease of land in spite of repeated follow ups with relevant authorities.

(viii) GM and Forest land earmarked for the Project, though transferred to DVC by the Government of Jharkhand, was not granted the requisite permission by Government to enable DVC for further transfer/ sub-lease to MPL.

(ix) There was change in the policy clarity on whether land could be sub-leased for long period in the name of private entities like MPL.

(x) Therefore, even though DVC was a 26% equity partner for the Project, the land transferred to DVC by the Government of Jharkhand was finally permitted to be transferred and made available to MPL in 2018 i.e. after delay of almost 10 years.

(xi) MPL made relevant payments with respect to the acquisition/ sub-lease of land within reasonable timelines against the original/ amended fees/ lease to the respective department.

(xii) GoJ, which permitted MPL physical possession of GM land and its transfer under sub-lease in 2010, had later gone back on their permission, citing provisions of the (new) amendments in the land policy of 2011/14 in the State, which made the process carried out till then redundant, thereby leading to additional associated cost and loss of time. The Change in Policy of GoJ fall within the scope of 'Change in law'.

(xiii) GoJ was fully aware of the shareholding pattern of MPL at the time of granting permission and despite the same, revoked the permission for sub-leasing of the land granted to it on the grounds that MPL is not a Government entity.



(xiv) On the grounds of new/ amended policy, provisions and restrictions on sub-lease to only Government entities, GoJ had asked DVC to surrender its sub-lease permission and the leased land, back to the Government.

(xv) MPL initiated its efforts for direct lease of land (GM land and un-notified Forest land) from GoJ under the land Policy of 2017. In response thereto, MPL received fresh 'Demand note' for the difference in current and previously paid rates with regard to un-notified land from Government which it has paid in 2018-19. The Demand note for GM land is expected to be received by MPL in the near future.

The Petitioner has furnished in detail, the justification for time and cost overrun in Annexure-P/4 and P/5 of the petition.

B. Cost Over-run for land

39. The Petitioner has submitted that in order dated 26.12.2017 in Petition No.152/GT/2015, a total of Rs.19505 lakh was approved towards Cost of Land & Site expenses in 2014-15. It has stated that the actual capitalisation under Land & Site head had increased to Rs.21142 lakh as compared to initially approved amount of Rs.19505 lakh. This, according to the Petitioner is due to internal adjustment of Rs.1628 lakh between two heads viz. "Cost of Land & Site" and "Pre-Operative expenses". The Petitioner has also submitted that the capitalization approved by the Commission under Pre-operative expenses was Rs.1836 lakh in 2014-15. However, the actual additional capitalization towards Pre-operative expenses was Rs. 208 lakh in 2014-15 and the remaining amount of Rs.1628 lakh initially approved under Pre-operative expenses was capitalised under "Cost of Land & Site" owing to the nature of expense as the statutory auditor changed the category of lease hold land due to which the amount of Rs.1628 lakh was shifted from pre-operative expenses to cost of land and is, thus, claimed as part of capitalisation under the head 'Cost of Land & Site in 2014-15'. The Petitioner has further submitted that there has been inter-se adjustment between these two heads of capitalisation, owing to re-categorization of



expenses heads in audited accounts way back on 11.5.2015 by statutory auditor and there is no increase in the overall actual capitalisation under these heads put together in 2014-15. In addition to the above, the Petitioner has submitted that it had incurred an expenditure of Rs.70 lakh in 2015-16, Rs.40 lakh in 2016-17 and Rs.2113 lakh in 2018-19 for purchase/ leasing of following land parcels:

- (i) Purchase of private land in Mugma Village for Railway Corridor (Rs.0.70 crore in 2015-16, Rs.0.004 crore in 2016-17 and Rs.1.72 crore in 2018-19);
- (ii) Payment of fresh demand for un-notified Forest land admeasuring 191.67 acre (Rs.11.61 crore in 2018-19);
- (iii) Payment of demand for GM land acquired for Railway Corridor and Payment of License fee for Railway land acquired for Railway Corridor (Rs.6.47 crore in 2018-19);
- (iv) Payment of fresh demand of GM Land (114.95 acre) for the Project (2019-24);

40. The details of additional capitalization towards Land & Site for 2015-19, as tabulated by the Petitioner, are as under:

		<i>(Rs. in crore)</i>			
Category		2015-16	2016-17	2017-18	2018-19
Main Plant Land					
Raiyati	Freehold land-Main Plant	-	-	-	-
Forest Land	Forest Land- Main project	-	-	-	11.61
GM land	GM land	-	-	-	-
Railway Land					
Raiyati	Freehold Land- Railway	0.7	0	-	-
	Freehold Land- Railway- Mugma	-	-	-	1.72
GM Land	GM land Railway-I	-	-	-	-
	GM Land- Railway-II	-	-	-	6.47
	Eastern Railway Land-II	-	-	-	1.04
	Eastern Railway Land-I	-	-	-	0.3
	Krishi Farm and tribal land	-	-	-	-
	Contingency	-	-	-	-
	Total	0.7	0	-	21.13

41. Accordingly, the Petitioner has submitted that due to changes in policies and the stand of 'GoJ' on transfer of land, the land transfer to the Petitioner for the Project had been delayed. The Petitioner had been asked to pay additional amount



on account of transfer of land from DVC to the Petitioner and also additional payments to the landowners were mandated by the State Government, thereby increasing the project cost.

C. General Civil Works

42. The Petitioner has claimed actual additional capital expenditure of Rs.791.99 lakh in 2015-16, Rs.184.39 lakh in 2016-17, Rs.154.47 lakh in 2017-18 and Rs.147.49 lakh in 2018-19 towards 'General Civil Works' which form part of the original scope of work, under Regulation 3(25) and Regulation 8(3) read with Regulation 54 of the 2014 Tariff Regulations. The Petitioner has submitted that delay in execution of 'General Civil Works' package capitalised during the period 2015-19 is on account of the various 'Force Majeure' reasons which were beyond the control of the Petitioner. As regards General Civil Works (GCW), the Petitioner has submitted that in terms of the liberty granted vide order dated 26.12.2017, the Petitioner has claimed actual capital expenditure of Rs.10578 lakh in 2014-15 for General Civil Works against the approved cost of Rs.9793 lakh. It has also submitted that an amount of Rs.787 lakh allowed in 2014-15 towards Design, Engineering and Project Management has been capitalized under 'General Civil Works' in 2014-15 as 'Engineering and Project Management' were provided for 'General Civil Works' package. Thus, a total amount of Rs.10578 lakh in 2014-15 has been claimed under this head, taking both the heads together. According to the Petitioner, there has been inter-se adjustment between these two heads of capitalization owing to re-categorization of expenses, but there is no increase in the overall actual capitalization under these heads put together. The details of the expenditure and the reasons for the delay as furnished by the Petitioner are as under:

- (i) Boundary Wall and Peripheral Road inside Plant along Boundary Wall:**
Boundary wall work was delayed due to various land related disputes and other problems which were beyond the control of the Petitioner. The contract for boundary



wall was awarded to M/s Premier Traders in 2012-13. However, due to various land disputes and other problems, the contractors could not complete the work on time citing problems created by local villagers as is evident from letters dated 23.6.2013, 7.7.2014, 23.9.2014, 19.1.2015 and 3.3.2016. Due to non-completion of the boundary wall, the Jharkhand Pollution Control Board (JPCB) in its Consent to Operate letter dated 23.5.2014 directed that the occupier shall construct pucca minimum 10 feet high boundary wall. The boundary wall was, therefore, required to be expedited covering the entire area around ash pond by wall of 7 km (approx.) length to securitise most of the key and sensitive areas. Various police complaints dated 3.2.2016, 5.5.2017, 13.9.2017, 6.4.2018 were also lodged by the security supervisor regarding agitation initiated by villages. At present, 226 acres (out of 1116 acres) of plot of land is not covered by boundary wall because this 226 acre land parcel is partly inhabited by tribal and non-tribal people and, hence, this area had to be cordoned off internally with grid pillars. As most of the key and sensitive areas have been covered and securitised with proper boundary wall, it is proposed that entire remaining land asset including grid pillars is covered, securitised or demarcated by boundary wall (balance 6.45 km out of total 27.75 km). The completion status of the boundary wall is as under:

Sl. No.	Description	Completion status (in km)
1	Boundary wall completed by 31 st March 2014	13.75
2	Boundary wall completed by 31 st March 2016	4
3	Boundary wall completed by 31 st March 2019	3.55
4	Boundary wall to be constructed	6.45
		27.75

The phasing of boundary wall capitalization is Rs 4.71 crore in 2015-16, Rs 1.43 crore in 2016-17, Rs 1.54 crore in 2017-18 and Rs 1.47 crore in 2018-19 and Rs 1.60 crore in 2019-20.

(b) Field Hostel (part of work got delayed): The Commission in its order dated 19.11.2014 (in Petition No.274/2010) had acknowledged that there is a need of field hostel within the boundaries of the plant for smooth, intervention free operation of the plant, considering the difficult remote location of the plant, accessibility at odd hours and frequent blockages and agitation by local villagers backed by factional politicians. The contract for construction of field hostel was awarded to M/s Kanwar Enterprises (P) Ltd in 2014. However, while carrying out the construction work, the contractor faced several hindrances from the local people. Therefore, M/s Kanwar addressed letter dated 13.5.2015 to the Petitioner, citing the reason for delay of field hostel and requested for time extension for the work. When the contractor started the work by making burgees for the layout and by installation of borewell, the locals damaged the burgees and borewell claiming to be owners of the land. This problem took around 2 months to be sorted out. Again, after starting the work, it was stopped by the locals demanding that work should be executed through them only. The contractor was ready, but the rates were very high and it took almost one month to convince them and make them ready to work at genuine rates. But the villagers could not deliver the required number of labour and the work was stopped. After resuming the work with available labour, it was again stopped by local vendors for about 45 days due to land dispute. Work was also stopped for 15



days by Samity people and the locals. There were also cases of hindrances by local vendors for around 30 days citing rate revision and various other reasons. In view of above reasons, which were totally out of control of the Petitioner and its contractor, the contractor asked for extension of contract thereby delaying some part of the project. Due to above issues, some part of the project got delayed by almost 3 months and 20 days and was finally completed in 2015-16. An amount of Rs.321 lakh and Rs.42 lakh was capitalized in 2015-16 and 2016-17 against Field Hostel and minor pending works of Gate House, Township etc.

43. We have examined the claims and justifications given by the Petitioner. According to the Petitioner, the cost of land had increased on account of changes in the policies of the Government of Jharkhand. Also, the works of Boundary wall and the peripheral road inside Plant along Boundary Wall and Field Hostel got delayed due to various force majeure events. Based on this, the Petitioner has prayed for relaxation of the provisions of 2014 Tariff Regulations to allow the additional capitalisation incurred due to reasons not attributable to the Petitioner. Regulations 3(25) and 54 of the 2014 Tariff Regulations are extracted hereunder:

Regulation 54: Power to Relax. *The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person."*

Regulation 3(25). 'Force Majeure' *for the purpose of these regulations means the event or circumstance or combination of events or circumstances including those stated below which partly or fully prevents the generating company or transmission licensee to complete the project within the time specified in the Investment Approval, and only if such events or circumstances are not within the control the generating company or transmission licensee and could not have been avoided, had the generating company or transmission licensee taken reasonable care or complied with prudent utility practices: a) Act of God including lightning, drought, fire and explosion, earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, geological surprises, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred years; or (b) Any act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or (c) Industry wide strikes and labour disturbances having a nationwide impact in India;*

44. It is observed from submissions of the Petitioner that the land payments are mainly due to (i) payment of fresh demand for un-notified Forest land, payment of demand for GM land acquired for Railway Corridor and (ii) payment of license fee for Railway land acquired for Railway Corridor etc. The payment delays were mainly



related with Railway Corridor disputes and Land site development. The purchase of private land in Mugma Village for Railway Corridor (for Rs.70 lakh in 2015-16, Rs.40 lakh in 2016-17 and Rs.172 lakh in 2018-19) and the Payment of fresh demand for un-notified Forest land measuring 191.67 acre (for Rs.1161 lakh in 2018-19) pertains to Railway corridor and the delay is attributable to the dispute which had arisen due to wrongful disbursement of land compensation amongst the beneficiaries. This resulted in Writ Petition No. 5084 of 2016 being filed by the Petitioner before the High Court of Jharkhand, wherein, directions were issued by the High Court on 6.9.2016 to the Deputy Commissioner, Dhanbad to expedite the resolution of land issues. As the matter could not be fully resolved, the Petitioner again filed Writ Petition No. 5242 of 2017 before the High Court of Jharkhand and the High Court in its judgement dated 22.2.2018, directed the State Government (GoJ) to cancel the earlier awards passed in favour of wrongful persons/ awardees and to further prepare fresh awards in favour of genuine persons within four months. The High Court's order dated 22.2.2018 has been enclosed as Annexure P6/H to the petition. In respect of (i) Payment of demand for GM land acquired for Railway Corridor and payment of license fee for Railway land acquired for Railway Corridor (for Rs.647 lakh in 2018-19) and (ii) Payment of fresh demand of GM Land (114.95 acre) for the project in 2019-24, it is noticed that additional payments were required to be made due to change in the policy of State Government (GoJ) for leasing the land. The sequence of events in regard to the leasing of land is enumerated below:

- (i) On 5.1.2010: The Government of Jharkhand accorded in-principal approval to DVC for sub-leasing 114.95 acres (already leased to DVC) of land to MPL. Reference placed at annexure P/5-C of the petition.
- (ii) On 22.1.2011: The Government of Jharkhand amended the leasing policy of land and held that on leased out land, third party right cannot be created and thereby sub-leasing already accorded to MPL vide letter dated 5.1.2010 became ineffective. Reference placed at annexure P/5-E of the petition.



(iii) On 30.9.2014: The Government of Jharkhand directed DVC to surrender 114.95 acres (already leased to DVC) of land stating that the DVC share being less than 51% in MPL, it does not fall under the category of government company as per Company Act. Thus, sub-leasing to MPL by DVC was withdrawn. Reference placed at annexure P/5-H of the petition.

(iv) On 4.1.2017: The Government of Jharkhand revised the rates for leasing of the land and thereby creating additional liability to MPL for the same land which was sub-leased to the Petitioner by DVC. Reference placed at annexure P/5-K of the petition.

(v) On 20.10.2017: DVC intimated to Govt. of Jharkhand that DVC Board had approved the surrender of 114.95 acres of land for subsequent grant of the same land to the Petitioner. Reference placed at annexure P/5-L of the petition.

(vi) On 08.11.2017: Petitioner requested the Govt. of Jharkhand that to initiate the leasing process directly in favour of the Petitioner and the same land is already in use for power plant. Reference placed at annexure P/5- of the petition.

(vii) On 24.11.2018: The Govt. of Jharkhand directed the Petitioner for further payment of Rs.43.69 lakh for leasing land to the Petitioner. Reference placed at annexure P/5-T of the petition.

45. On perusal of the sequence of events and documents furnished by the Petitioner, it is observed that the delay in payment towards land and site was due to change in policy of the State Government of Jharkhand. Scrutiny of the documents furnished indicates that 'land issues' had prolonged till 24.11.2018, i.e. even after the cut-off date. Though the said work form part of the original scope of work of the project, the Petitioner had to continue the execution of these works even after the cut-off date on account of the delay in the availability of land and site. Similarly, the delay in the development of Railway Corridor was cleared when Hon'ble High Court of Jharkhand vide its judgment dated 22.2.2018 had directed the State Government of Jharkhand to cancel the earlier awards passed in favour of wrongful awardees and to prepare fresh awards in favour of genuine persons and to proceed in accordance with law. The Petitioner had made all payments mandated due to change in policy of the State Government of Jharkhand and as a consequence of cancellation of wrongful disbursement of land compensation award. Therefore, the



expenditure so incurred has been claimed in this petition on actual and audited basis. Similarly, in the case of General Civil Works (Boundary wall and Field hostel), the delay in execution of these works is consequent upon the delay in the availability of land and are for reasons not attributable to the Petitioner. As regards the prayer of the Petitioner for extension of cut-off date till 31.3.2019, the Commission in its order dated 26.12.2017 in Petition No.152/GT/2015 had decided as under:

“In view of this submission and considering the fact that capitalization of projected additional expenditure of these assets/ expenditure before 31.3.2019 is uncertain, the consideration of the prayer of the petitioner for extension of cut-off date of the generating station till 31.3.2019 would not serve any useful purpose. In this background, the prayer of the petitioner for projected capitalization of the expenditure is not allowed. However, the petitioner is granted liberty to approach the Commission for additional capitalization based on the actual expenditure incurred for these assets and the same will be considered after due diligence and prudence as per the regulation in vogue at that time...”

46. As already observed, the delay in the availability of land & site was due to changes in the policy of the Govt. of Jharkhand, cancellation of wrongful disbursement of land compensation award and clearance for the development of Railway Corridor after payment of compensation. Also, the delay due to non-availability of land had caused the delay in execution of the General Civil Works by the Petitioner and the same cannot be attributable to the Petitioner. From the documents enclosed by the Petitioner, it is noticed that the Petitioner has been coordinating with the local administration for speedy resolution of the land issues and has been taking steps to mitigate the delay. Accordingly, actual additional capitalisation of Rs.69.98 lakh in 2015-16, Rs 0.40 lakh in 2016-17 and Rs.2112.86 lakh in 2018-19 towards Land & Site is allowed under Regulation 14(3(i) of the 2014 Tariff Regulations. Consequently, as the General Civil Works were also delayed due to delay in the possession of land, for which reasons and justifications have been furnished in previous paragraphs, the actual additional capitalisation of Rs.791.99 lakh in 2015-16, Rs.184.39 lakh in 2016-17, Rs.154.47 lakh in 2017-18 and



Rs.147.49 lakh in 2018-19 towards General Civil Works is also allowed under Regulation 14(3(i) of the 2014 Tariff Regulations.

Coal Handling System

47. The Petitioner, in Petition No.152/GT/2015 had claimed projected additional capital expenditure of Rs.959.00 lakh in 2015-16 and Rs.2142.00 lakh in 2016-17 towards 'Coal Handling System' under Regulation 14(3) of the 2014 Tariff Regulations. By order dated 26.12.2017, the said claim was rejected as under:

"In response to the Commission's directions vide ROP of hearing dated 12.1.2016, the petitioner has not furnished any details of the works to be executed, the reasons/justification for the delay in the execution of 'Coal Handling System' beyond the cut-off date of the project. In this background, the projected additional capital expenditure for Coal Handling System claimed by the petitioner after the cut-off date is not allowed"

48. The Petitioner, in the present petition, has claimed actual additional capital expenditure of Rs.367.53 lakh (including spares for Rs.282.72 lakh) in 2015-16 towards 'Coal Handling System' (which form part of the original scope of work of the project, but after the cut-off date) under Regulation 3(25) read with Regulation 8(3) and Regulation 54 of the 2014 Tariff Regulations. The balance amount of Rs.84.81 lakh (Rs.367.53 lakh - Rs.282.72 lakh) is towards Stone Picking shed (for Rs.42.79 lakh), Fire Detection system (for Rs.21.04 lakh) and 'Others' (Rs.20.98 lakh). In justification of the same, the Petitioner has submitted that the actual additional expenditure incurred under 'Coal Handling System' package is Rs.1040 lakh in 2014-15 and Rs. 367.53 lakh in 2015-16. It has submitted that Rs.367.53 lakh capitalised in 2015-16 mostly relates to the procurement of initial mandatory spares, which was initiated and procured prior to the cut-off date (31.3.2015), while the procurement of balance spares was concluded in 2015-16. Regulation 14(1)(3) of 2014 Tariff Regulations permits the capitalization of spares up to cut-off date, in accordance with the provisions of Regulation 13 of the 2014 Tariff Regulations (4%



of Plant & Machinery cost as on the cut-off date). It is noticed that the claim of Rs.282.72 lakh towards initial spares pertains to initial spares which form part of the original scope of the Plant and Machinery. It is evident from the submissions of the Petitioner, that the procurement of spares was initiated even before the cut-off date (31.3.2015), but spares were received only during 2015-16. Since the claim of the Petitioner for additional capitalisation of Rs.282.72 lakh in 2015-16 is towards initial spares for 'Coal Handling System' after the cut-off date, the same is allowed in relaxation of Regulation 14(1)(3) of 2014 Tariff Regulations. However, the balance amount of Rs.84.81 lakh (Rs.42.79 lakh for Stone Picking shed, Rs.21.04 lakh for Fire Detection system and Rs.20.98 lakh towards 'Others') have not been allowed as the items do not form part of initial spares and no justification has also been furnished by the Petitioner for capitalization after the cut-off date.

BTG & Spare GT

49. The Petitioner, in Petition No. 152/GT/2015, had claimed projected additional capital expenditure of Rs.1616 lakh in 2015-16 towards BTG Package and the same was not allowed by the Commission in its order dated 26.12.2017. The Petitioner, in the present petition, has claimed actual additional capital expenditure of Rs.837.40 lakh for BTG package (including spares for Rs.777.30 lakh) and Rs.846.76 lakh for Spare GT in 2015-16, Rs.1.78 lakh for BTG and Rs.35.73 lakh for Spare GT in 2016-17, which are within the original scope of work of the project, but after the cut-off date. The balance amount of Rs.60.10 lakh (₹837.40 - ₹777.30) under BTG package apart from Spares is towards 'Workshop equipment' (Rs.23.83 lakh), 'Mill hoist' (Rs.15.23 lakh) and 'Others' (Rs.21.05 lakh). The Petitioner, in justification of the said claim has submitted that the expenditure mainly relates to mandatory 'Initial capital spares', which were required to be procured before the cut-off date (31.3.2015). It has, however, submitted that due to their non-critical requirement for

