

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

**Petition No. 5 of 2014 and Petition No 3 of 2016
RA 3 of 2022**

**Date of Hearing : 07.04.2022
Date of Order : 12.05.2022**

IN THE MATTER OF:

Application for passing consequential orders as per the directions issued by the Hon'ble Appellate Tribunal for Electricity in the judgment dated 10.03.2022 passed in Appeal No. 92 of 2020.

AND IN THE MATTER OF:

Review of the Order dated 03.03.2022 passed by the Hon'ble Commission in the captioned Petition nos. HERC/PRO-5 of 2014 and HERC/PRO-3 of 2016 in terms of the Order dated 10.03.2022 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 92 of 2020 read with Section 94(1)(f) of the Electricity Act, 2003 and Regulations 65 of the HERC (Conduct of Business) Regulations, 2019, and read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, seeking reconsideration of the rate of interest and the period of interest computation.

Review Applicant

Haryana Power Purchase Centre (HPPC)

Petitioner

Lanco Amarkantak Power Ltd. (LAPL)

Respondents

1. PTC India Ltd (PTC)
2. Haryana Power Purchase Centre (HPPC)

Present on behalf of the Petitioner

1. Sh. Deepak Khurana, Advocate, LAPL

Present on behalf of the Respondents/Review Applicant

1. Sh. M.G. Ramachandran, Advocate, HPPC
2. Ms. Sonia Madan, Advocate, HPPC

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

1. The cases were heard through video conferencing on 07.04.2022, as scheduled, in view of the COVID-19 pandemic.

2. The present cases have arisen from the judgement dated 10.03.2022 passed by the Hon'ble Appellate Tribunal of Electricity (APTEL) in Appeal No. 92 of 2020, wherein the order of the Commission dated 27.09.2019 (HERC/PRO-3 of 2016) was directed to be reconsidered under remand to this Commission.
3. Further, in terms of the order of Hon'ble APTEL dated 10.03.2022, HPPC (review applicant) has filed a review petition, seeking review of the order dated 03.03.2022 passed by this Hon'ble Commission in IA No. 2 of 2022 filed in the petition bearing nos. HERC/PRO-5 of 2014 and HERC/PRO-3 of 2016.
4. In view of the above, two orders (dated 27.09.2019 and dated 03.03.2022) passed by this Commission, in separate rounds of litigations, between HPPC and M/s. LAPL, are under consideration. Since, the matter in both the orders relate to the rate of interest and period of interest, the Commission has considered it appropriate to settle the issues through a combined order, to remove any ambiguity/inconsistency.
5. HPPC has sought review of the order of the Commission dated 03.03.2022 in line with the order of the Commission dated 27.09.2019, so as to remove inconsistency between these two orders. HPPC has submitted as under: -

Grievance No. 1:-There is statutory bar on allowing Interest on Interest

- i) That the claim for interest for the period after the payment of the principal amount and on the aspect of interest being paid after subsequent determination of interest liability would constitute interest on interest. Such a claim of interest on interest is not admissible either in terms of any of the Regulations notified by this Hon'ble Commission or under any statutory provisions of the Electricity Act, 2003 or under the provisions of the Interest Act, 1978. In fact, Section 3(3)(c) of the Interest Act specifically provides '*(3) Nothing in this section, —.... shall empower the Court to award interest upon interest*'. There is therefore a statutory bar on awarding interest on interest.
- ii) That LAPL's claim is contrary to the settled principles in the case of *Jaigad Power Transco Limited -v- Maharashtra Electricity Regulatory Commission* in decision 11.05.2017 passed by Hon'ble Tribunal in Appeal No. 250 of 2015- (2017) SCC Online APTEL 46, wherein, it has been held that "*We tend to agree with the State Commission's view that there is no concept of compound interest in dealing with various provisions related to interest calculations in the Tariff Regulations, 2011. Thus, the principle applied by the State*

Commission in absence of specific provisions of interest rate of carrying cost is equitable and just and there is no need of interference by us on the same.”

- iii) That the interest/carrying cost relates to the period prior to the determination of the amount payable by the Regulatory Commission and crystallization of the liability to pay. It is akin to interest pendente lite. Hon'ble Supreme Court in *South Eastern Coalfields Limited -V- State of M P, (2003) 8 SCC 648* and *Indian Council for Enviro Legal-Action -V- Union of India and Ors., (2011) 8 SCC 161*.
- iv) That without prejudice to the above, if any compounding interest or interest on interest is to be considered, the decision dated 31.08.2020 of Hon'ble Apex Court in Civil Appeal No.8625-8626 of 2019 -Jaipur Vidyut Vitran Nigam Limited & Ors. -v- M/s. Adani Power Rajasthan Limited& Ors., (2020) SCC Online SC 697 be followed, wherein it has been held that 'rate of interest/late payment surcharge would be at SBAR, not exceeding 9 percent per annum, to be compounded annually, and the 2 percent above the SBAR (as provided in Article 8.3.5 of PPA) would not be charged in the present case.
- v) That LAPL in Appeal No. 308 of 2017 has itself relied on the judgment of the Hon'ble Supreme Court in the case of *Enviro Legal Action v. UOI & Ors. [(2011) 8 SCC 161]* wherein it has been specifically mentioned that- '*... interest has to be calculated on compound basis - and not simple - for the latter leaves much uncalled-for benefits in the hands of the wrongdoer.*' It is respectfully submitted that the Review Applicant cannot be termed as a 'wrongdoer' as the payment has been made by the Review Applicant as per the directions of the Hon'ble Courts. No wrong has been committed by the Review Applicant who has always abided and acted in accordance with the orders of the Hon'ble Courts. There is no '*uncalled benefit*' which is lying in the hands of the Review Applicant. As such the question of compounding of interest does not arise.
- vi) That if no interest rate is specified, it is settled that interest should be construed as simple interest only. Reference Priya Vart & Anr. -v- Union of India (1995) 5 SCC 437 while dealing with the unamended Section 28 of the Land Acquisition Act, 1894, the Hon'ble Supreme Court inter-alia, held *....when the statute prescribed interest @ 6% per annum, it necessarily means only simple interest and not compound interest and pendency of proceedings is no ground to award compound interest.*

Grievance No. 2: Rate of interest higher than 9.95% is unjustified.

- vii) That LAPL's claim for interest at a rate higher than 9.95% per annum is not admissible or justified.
- viii) That the claim made by LAPL for the higher rate of interest is contrary to well-settled principles of law laid down by various judgments: -
- Citibank N.A. Vs. Hiten P. Dalal [(2016) 1 SCC 411] :
 - Kerala SEB Vs. M.R.F. Ltd. [(1996) 1 SCC 597]
 - Jaipur Vidyut Vitran Nigam Limited v. Adani Power Rajasthan Limited [2020 SCC Online 697 dated 31.08.2020]

Grievance No. 3:- Order dated 03.03.2022 lacks clarity, owing to non-availability of rates under MYT Regulations prior to the year 2016.17.

- ix) That there is complete lack of clarity in the order dated 03.03.2022 insofar as it relates to award the interest in line with HERC MYT Regulations.
- x) That the dispute in the instant case relates to Invoices dated May 2011 to July 2018. MCLR came into effect w.e.f. 1.04.2016. Before the implementation of the MCLR, loans in every category fell under the purview of the base rate. In terms of the foregoing order, the Base rate for the year 2011-12 to 2015-16 and MCLR+150 basis points for the year 2016-17 to 2021-22 is tabulated as under: -

FY	Base rate		MCLR			
	Base rate of SBI as applicable on 1st April of the relevant financial year plus an appropriate margin that realistically reflects the rate at which the generating company/licensees can raise debt from the market.		CERC tariff regulation 19-24 (Bank rate is MCLR of SBI issued from time to time plus 350 basis points prevailing as on 1st April of the respective year of the tariff)	Positive spread	Effective rate	
	01.04.2011	8.25				
2012-13	01.04.2012	10.00				
2013-14	01.04.2013	9.70				
2014-15	01.04.2014	10.00				
2015-16	01.04.2015	10.00				
2016-17	01.04.2016	9.30	01.04.2016	9.20	1.50	10.70
2017-18	01.04.2017	9.10	01.04.2017	8.00	1.50	9.50
2018-19	01.04.2018	8.70	01.04.2018	8.15	1.50	9.65
2019-20	01.04.2019	9.05	01.04.2019	8.55	1.50	10.05
2020-21	01.04.2020	8.15	01.04.2020	7.75	1.50	9.25
2021-22	01.04.2021	7.40	01.04.2021	7.00	1.50	8.50

The rate of interest, if allowed, in terms of the rates specified above, the same shall be subject to ceiling rate of 9.95% per annum which is being allowed to State generator in terms of the Regulations.

- xi) That apart from the non-applicability of MYT Regulations, 2019 prior to the year 2016-17, the reliance by the Hon'ble Commission on *Adani Power (Mundra) Limited vs. CERC, Uttar Haryana Bijli Vitran Nigam Limited (HPPC) and Ors.* wherein it has been stated that the Review Applicant agreed with CERC's view to determine the interest rate as per the actual interest rate or working capital interest rate as per CERC Regulations, whichever is lower, is also misplaced. In this regard, it is respectfully submitted that the decision of the Hon'ble APTEL in the aforementioned case has already been challenged by way of filing an appeal before the Hon'ble Supreme Court. The said appeal bearing CA No. 7129 of 2021 titled *Uttar Haryana Bijli Vitran Nigam Ltd. Vs. Adani Power (Mundra) Ltd.* is pending adjudication. As such, the order has not attained finality. The award of rate of interest has also been challenged before the Hon'ble APTEL. A bare perusal of the grounds of SLP establishes that the Review Applicants have opposed the grant of interest rate by APTEL on various aspects.

Grievance No. 4:- Carrying cost allowed to HPGCL was required to be considered.

- xii) That the amount of interest awarded in terms of rate of carrying cost allowed to Haryana Power Generation Corporation (HPGCL) in an order dated 18.09.2019 passed in petition bearing RA No. 08 of 2019, is justified and reasonable.

Grievance No. 5:- Grant of interest is a discretionary power

- xiii) That the legislative framework provides discretion in the hands of the authority adjudicating the dispute as regards the applicability of rate of interest payable on the claimed amount.

Grievance No. 6:- The Chartered Accountant's certificate was wrongly relied upon:

- xiv) That the reports of the statutory auditors regarding rate of interest submitted by LAPL in both the proceedings resulting in the passing of two separate orders dated 27.09.2019 and 03.03.2022, are identical in nature i.e. 18.07.2019 by Chartered Accountants (CA) i.e. M/s Brahmayya & Co. in support of its claim.

- xv) That the statement by the CA had been made purportedly after considering the “*bank base rate + spread (as per last sanction) for the period June 2017 till March 2019 for computing yearly average rate of interest*”, which is entirely different from the period for which carrying/ holding cost is required to be determined i.e. the period from FY 2011-12 to FY 2016-17. It is submitted that the computation provided by LAPL ought to have been as per audited accounts for the period in question and not the period after it.
6. Lanco Amarkantak Power Limited (LAPL), the petitioner herein, has submitted that the review petitioner i.e. HPPC, under the garb of the present review petition, is attempting to enlarge the scope of the review jurisdiction of this Hon’ble Commission by placing selective and erroneous reliance on expressions ‘comprehensive fresh order’ used in the Hon’ble Aptel’s order. Comprehensive fresh order implies that the order has to be passed by this Hon’ble Commission in both the matters i.e. remand proceedings as well as review petition as the order will be the same in both the cases. LAPL has further submitted that the present review petition is liable to be dismissed as no error apparent on the face of the order has been pointed out by HPPC. Additionally, it has been submitted that the issues raised in the present review petition are mere repetition of the contentions raised earlier which was considered and rejected by this Hon’ble Commission in its order dated 3.03.2022. Further, LAPL made detailed submissions on the two aspects of the Hon’ble Commission’s order on which HPPC has sought review. In conclusion it has been submitted that the findings of the Hon’ble Commission on the period of interest as well as the rate of interest suffers from no error and nothing to the contrary has been pointed out by the review applicant herein. While distinguishing the case laws viz. Jaigad Power Transco Vs Maharashtra Electricity Regulatory Commission (2017 SCC OnLine APTEL 46), M/s Pt. Munshi Ram & Associates (p) Ltd v. DDS, decision dated 22.07.2010 (Delhi High Court) and Priya Vart & anr. V. Union of India (1995) 5 SCC 437, LAPL has submitted that entire premise of HPPC is misdirected and fallacious as in the present case this Hon’ble Commission has merely granted interest on the amount that has partaken the character of principal amount. Hence, it is not the case of compounding of interest or interest on interest in the absence of contract or a statute dealt by the Hon’ble Courts / Tribunal in the ibid judgements. The other judgements cited in the matter were also countered as being not relevant to the present case.

In conclusion LAPL has prayed that this Hon’ble Commission may reject the review petition as it is akin to ‘old wine in a new bottle’ as all arguments, submissions and contentions have already been raised, considered and decided by the Hon’ble Commission vide order dated 03.03.2022. Resultantly, LAPL has prayed that this Hon’ble Commission may pass an order on the same principles as laid down in the order dated 03.03.2022.

7. **Commission's order: -**

This order is being passed in pursuance to the Order and direction dated 10.03.2022 passed by the Hon'ble APTEL in Appeal No. 92 of 2020. The Commission has carefully considered the rival contentions of the parties as well as perused the records of the case available in the matter under consideration.

In the said Order, the Hon'ble APTEL had directed the Commission to reconsider the orders dated 27.09.2019 and 03.03.2022 passed in PRO no. 5 of 2014 and PRO no. 3 of 2016. The respondent-HPPC, had filed an application for review of the order dated 03.03.2022 in terms of Hon'ble APTEL Order dated 10.03.2022. A hearing was given to the parties on 07.04.2022. Both the parties advanced their arguments. A comprehensive Order is being passed hereunder after considering the pleadings and submissions of both the parties.

Petitioner – LAPL's claim for interest under Order dated 27.09.2021 is with respect to payment of interest on recovery of the differential amount being the difference between the tariff determined by the Commission and Rs. 2.32/kWh earlier paid by HPPC to LAPL. The Commission, in its order dated 12.07.2016 directed HPPC to make payment of the principal amount of Rs. 88.123 Crore. HPPC made the said payment of the principal amount of Rs. 88.123 Crore to LAPL in three equal monthly instalments with the last instalment paid on 04.10.2016.

Petitioner – LAPL's claim for interest under Order dated 03.03.2022 is with respect to payment of interest on recovery of the differential amount of O&M Expenses allowed in terms of the remand order dated 21.03.2018 passed by the Hon'ble APTEL in Appeal No. 107/2015 & Appeal No. 117/2015 filed against the Tariff Order dated 23.01.2015. The Commission, in its order dated 31.10.2018 directed HPPC to make payment of the principal amount of Rs. 54.202 Crore. HPPC made the said payment of the principal amount of Rs. 54.202 Crore to LAPL in three equal monthly instalments with the last instalment paid on 01.02.2019.

With respect to Orders dated 27.09.2021 and 03.03.2022 referred above, the issues for consideration of the Commission are the rate of interest to be allowed and the period for which the same has to be computed. With this Order, the Commission has given a fresh look to the issues under consideration and passes a comprehensive uniform order as under

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Issue No 1: What rate of interest shall be allowed?

The Hon'ble APTEL passed judgment in Appeal no 308 of 2017 on 22.05.2019 pursuant to which Order dated 27.09.2021 was passed by this Commission. In the said Order, it was observed that for equity and restitution payments made at a later stage, the amount, due in the past, must be compensated by way of an appropriate rate of interest so as to compensate for the loss of money value. The principle behind the award of such interest has been spelled out in the Order, i.e. to safeguard the interest of the receiving party with the time value of the amount not paid in time.

The Commission, in its Order dated 03.03.2022 has held that the rate of interest has to be awarded based on the principle of equity and restitution, in line with the HERC MYT Regulations, 2019 in vogue. The interest rate on working capital specified in the Regulations of this Commission, reflects the cost of short term borrowing during the control period. Accordingly, the Commission finds it appropriate to compensate the petitioner-LAPL, with the interest rate specified in the Regulations.

During the course of the arguments, the petitioner specifically stated that they are agreeable to the award of the rate of interest in line with MYT Regulations of the Commission, as amended, from time to time. The Respondent, however, contended that the rate of interest should not exceed 9.95% simple interest, as allowed by the Commission in its order dated 27.09.2019. This contention of Respondent-HPPC does not find merit with the Commission. Although, the Commission in its Order dated 27.09.2019, had allowed simple interest rate of 9.95% in parity with the latest rate of carrying cost allowed to the State Generator, HPGCL, by this Commission in its Order dated 18.09.2019 in case no. RA 8 of 2019 yet, on fresh consideration of the matter, the Commission finds it appropriate to consider well-settled regulatory principle of awarding interest at the rate specified in the regulatory framework. This shall adequately compensate the Petitioner-LAPL in terms of the Order of the Hon'ble APTEL. In view of the consent given by the petitioner with respect to the award of the rate of interest in line with MYT Regulations, the Commission need not delve into the relevance of documents i.e. auditor's certificate, relied upon by the petitioner in support of its claim.

The reliance of the Respondent on various judgments to contend that the discretionary powers of the court allow the award of a lower rate of interest in the peculiar facts of the case also does not find favour with this Commission. Payment of interest in the instant case aims to balance equity on both sides and has to be within the four corners of the legislations. The rate of interest on working capital, as specified in the Regulations cannot be said to be exorbitant so as to cause unjust enrichment of Petitioner. The Commission

is bound by the Regulations framed and notified by it, in the discharge of its legislative functions.

Accordingly, the Commission, considering the principle of equity and restitution, allows the rate of interest in line with the HERC MYT Regulations, as amended from time to time.

The Respondent, in its review application, had also contended that the dispute in the instant case relates to Invoices from 2011 to 2018. However, MCLR came into effect w.e.f. 1.04.2016. Before the implementation of the MCLR, loans in every category fell under the purview of the base rate. The Respondent provided a tabular representation of the applicable base rate for the year 2011-12 to 2015-16 and MCLR+150 basis points for the year 2016-17 to 2021-22 as under –

FY	Base rate		MCLR			
	Base rate of SBI as applicable on 1st April of the relevant financial year plus an appropriate margin that realistically reflects the rate at which the generating company/licensees can raise debt from the market.		CERC tariff regulation 19-24 (Bank rate is MCLR of SBI issued from time to time plus 350 basis points prevailing as on 1st April of the respective year of the tariff)	Positive spread	Effective rate	
2011-12	01.04.2011	8.25				
2012-13	01.04.2012	10.00				
2013-14	01.04.2013	9.70				
2014-15	01.04.2014	10.00				
2015-16	01.04.2015	10.00				
2016-17	01.04.2016	9.30	01.04.2016	9.20	1.50	10.70
2017-18	01.04.2017	9.10	01.04.2017	8.00	1.50	9.50
2018-19	01.04.2018	8.70	01.04.2018	8.15	1.50	9.65
2019-20	01.04.2019	9.05	01.04.2019	8.55	1.50	10.05
2020-21	01.04.2020	8.15	01.04.2020	7.75	1.50	9.25
2021-22	01.04.2021	7.40	01.04.2021	7.00	1.50	8.50

To bring clarity to the applicable rate of interest, the Commission orders that from FY 2011-2012 to 2015-2016, the applicable rate shall be SBI base rate plus a margin of 150 basis points. With effect from FY 2016-17 to 2021-22, MCLR of the relevant financial year plus 150 basis points shall be applied for computation of interest. The figures given by the Respondent in the tabular statement above shall be verified by the parties. The Commission, therefore, allows the rate of interest as interest on working capital specified in terms of MYT regulations, as amended, from time to time. The appropriate margin applicable for the computation of such interest shall be considered as 150 basis points.

Issue No 2: What is the period for which the interest is payable?

As regards the allowable period for computation of interest, the Petitioner reiterated its contention to the effect that the amount outstanding as interest as on the date of payment of principal amount partake the character of principal amount and therefore, interest on the same shall be allowed up till the date of payment by Respondent. Respondent-HPPC, however, refuted this contention by stating that the interest awarded beyond date of payment of principal amounts to 'interest on interest', which is not permissible under law.

The learned Senior Counsel for the Respondent contended that a claim of interest on interest is not admissible in terms of any of the Regulations notified by this Commission or under any statutory provisions of the Electricity Act, 2003 or under the provisions of the Interest Act, 1978. Reliance was placed upon section 3(3)(c) of the Interest Act, which provides - '(3) Nothing in this section, —.... shall empower the Court to award interest upon interest'. It was emphasized that the claim for interest for the period after the principal amount has been duly paid and discharged can be nothing but interest on interest or compounding interest.

The respondent also relied on the judgment of Jaigad Power Transco Limited vs. Maharashtra Electricity Regulatory Commission (2017 SCC OnLine APTEL 46) and M/s Pt. Munshi Ram & Associates (P) Ltd -v- DDA, Decision dated 22.07.2010 passed by Delhi High Court stating that in the absence of any provision providing for levy of compound interest, it is not permissible for the Court to award compound interest.

The issue involved here is whether the payment of interest on the principal amount paid becomes part of the principal amount and will be eligible for interest thereon till the date of payment. Considering the detailed arguments of both parties on this aspect, the Commission analyzed the issue of award of interest on the outstanding amount of interest afresh and observes as under -

The imposition of interest is for the purpose of providing compensation for withholding the principal amount. In view of the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Limited (2008) 4 SCC 755, it is well settled that the Commission has same powers as are vested in a Civil Court under the Code of Civil Procedure 1908 (5 of 1908), in respect of all disputes within its jurisdiction as also enshrined under Section 94 of the Electricity Act, 2003. Further, in T.N. Generation & Distribution Corporation v PPN Power Generation Company Pvt. Ltd., the Hon'ble Supreme Court held that State Electricity Regulatory Commissions have the trappings of a court. There is no specific provision in the Electricity Act, 2003 regarding payment

of interest. Thus, the power of the Commission to award interest has to be governed by the provisions of the procedural law, Interest Act, 1978 and the law enunciated by the Courts. We shall, therefore, be guided by general principles of law in adjudicating the instant issue.

17. Section 34(1) of the Code of Civil Procedure, 1908 provides as under –

“ (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, Order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.” (Emphasis Supplied)

The Hon'ble Supreme Court in the case namely Central Bank of India vs. Ravindra and Ors., AIR 2001 SC 3095 dealt with the question as to what is the meaning to be assigned to the phrases “the principal sum adjudged” and “such principal sum” as occurring in Section 34 of the Code of Civil Procedure, 1908. It was held that the meaning assigned to the expression “the principal sum adjudged” should continue to be assigned to the “principal sum” at such other places in Section 34(1) where the expression has been used qualified by the adjective “such”, that is to say, as “such principal sum”. Where the principal sum has been so adjudged, the same shall be treated as “principal sum” for the purpose of “such principal sum” – the expression employed later in Section 34 of C.P.C. The expression “principal sum” cannot be given different meanings at a different place in the language of the same section, i.e. Section 34 of C.P.C.

The Hon'ble Supreme Court also recognized the method of capitalization of interest so as to make it a part of the principal but the same was made subject to a stipulation in Contract, statute or prevalent/ established practice. It was held that the Capitalisation method is founded on the principle that the borrower failed to make payment though he could have made and thereby rendered himself a defaulter. To hold an amount debited to the account of the borrower capitalised it should appear that the borrower had an

opportunity of making the payment on the date of entry or within a reasonable time or period of grace from the date of debit entry or the amount falling due and thereby avoiding capitalisation. Any debit entry in the account of the borrower and claimed to have been capitalised so as to form an amalgam of the principal sum may be excluded on being shown to the satisfaction of the Court that such debit entry was not brought to the notice of the borrower and/or he did not have the opportunity of making payment before capitalisation and thereby excluding its capitalisation.

The law is settled in the case of *Central Bank of India v Ravindra* (supra) Hon'ble Supreme Court in various other cases, both in the context of the Code of Civil Procedure, 1908 as also in the context of other substantive debt laws, have a strong precedentiary value. Further, Section 3 of the Interest Act, 1978 enables the courts to award interest from the date of cause of action to the date of institution of legal proceedings or initiation of arbitration proceedings. Sub-section (3)(c) of section 3 of the Interest Act, 1978 makes it clear that nothing in the said section shall empower the Court to award interest upon interest. The law is, therefore, settled that there is no general discretion in courts or tribunals to award compound interest or interest upon interest unless the special legislation contains a provision to that effect or the parties agree to such payment in the Contract executed between them.

In *Chevron Petroleum UK Ltd v. BP Petroleum Development Ltd* [1981] STC 689, it was made clear that the mere fact that the payment by way of interest may be aggregated with a payment of a different nature does not "denature" the payment that is interest. In this judgment, Megarry V-C said as under:-

"If in its nature a sum is "interest of money" I think it retains that nature even if the parties to a contract provide for it to be wrapped up with some other sum and the whole paid in the form of single indivisible sum. The wrappings may conceal the nature of the contents, but they do not alter them ... If the true nature of a sum of money is that it is "interest of money" that sum will not be denatured, or transmuted into something different, simply by being incorporated into some larger sum before being made payable under the terms of the contract".

We are of the considered opinion that considering the precedents and the position of law referred above regarding award of interest upon interest, both Section 34 of C.P.C and Section 3 of the Interest Act refers to the concept of interest which has to be understood as simple interest. We find that the legal position is quite clear that unless

there is a contract or legislation providing for payment on interest on interest, the same cannot be awarded. The interest, therefore, cannot assume the nature of the 'principal amount' and has to be considered as interest amount only.

As regards Order dated 27.09.2021, the Respondent-HPPC has paid the differential principal amount of Rs. 88.123 crores to Petitioner-LAPL in three equal monthly instalments with the first instalment being paid on 04.08.2016, second instalment paid on 04.09.2016 and third instalment paid on 04.10.2016.

Similarly, as regards Order dated 03.03.2022, the Respondent-HPPC has paid the differential principal amount of Rs. 54.202 crores to Petitioner-LAPL in three equal monthly instalments with the first instalment being paid on 30.11.2018, second instalment paid on 30.12.2018 and third instalment paid on 01.02.2019.

On perusal and consideration of above-referred position of law, the Commission holds that the interest should be paid up till the date of payment of the principal amount. In conclusion, the Petitioner is entitled for interest from the time it became due till the date of the payment of the principal amount.

The Respondent had also raised the contention that Respondent no. 2 on behalf of the Petitioner had raised bill dated 19.03.2022 in pursuance to order of this Commission dated 03.03.2022. Needless to say that the bills raised earlier cannot be considered in light of the present Order. The Petitioner shall submit fresh bills in terms of the present Order. The Petitioner shall raise the bill supported by the calculation sheet and Auditor's Certificate within a period of 15 days from the date of this order. In case, the delay in payment is beyond 30 days from the date of raising of bills, the Petitioner shall be entitled to late payment surcharge on the outstanding amount. The review application of the respondent i.e. HPPC, as well as the petition filed by LAPL along with the interlocutory applications, is disposed of in terms of the above.

In terms of the above order, the present petitions are disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 12.05.2022.

Date: 12.05.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman