



## **Delhi Electricity Regulatory Commission**

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017.  
F.17(47)/DERC/Engg./2023-24/8054

**In the matter of: Review of Capitalization and Physical Verification of assets of BSES Yamuna Power Ltd. for the Financial Year 2004-2005 to 2015-16.**

**BSES Yamuna Power Ltd.**

**...Petitioner**

**CORAM:**

**Hon'ble Shri Justice (Retd.) Jayant Nath, Chairperson**

### **ORDER**

(Date of Order: 03.05.2024)

1. BSES Yamuna Power Ltd. vide its Letter No. RA/2024-25/01/A/007 dated 09.04.2024, requested the Commission to pass a suitable Order approving the final numbers of capitalization of assets for FY 2004-05 to FY 2015-16.
2. BYPL has submitted the following:
  - (a) BYPL has approached the Commission to finalize the outcome of Physical Verification exercise conducted for the period of FY 2004-05 to FY 2015-16;
  - (b) The Commission has given undertaking in various proceedings including its Affidavit dated 23.02.2023 filed before Hon'ble APTEL in Review Petition No. (RP) 17 of 2015 wherein the Commission has undertaken to expeditiously conclude the physical verification exercise and accordingly, approve the capitalization of assets of BYPL;
  - (c) The Commission has approved the capital expenditure of TPDDL for financial year 2004-05 to 2015-16 vide its order dated 02.02.2024;
  - (d) BYPL has requested the Commission to pass the suitable orders approving the final numbers of capitalization of assets for FY 2004-05 to FY 2015-16.

### **Commission Analysis**

3. The provisional disallowance of capitalization on account of Capital Expenditure and Allowance in Compliance Order dated 14.05.2023 pertaining to REL Matter/EIC for MYT Period as per Hon'ble APTEL Order dated 06.10.2019 is of Rs. 114.28 Crore for the period FY 2005- 06 to FY 2015-16.

4. Based on the Commission's directive to review the final reports of M/s RECPDCL and M/s Feedback Infra, the external consultants engaged by the Commission for Physical Verification, and comments received from BYPL, the Physical verification reports have been finalized for the period FY 2004-05 to FY 2015-16:

*"3.1 Physical Verification Disallowance: - After analyzing the reports submitted by external consultant and subsequent comments received from DISCOM vide letter dated 25.01.2021, final amount disapproved by Engg. Division is Rs. 19.97 Crore. under physical verification exercise of FY 2004-05 to FY 2015-16.*

*3.2 Electrical Inspector Certificate (EIC) amount has been considered as per directions of the Hon'ble Supreme Court vide Order dated 15.12.2022 to consider APTEL judgement dated 06.10.2009, for calculation of EIC amount for the period prior to FY 07(PDP period) as had been considered as per Compliance Order dated 12.04.2022."*

5. The Engineering Division analysed the reports of the external Consultant and comments submitted by BYPL, which includes an amount of Rs.3.98 Cr pertaining to 47 nos. of schemes whose capitalized value is in excess of 15% of Approved cost of Scheme but no re-approval has been taken from the Commission. DISCOMs are required to take prior approval of all major capital scheme as per Clause No. 10.4 of "License for Distribution & Retail Supply of Electricity", which is reproduced as under:

*"...10.4 The licensee shall make an application to the Commission for obtaining prior approval of the Commission for schemes involving major investments as per the procedure which the Commission may specify from time to time and demonstrate to the satisfaction of the Commission that:*

*(a) There is a need for the major investment in the Distribution System which the licensee proposes to undertake;*

*(b) The licensee has examined the economic, technical and environmental aspects of all viable alternatives to the proposal for investing in or acquiring new Distribution System assets to meet such needs; and*

*(c) The licensee has explored all possible avenues and is sourcing funds in the most efficient and economical manner...."*

However, the said schemes have been verified on site and benefits have been taken by the consumers. Since BYPL has capitalized these schemes without DERC approval, this will fall under violation of Clause 10.4. of "License for Distribution & Retail Supply of Electricity". Despite violation as stated above, the Commission, without taking a strict view, is allowing capitalization based on the physical verification subject to the provisions of Section 142 of Electricity Act, 2003.

6. Section 142 of the Electricity Act 2003 is reproduced as under: -

“.... Section 142. (Punishment for non-compliance of directions by appropriate Commission):

*In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction....”*

7. The said Section invites maximum penalty is of Rs. 1 Lakh for each of the non-compliance of the Commission's directives. In light of the same, the Commission considers appropriate the levying of penalty at a rate of Rs 1 Lakh per scheme. Thus, a total penalty of Rs. 0.47 Cr. for 47 nos. of schemes to be levied on BYPL.
8. After considering various reports/comments/analysis of the external consultants as well as analysis done by the Engineering Division and the comments of BYPL, the Commission approves a total disallowance of 19.97 Cr. towards physical verification from FY-2004-05 to FY 2015-16, detailed as under:

FY	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	Total
Provisionally approved in TOs	181.11	87.92	141.08	270.43	315.59	199.02	210.02	112.24	69.12	148.57	244.99	261.92	2,242.01
**Allowed as per order dated 14.05.2023	127.63	188.34	260.97	221.19	391.96	205.05	214.84	97.85	71.82	148.77	245.00	280.70	2,454.10
Disallowance on behalf of capex review	1.25	1.18	1.95	2.95	5.74	2.57	1.44	0.16	0.22	0.30	1.46	0.75	19.97
Finally Allowed capitalization	126.384	187.158	259.017	218.235	386.222	202.475	213.396	97.686	71.597	148.470	243.540	279.950	2,434.13

\*\* (Compliance order challenged before Hon'ble Supreme Court by BYPL)

9. Accordingly, the impact of differential amount considered for additional capitalization based on Physical Verification will be provided in the ensuing True-Up Order.
10. Ordered accordingly.

Sd/-  
(Justice (Retd.) Jayant Nath)  
Chairperson