CHAPTER XII: MINISTRY OF POWER

NTPC Limited

12.1 Additional expenditure due to amendments to contracts

The Company extended undue benefit to contractors by amending contracts resulting in additional expenditure of ₹ 142.33 crore along with further liability of US$ 3.51 million towards retrospective price escalation for foreign materials already supplied within the original contractual period.

NTPC Limited (Company) awarded (March 2005) three separate contracts to M/s. FGUP "VO" Technopromexport, Russia (TPE) for supply, erection and commissioning of Steam Generator and Auxiliaries of Main Plant Package (Part- A) at Barh Super Thermal Power Project (BSTPP) Stage-I (3 units x 660 MW) at a total contract price equivalent to ₹ 2066 crore[1]. Similarly, three separate contracts for supply, erection and commissioning of Steam Turbine Generator and Auxiliaries of Main Plant Package (Part- B) were awarded (March 2005) to M/s. Power Machines[2] (PM) at a total contract price equivalent to ₹ 1192.87 crore[3]. The dates by which contracts were to be completed for commissioning of the above units of BSTPP was January 2009 (Unit 1), July 2009 (Unit 2) and January 2010 (Unit 3). The contracts stipulated price escalation for both foreign and indigenous materials, subject to a ceiling of 20 *per cent* of its contractual value.

Meanwhile, TPE informed (March 2006) the Company about the change in its legal status and accordingly, the contract with TPE was amended (April 2007). TPE approached (January 2007 onwards) the Company for extension of the contractual delivery schedule and removal of price variation ceiling of 20 *per cent* due to delay by the company in accepting change of legal status of TPE. M/s. PM also pursued (October 2007 onwards) the Company with a similar request on the ground of inflationary trends in material cost and unfavourable exchange rates.

As TPE had raised issues relating to time extension, removal of 20 *per cent* ceiling on the price variation and delay in execution of work, the Company sought (September 2009) permission from Ministry of Power (MoP) for termination of the contract on grounds of infringement of contractual provisions and to complete the contract at the cost and expenses of TPE with subsequent ratification by the Board of Directors (November 2009).

MoP directed (May 2010) the Company not to terminate the contract with TPE and to revise the completion schedule by removing price variation ceiling of 20 *per cent* since 2005. The Company, accordingly, amended the contract (October 2010) with TPE, by

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1 ***@ ₹45.55 per US$***
2 ***Power Machines ZTL, LMZ, Electrosila, Energomachexport, Russia and its assignee M/s. LMZ Energy (India) Ltd., New Delhi***
3 ***@ ₹45.45 per US$***

removing the price variation ceiling of 20 *per cent,* retrospectively, for supply of foreign materials and also extended the completion schedules by 55 months to August 2013 (Unit 1), February 2014 (Unit 2) and August 2014 (Unit 3). Similarly, to meet the revised schedule with TPE, the contract with M/s. PM was also amended (March 2011) by removing the above price variation ceiling retrospectively and completion schedules were extended by 57 months to October 2013 (Unit 1), April 2014 (Unit 2) and October 2014 (Unit 3). These amendments resulted in additional liability of US$ 35.04 million[1], of which US$ 31.53 million[2] (₹ 142.33[3] crore) was paid in respect of the foreign materials already supplied within the original contractual period (January 2009).

The Company stated (January 2013) that the decision for removal of price variation ceiling of 20 *per cent* was taken in line with the decision of MoP in the discussion held (March 2010) between the Company, TPE and MoP. While endorsing (April 2013) the views of the Company, MoP further stated that the Company subsequently decided (November 2010) to remove price variation in the bidding documents for all future packages.

The reply needs to be viewed against the fact that the contractors were irregularly paid for materials already supplied within the original contractual completion period, as price variation ceiling was removed retrospectively. This resulted in undue benefit to the contractors. It was also denial of level playing field as removal of the important parameter on restriction to price variation conferred a post contractual advantage to TPE and PM.

Thus, removal of price variation clause in the amended contracts (October 2010 and March 2011) in respect of the foreign materials already supplied within the original contractual period (January 2009) was irregular, for which the Company had to bear an additional liability of US$ 35.04 million (US$ 31.53 million equivalent to ₹ 142.33 crore was paid and US$ 3.51 million retained for performance guarantee).

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1 ***TPE – US$ 28.38 million and PM – US$ 6.66 million***

2 ***TPE – US$ 25.54 million and PM – US$ 5.99 million***

3 ***TPE – ₹115.53 crore and PM – ₹26.80 crore***